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Results of the Auditor's Examination of the Processes Leading to the Award of a Sole Source, Non-Competitive Contract, and Blanket Purchase Agreement to Curtis Lewis & Associates

September 30, 2004

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The Honorable Jim Graham
Councilmember, Ward One
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 406
Washington, DC 20004

Letter Report: Results of the Auditor's Examination of the Processes Leading to the Award of a Sole Source, Non-Competitive Contract, and Blanket Purchase Agreement to Curtis Lewis & Associates

Dear Councilmember Graham:

Pursuant to your letter request dated May 22, 2003, and section 455 of Pub. L. No. 93-198,[1] the District of Columbia Auditor ("Auditor") examined the contractual relationship between the law firm of Curtis Lewis & Associates ("Curtis Lewis") and the District of Columbia Office of Human Rights ("OHR"). Specifically, the Auditor conducted an examination of the circumstances and bidding procedures surrounding the award of a contract by OHR to Curtis Lewis on September 20, 2001,[2] as well as OHR's broader contracting authority, and whether the agency's $25,000 contract authority had been exceeded.

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[1] *See* the District of Columbia Home Rule Act, as amended, 87 Stat. 790, approved December 24, 1973, Pub. L. No. 93-198, section 455 (b), D.C. Official Code §1-204.55 (b): "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 may prescribe." *See also,* the District of Columbia Home Rule Act, as amended, Pub. L. No. 93-198, section 455 (c), D.C. Official Code §1-204.55 (c): "The Auditor shall have access to all books, accounts, records, reports, findings and all other 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."

[2] Blanket purchase agreement against GSA Contract No. GS-22F-8173H for EEO Investigation Services in support of OHR Contractor shall provide services in accordance with request for Task Order proposal No. DCHM-2001-T-0048 .1 dated July 20, 2001. Type: GSA Federal Supply Schedule No.: DCHM-2001-A-0048 Base Year: $296,500 Option Year One: $299,000 Signed: 9/20/01.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to:

(1) determine whether the circumstances and bidding procedures surrounding the award of a contract to Curtis Lewis during fiscal years 2001 and 2002 complied with employee standards of conduct and procurement regulations, policies and procedures; and

(2) review OHR's broader contracting authority and determine whether the agency's $25,000 contract authority had been exceeded.

In conducting the review, the Auditor examined contract files, meeting notes, financial accounts and records, supportive documentation, reports and relevant correspondence, and referenced the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended, effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-609 *et seq.*, District of Columbia Personnel Manual ("DPM"), the District of Columbia Procurement Practices Act of 1985,[3] as amended, and related rules and regulations. Principals of the law firm of Curtis Lewis, and current and former District of Columbia government employees and officials of OHR, the Office of Contracting and Procurement ("OCP"), and the Executive Office of the Mayor ("EOM") were interviewed by the Auditor.

BACKGROUND

OHR is a subordinate agency of the District of Columbia under the authority of the Mayor, established pursuant to D.C. Official Code § 1-204.04 (b).[4] Its mission is to mediate, investigate, prosecute, and address illegal discriminatory practices in employment, housing and commercial space, public accommodations, and educational institutions.[5] OHR specifically administers and

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[3] *See* the District of Columbia Procurement Practices Act of 1986, effective February 21, 1986, D.C. Law 6-85, D.C. Official Code § 2-301.01 *et seq.*

[4] *See also* D.C. Official Code §§ 2-1411.01, 2-1411.02, 2-1411.03 and 2-1411.05. *See also* section 404 (b) of the District of Columbia Home Rule Act, as amended, Pub. L. No. 93-198, D.C. Official Code § 1-204.04 (b) which states that "the Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality."

[5] Additionally, the Office of Human Rights seeks to end illegal discrimination based on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family status, family responsibilities, matriculation, political affiliation, physical handicap, source of income, and place of residence or business.

enforces the provisions of the District of Columbia Human Rights Act of 1977, as amended (the "Act"),[6] the District of Columbia Family and Medical Leave Act of 1990,[7] the Parental Leave Act of 1994, District government regulations and policies, executive orders, and other federal civil rights laws.

OHR, established in 1971, and as a separate agency in 1999, had been plagued by a longstanding backlog of pending discrimination cases and a diminished investigative and legal staff to process the pending inventory of cases, thereby affecting OHR's overall productivity and its effective enforcement of the Act and other statutes it administers. During fiscal years 1998 through 2002, OHR endured a backlog of unlawful discrimination complaints averaging 472 cases per year. In an effort to reduce this enormous backlog, OHR relied on contractors to investigate complaints and draft letters of determination ("LOD").[8] Table I presents OHR's backlogged and pending case inventories for FY 1998 through 2003, as of March 7, 2003.

Table I

OHR's Backlogged and Pending Case Inventories for FY 1998 through FY 2003, As of March 7, 2003

End of Fiscal Year	Backlogged Case Inventory	Pending Case Inventory
1998	546	702
1999	485	659
2000	494	581
2001	450	567
2002	383	540
2003*	380	444

Source: Testimony of Nadine C. Wilburn, Interim OHR Director, on March 8, 2003, OHR Performance Oversight Hearing before the Council of the District of Columbia. *Period from October 2002 through March 7, 2003.

[6] *See* the Human Rights Act of 1977, as amended, effective December 13, 1977, D.C. Law 2-38, D.C. Official Code §2-1401.01 *et seq.*

[7] *See* the "District of Columbia Family and Medical Leave Act of 1990, D.C. Law 8-181, D.C. Official Code §32-501 *et seq.*

[8] According to 4 DCMR § 715, a letter of determination represents a written notice of a finding, served on all parties to a complaint indicating that a finding of probable cause shall be based upon credible, probative, and substantial evidence which demonstrates a nexus between the harm complained of and the protected characteristic or activity of the complainant.

As noted in Table I, by the end of FY 1999 OHR had accumulated a backlog of 485 cases and a pending inventory of 659 cases. Consequently, OHR contracted with The Training Center, an African-American woman-owned business, to provide investigative and drafting services for 67 cases in an effort to reduce the backlog. During FY 1999, The Training Center successfully completed the contract and delivered 67 LODs to OHR at the rate of $450 each, or a total of $30,150.

On February 28, 2000, Charles F. Holman, III was named director of OHR. He immediately focused on the sizeable case backlog, making its decrease a management priority and a strategic goal. Mr. Holman specifically forecasted a substantial reduction by the end of FY 2000.[9]

During FY 2000 on behalf of OHR, OCP solicited proposals from which contractors would be competitively selected to perform the drafting and investigative functions for OHR. Proposals were received from four contractors, but proposals submitted by only two firms were deemed acceptable--The Training Center and Curtis Lewis. A technical evaluation panel rated each proposal and concluded that The Training Center possessed the requisite prior experience with OHR to fully comprehend and execute the solicitation's requirements and the necessary in-house staff to handle the required work. On the other hand, the review panel determined that Curtis Lewis, with only two partners, had significantly less resources and staff to perform the services set forth in the solicitation, and would have to rely extensively on subcontractors to perform the required work. Also, the obvious lack of information for and experience of proposed subcontractors made it difficult for the panel to assess whether work assigned to Curtis Lewis would or could be performed in a thorough and timely manner. The panel also noted that Curtis Lewis inserted an extra layer of review in the investigation process thereby placing an unnecessary administrative burden on OHR. Moreover, it was discovered that most of Curtis Lewis's work experience was concentrated in the areas of arbitrations and union grievances, and not the investigation and processing of equal employment opportunity cases.

On June 6, 2000, The Training Center was awarded a second competitive contract with OHR for $93,000, for a period of one year beginning June 6, 2000 and ending June 5, 2001. During FY 2000, The Training Center, with the scope of work defined, was to again provide EEO investigative services to OHR for 80 cases at a unit price of $600 per abbreviated and long-form LOD, for a total of $48,000 and 20 fully investigated cases at a unit price of $2,250, or a total of $45,000. The contract included one option year for $97,000.

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[9] During an interview with the Auditor on April 14, 2004, Charles F. Holman III, the new director, indicated that he was aware at that time that his future with OHR would be "tied to" reducing the backlog.

It appears from documents reviewed by the Auditor that the increase in the unit rate per LOD from $450 in FY 1999 to $600 in FY 2000 was due to the complexity of cases requiring LODs. Some cases had been consolidated and contained anywhere from one to 26 issues and sometimes required approximately 32-40 hours of actual work, excluding supervisory review.[10] The increased rate of $600 was determined by the District to be fair and reasonable.

In an effort to achieve his goal of substantial reduction of the backlog, the new director continued to work with The Training Center until August 22, 2000 when The Training Center proposed "an equitable adjustment" in the current contract price from $600 per LOD to $1,000 per LOD. Pricing had been based upon a combination of completed abbreviated and long-form LODs, and was balanced to accommodate the complexity of some LODs and the simplicity of others. Information reviewed by the Auditor revealed that The Training Center's request to increase the rate per LOD was intended to obtain the "resources" needed to more timely assist the new director in meeting OHR's substantial backlog reduction goal. These additional resources would permit The Training Center to complete the work required under the contract in one-fourth the time agreed upon in the contract and modify the completion date to September 2000 rather than June 2001. Unable to reach agreement, the Director of OHR terminated The Training Center's contract for the convenience of the government effective November 13, 2000.

Curtis Lewis, aware of the new leadership at OHR and desirous of obtaining District business, approached the new director in January 2001 to introduce his firm and offer its services on a contractual basis to eliminate OHR's entire backlog, which he erroneously estimated to be approximately 700 cases. In February 2001, the Director of OHR awarded Curtis Lewis a non-competitive sole source contract in the amount of $1,200 ($400 per LOD) in an effort to determine the quality of the firm's work. Apparently satisfied with their performance at the end of the first contract, the Director of OHR awarded Curtis Lewis a second sole source contract to complete 32 LODs at $700 each, for a total of $22,400.[11] After that contract was completed, the Director of OHR

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[10] According to 4 DCMR § 403.1 and § 403.3, a "consolidated case" is one that involves identical or similar issues and that are filed against the same respondent and consolidation would expedite the processing of the complaints and would not adversely affect the interests of the parties.

[11] Curtis Lewis believed OHR's backlog to be higher than it actually was and on March 22, 2001, Curtis Lewis approached OHR and offered to complete 722 LODs at a rate of $700 each. OHR countered by proposing a contract for 32 LOD's at $700 each, or $22,400, which was just below OHR's contracting authority. Initially, Curtis Lewis rejected the proposed contract, despite the fact that OHR agreed to pay Curtis Lewis's higher contract price of $700 per LOD. It appears that Curtis Lewis wanted to obtain a higher dollar amount contract by processing more LOD's.

attempted to enter into an even larger contract with Curtis Lewis during the summer of 2001. However, the OHR Director's contracting authority was limited to $25,000 for each procurement thus limiting the number of cases he could outsource to any single contractor.[12] If funding were available, OHR could either spread its contracting opportunities to various vendors within its contracting authority or forward the procurement to OCP which had higher contracting authority. OHR chose the latter option. The OHR Director then sought advice and assistance from the Assistant to the Chief of Staff for the EOM on how to remove all obstacles to OHR's ability to award a higher priced contract to Curtis Lewis.[13]

Discussions ensued with OHR officials and Curtis Lewis to develop guidelines for the preparation and delivery of future LODs as well as to review apparent problems with LODs previously submitted by Curtis Lewis under the second contract. Shortly thereafter, a meeting was held at the EOM between April 2001 and July 2001, which was attended by officials and representatives from the EOM, OHR, and the Washington Teachers Union ("WTU"). From interviews and testimony, it appears that Barbara A. Bullock, the former president of the WTU interceded on behalf of Curtis Lewis, requesting that OHR award the firm a contract in a higher dollar amount. On September 20, 2001, OCP, on behalf of OHR, ultimately entered into a blanket purchase agreement with Curtis Lewis to draft 50 LODs at $950 per LOD, and investigate 100 cases at $2,490 per case, or a total of $296,500.

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[12]Pursuant to Procurement Order No. 97-04, the Chief Procurement Officer delegated $25,000 in small purchase contracting authority to the director of OHR. Note that the difference between OHR's contracting limit of $25,000 and the proposed contract rate of $22,400 took into account three LOD's that Curtis Lewis had already drafted at the lower rate of $400 per LOD. While the new director engaged in questionable procurement actions in the solicitation and award processes, OHR did not exceed its contracting authority.

[13]*See* Memo dated May 9, 2001 to Terence Coles, Assistant to the Chief of Staff, from Charles F. Holman III, Director, OHR at 3 where Mr. Holman states: "In conclusion, OHR is very much willing to contract with CL [Curtis Lewis] in whatever amounts are necessary to eliminate OHR's case backlog. However, requirements of the D.C. Municipal Regulations and the process for letting contracts at the Office of Contracting and Procurement place serious restrictions on OHR's ability to do so in the amounts sought by CL. Nevertheless, OHR welcomes your assistance in removing all obstacles to our ability to contract with CL."

FINDINGS

OHR DIRECTOR UNFAMILIAR WITH DISTRICT'S PROCUREMENT POLICIES AND PROCEDURES EXPOSED CONTRACTING PROCESS TO MISUSE

After arriving at OHR, the new director found himself confronted with an ever-increasing backlog and inventory; a lack of qualified and properly trained investigators; inexperienced managers; high employee turnover; a low percentage of probable cause findings; and lengthy processing times for completing investigations. Amid constant criticism that his agency was not sensitive to the needs of the community it was established to serve, the new director began the task of reducing a seemingly insurmountable backlog with a skeleton staff. A newly appointed OHR director unfamiliar with the District's procurement law, regulations, and processes apparently circumvented procurement safeguards designed to protect OHR from abuse and misuse–making it vulnerable to political pressure and a contractor's unfair competitive advantage.

Curtis Lewis & Associates Submitted an Unsolicited Proposal to New OHR Director Which Was Accepted in Violation of District Procurement Rules and Resulted in the Award of a Non-Competitive Contract

Curtis Lewis was quickly awarded three consecutive contracts–the first two were sole source non-competitive awards and the last contract was awarded using questionable competitive procedures. Because the first contract was below $2,500, OHR was able to award this contract under non-competitive procedures in accordance with District procurement regulations.[14] Although the second contract to complete 32 LODs at $700 each, for a total of $22,400, was awarded to Curtis Lewis based upon an unsolicited proposal, it appears from documents reviewed by the Auditor, that the criteria used to justify the award did not meet the requirements of District procurement regulations applicable to contracts awarded as a result of unsolicited proposals and sole source contract awards.[15]

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[14] According to 27 DCMR § 1801.1: "A contracting officer may make a procurement for an amount of ten thousand dollars ($10,000) or less without obtaining competitive quotations if the contracting officer determines that the purchase is in the best interest of the District government considering the price and other factors (including the administrative cost of the purchase)." Therefore, a procurement of $2,500 or less may be made without obtaining a competitive quotation.

[15] *See* D.C. Official Code § 2-303.05 and see *also* 27 DCMR §1702.1 which states in part: "The contracting officer may award a contract by using the noncompetitive negotiation procedures. ..upon making a determination and findings, that there is only one (1) available source for a supply, service, or construction." According to 27 DCMR § 1702.2 " When determining whether there is only one (1) source for the requirement, the contracting officer (and, for procurements over twenty-five thousand

According to 27 DCMR §1612.1: "Unsolicited proposals may be considered by agencies in order to obtain innovative or unique methods or approaches to accomplish their missions from sources outside the District." Further, 27 DCMR § 1613.2 states that: "An agency shall return an unsolicited proposal to an offeror, citing reasons, when its substance meets any of the following criteria: (a) It is available to the District without restriction from another source; (b) It closely resembles a pending competitive requirement; and (c) It does not demonstrate an innovative and unique method, approach or concept." Finally, 27 DCMR §1613.3 states that: "A favorable evaluation of an unsolicited proposal shall not, by itself, justify awarding a contract without full and open competition." The Auditor found that based on these requirements, Curtis Lewis's proposal did not meet the criteria set forth in either 27 DCMR § 1612.1 or § 1613.2 in that Curtis Lewis's proposal did not demonstrate an "innovative and unique method, approach, or contract" and it was available to the District without restriction from other sources. Additionally, 27 DCMR §1700.1 states that: "A contracting officer shall not award a District contract without using competitive sealed bid procedures. . . or the competitive sealed proposal procedures."[16] Further, 27 DCMR §1701.1 states that: "Each contracting officer shall take reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interest of the District."[17] It appears that the second contract awarded to Curtis Lewis violated the procurement regulations because, as a sole source contract, it was not determined to be both necessary and in the best interest of the District. In sum, the second contract failed to meet applicable procurement regulations for accepting unsolicited proposals, awarding sole source contracts, and was not awarded in accordance with competitive procedures.

Despite Poor Contract Performance Curtis Lewis was Awarded a Third Contract in the Face of Political Influence and Intervention, Questionable Procurement and Personnel Practices, and (Suspected) Ethics Violations

Apparently unaware that he had violated procurement regulations, the OHR Director set in motion the strategy to award yet a third contract to Curtis Lewis. Once the second contract had been

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dollars ($25,000), the Director) shall consider whether there is a reasonable basis to conclude that the District's minimum needs can only be satisfied by the supplies, services, or construction proposed to be procured, and whether the proposed sole source contractor is the only source capable of providing the required supplies, services, or construction." No explanation was provided by the contracting officer to justify award of a sole-source contract to Curtis Lewis.

[16] *See* D.C. Official Code § 2-303.03.

[17] *Id.*

awarded, Curtis Lewis began to use his access to the OHR Director as well as the OHR Director's inadequate knowledge and unfamiliarity with the District's procurement policies and procedures to his advantage. For example, the inquiry reveals with regard to the third contract that Curtis Lewis participated in meetings and discussions where, in some cases, he suggested the terms, conditions, and manner of awarding the third contract. During an interview with the Auditor, Curtis Lewis stated that on one occasion he told the new director that OHR could utilize the General Service Administration's ("GSA") Federal Supply Schedule ("FSS") as a vehicle to hire the firm because Curtis Lewis was a GSA schedule vendor. In April 2001, Curtis Lewis sent OHR a letter describing the process to award contracts through the GSA's federal supply schedule. Among other things, that letter described how agencies could use a blanket purchase agreement to establish accounts with contractors to fill recurring requirements. (See **Attachment I**–Letter dated April 2001 from Curtis Lewis to Charles Holman.)

At some point during the summer of 2001, the OHR Director and OHR staff began to question the quality of Curtis Lewis's work product under the second contract. Records show that OHR staff raised persistent questions concerning the quality of work supplied by the firm. Despite the concerns, Curtis Lewis continued to provide services to OHR. Because OHR had limited contracting authority and could not award a larger contract, EOM became involved. It appeared that at this juncture, Mr. Holman and staff of the EOM yielded to the perceived political influence of the president of the WTU, who attended at least one meeting held between April and July, where the award of the third contract to Curtis Lewis and its proposed payment structure were openly discussed.

Barbara A. Bullock was a political ally of Mayor Anthony Williams. Curtis Lewis was the lawyer for WTU, and a personal friend of Barbara A. Bullock. Because of her perceived political influence, Barbara A. Bullock possessed access to many governmental officials. In the coming weeks, Barbara A. Bullock became Curtis Lewis' advocate, and it appears from our investigation that she requested that Curtis Lewis be awarded a higher dollar amount contract than OHR had previously awarded.

According to interviews with the Auditor,[18] Barbara A. Bullock attended at least one meeting with the Mayor's interim chief of staff, and a special assistant to the interim chief of staff. It was explained that Barbara A. Bullock wanted Curtis Lewis to be awarded the OHR contract according to the terms and conditions that *he* had specified. It appears that Barbara A. Bullock "presided" over this meeting in the EOM, while the interim chief of staff, her assistant,[19] and other participants sat passively. It was stated that Ms. Bullock became very agitated during the meeting and *demanded* that OHR award a contract to Curtis Lewis. It was further acknowledged that no objections were raised and that EOM employees were very receptive to Ms. Bullock's demands.

During her interview with the Auditor, the interim chief of staff indicated that her recollection of the meeting was that Ms. Bullock was discussing various issues that she had with EOM. One issue of concern was that Curtis Lewis and OHR were not agreeing on how the contract should be awarded. The interim chief of staff was asked by Ms. Bullock to help resolve the issue because it appeared that Curtis Lewis had his own preference as to how the contract should be awarded and OHR officials and staff were uncertain whether they could accommodate his request. Further pressure was exerted by the WTU official to ensure that Curtis Lewis was awarded the OHR contract.

Despite mounting concerns about Curtis Lewis's poor work product,[20] it appears that the OHR Director, rather than resist the political pressure being exerted by Barbara A. Bullock, became disengaged from the procurement process and his attendant responsibilities as Director of OHR in ensuring that the procurement met the needs of his agency and complied with applicable laws, regulations, and standards. As a result, he permitted EOM and Barbara A. Bullock to determine the terms, conditions, and manner of awarding the third contract with Curtis Lewis.

[18]Interview with Joy A. Arnold interim chief of staff, on April 4, 2004.

[19]In addition to being a special assistant to Ms. Arnold, Terence Coles worked as a liaison between OHR and EOM, to assist Charles Holman in clearing OHR's tremendous backlog.

[20]Internal memos and emails reviewed by the Auditor indicate that OHR complained that LOD's submitted by Curtis Lewis were not accurate, and lacked legal analysis and substance.

District Officials Engaged in Questionable Procurement Practices

According to 27 DCMR §1006, "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." Further, 27 DCMR § 1003.5 also states that: "A contracting officer shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the District of Columbia Procurement Practices Act of 1985." Also, 27 DCMR §1500.12 states that: "information concerning proposed acquisitions shall not be released outside the District before solicitation, except for pre-solicitation notices."

The Auditor found that in their efforts to resolve the backlog, OHR and EOM officials engaged in activities that demonstrated a lack of knowledge of, or disregard for standards of employee conduct and ethical standards applicable to the District's procurement process. While those regulations also require that officials with contracting authority ensure that contractors receive impartial, fair, and equitable treatment, OHR officials permitted Curtis Lewis to participate in the procurement process in a manner that provided him with an unfair advantage over other potential competitors.

In addition, District personnel regulations require District government employees not to engage in any activity incompatible with government service including, among others, divulging any official information to any unauthorized person in advance of the time stipulated for its authorized issuance, or permitting others to make use of information not available to the general public.[21] The participation of Barbara A. Bullock in the meeting in which the award of a contract was discussed indicates that information regarding procurement opportunities was made available by government officials to unauthorized individuals that was not available to the general public. As a result, the perceived necessity to resolve the backlog issue in this manner rendered OHR's procurement process vulnerable to manipulation.

The District government did not provide adequate guidance and oversight to the new director so that he could build an effectively functioning agency. The Auditor also found that the lack of procurement training and lack of familiarity and knowledge of personnel regulations governing employee conduct appears to have contributed to the vulnerability and susceptibility of the

[21] *See* DPM §1804.1 (f).

procurement process. While the Office of the District of Columbia Auditor does not find that Curtis Lewis's actions or manipulations violated applicable law, there is evidence to suggest that a direct competitive advantage was conferred on the firm as a result of a various factors including Barbara A. Bullock's advocacy and intervention on the firm's behalf.

Employees of EOM Engaged in Activities That Appeared to Violate the District's Employee Standards of Conduct

As previously noted, with a limitation on its contracting authority, OHR was prevented from awarding a larger contract to Curtis Lewis. At this point, it appears that the Mayor's interim chief of staff interceded. On one occasion, the interim chief of staff indicated that Curtis Lewis made a request to have the contract "handled in a certain way and she asked OHR whether it could be done the way Curtis Lewis wanted." In addition, the interim chief of staff indicated to the Auditor that her assistant worked with OHR and with OCP officials to determine "whether it could be done the way Curtis Lewis had requested."[22] During an interview with the Auditor, Curtis Lewis indicated his expectation to obtain OHR's entire backlog of cases, which Curtis Lewis estimated to be 700.[23]

According to DPM §1800.1, "Employees of the District government shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government."[24] Section 1803.1 of the DPM also addresses the ethical responsibilities of District government employees as follows: "An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of, the following: (a) using public office for private gain; (b) giving preferential treatment to any person; (c) impeding government efficiency or economy; (d) losing complete independence or impartiality; (e) making a government decision outside official channels; or (f) affecting adversely the confidence of the public in the integrity of government. The

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[22] During an interview conducted with the Auditor on April 8, 2004, Ms. Arnold stated: "Yes, there was a contract that Curtis Lewis was vying for with the city and there was a dispute as to how the contract would be administered. And there was a request made by Curtis Lewis to have the contract handled in a certain way. And I talked with Holman about whether it could be done that way."

[23] Interview of Curtis Lewis' principals conducted by the Auditor on April 12, 2004.

[24] *See* D.C. Official Code § 1-618.01.

Auditor found that the interim chief of staff created an "adverse appearance" based on her improper involvement in giving preferential treatment to Curtis Lewis. Similarly, her actions adversely affected the confidence of the public in the integrity of the District government.

The Auditor found that the interim chief of staff may have violated the standards of conduct prohibiting involvement in or excessive entanglement of private interests in governmental activities by allowing Ms. Bullock to intercede on Curtis Lewis' behalf in a governmental office during government work hours. As a result, a direct competitive advantage was conferred on Curtis Lewis by the District government. Therefore, the interim chief of staff may have violated DPM §§ 1800.1 and 1803.1(b), (e) and (f) by engaging in conduct during the course of her government employment which adversely affected the confidence of the public in the integrity of the District government and by giving preferential treatment to an individual thereby conferring a direct unfair competitive advantage. Also, the interim chief of staff's actions in letting Ms. Bullock participate in governmental meetings in which a course of action of an official nature was decided outside official government channels and ultimately implemented, placed the government in a negative light.[25]

The Auditor also found that there was excessive entanglement between the District of Columbia government and private interests. The interim chief of staff may have violated employee standards of conduct by permitting a private individual to intercede on behalf of a potential awardee of a government contract. She allowed Ms. Bullock to promote the firm of Curtis Lewis, ultimately paving the way for the third contract award. The influence exerted by Ms. Bullock was clearly improper. District employees must avoid any action that may result in or create the appearance of adversely affecting the public's confidence in the integrity of the District government and its operations. The interim chief of staff's involvement in OHR's contracting process contributed to the improper award of a contract to Curtis Lewis.

[25]Because there was no corroborating evidence to confirm the Mayor's involvement, it is difficult to determine the extent of the Mayor's knowledge of his staff's activities.

The interim chief of staff was previously cited for being "unfamiliar" with the employee standards of conduct.[26] The Auditor also found that many of the actions demonstrate the lack of knowledge of, or little regard for, employee conduct provisions of the District's personnel regulations which require each District government employee to maintain high standards of ethical behavior in the performance of their official duties.[27]

RECOMMENDATIONS

1. The District of Columbia Auditor recommends that the former interim chief of staff attend mandatory ethics classes and refers this matter to the District of Columbia Board of Elections and Ethics, through its Office of Campaign Finance, for enforcement. The Mayor's former interim chief of staff is currently a senior advisor to the executive director of the National Capital Revitalization Corporation ("NCRC")[28] and retains a position of responsibility.

2. The Auditor will refer all suspected violations to the District of Columbia Board of Elections and Ethics upon which is imposed the responsibility for enforcing the District of Columbia Government Comprehensive Personnel Act of 1978 and D.C. Personnel regulations governing employee conduct.

3. Agency officials and procurement staff be required to attend regular procurement ethics training and "refresher" courses, including training in sole source contract awards in the District of Columbia.

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[26]*See* OCF Docket No. CF 2002-09, where the matter although dismissed against Ms. Arnold, the recommendation was that "...[i]t is imperative that she (Joy Arnold) a District government employee, become closely familiar with the provisions of the employee conduct regulations, and avail herself, if she has not already done so, of any ethics seminars or workshops scheduled by the District government."

[27]In an article appearing in *The Washington Post,* dated January 15, 2003, entitled "*Union Chief Lobbied for Aide's Brother, Suit Said,*" Tony Bullock, mayoral spokesman, responding to allegations that Barbara Bullock had lobbied on behalf of Curtis Lewis, stated "This goes on in government every day all over the world . . . People come in all the time wanting an audience with the Mayor or his staff, requesting things that they think would be good for them."

[28]NCRC's mission is to spur economic development throughout the District, primarily in under-served communities, through real estate development and business development, ensuring that activities benefit current and new residents and businesses including Local, Small and Disadvantaged Enterprises.

4. Prohibit prospective contractors from participating in, proposing, or designating project specifications, contractor requirements and evaluative criteria to avoid actual or perceived appearance of impropriety, thus exposing the District of Columbia to bid protests and unfair competition claims.

5. Allow potential bidders a reasonably adequate amount of time to prepare responsive proposals to avoid the appearance of contract steering and failure to secure and seek adequate competition.

OCP USED A QUESTIONABLE PROCUREMENT PROCESS TO JUSTIFY THE AWARD OF A $296,500 BLANKET PURCHASE AGREEMENT WITH CURTIS LEWIS ON BEHALF OF OHR

The Auditor's review indicated that the procurement process used by OCP to justify the award of a $296,500 blanket purchase agreement with Curtis Lewis was expressly designed to ensure that Curtis Lewis was awarded the contract by limiting competition, expediting the award process, and by improperly utilizing the federal supply schedule in violation of applicable regulations. Curtis Lewis initially suggested the use of the GSA's FSS as a procurement method to the OHR Director. The Auditor found that by using the GSA Schedule method of procurement, a series of questionable actions occurred casting doubt on the integrity, fairness, and reasonableness of the contract award system as discussed briefly below.

Curtis Lewis Had an Advantage Over Competitors Due to Advance Notice of Forthcoming Solicitation and the Unchanged Statement of Work

The Statement of Work ("SOW") used in the GSA FSS Solicitation No. DCHM-2001-T-0048, "Request for Task Order Proposals" issued by OCP on behalf of OHR, was an updated version of the SOW originally used to obtain the same services under a previous solicitation issued during FY 2000. Curtis Lewis unsuccessfully competed under the previous solicitation which contained substantially the same SOW, for essentially the same EEO services. Curtis Lewis had only to update the previously submitted technical proposal making adjustments for the number of LODs and investigations, and re-submit it in response to Solicitation No. DCHM-2001-T-0048.[29] After The Training Center's contract was prematurely terminated by the OHR Director in November 2000, Curtis Lewis became aware that OHR would need to outsource work in an effort to decrease the backlog and inventory of cases. (See Background Section for history of contract awards to Curtis Lewis.) Curtis Lewis had an advantage in that they had prior notice of the solicitation and had already prepared a proposal for the same services under a previous solicitation. Thus, the level of effort that Curtis Lewis had to expend in preparing and submitting a response paled by comparison to level of effort and preparation required of the other vendors. After receiving two contracts in relatively quick succession, Curtis Lewis was properly positioned to receive yet another.

The Use of Federal Supply Schedule to Award a Contract to Curtis Lewis Was Not in Accordance with Applicable Regulations

The FSS is a program directed by GSA which "provides [government] agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying [30] and represents a required source of supplies and services for District of Columbia government agencies.[31] As GSA has already determined the price in the schedules to be fair and reasonable, ordering officers need not make a separate determination. Under the District's procurement regulations, the use of federal supply schedules is mandatory when a contracting officer determines that the supplies and services meet the District's minimum requirements and when the federal schedule price is lower than the price that can be obtained with a new contract.[32]

The GSA FSS method of procurement allowed by District regulations was regarded as the most flexible and timely method of procurement that could be used to award Curtis Lewis a more lucrative business opportunity to draft LODs and conduct discrimination investigations on behalf

[29]On August 20, 1999, OCP issued a solicitation for the procurement of 80 LODs and 20 EEO investigations. Only The Training Center and Curtis Lewis submitted acceptable proposals, with The Training Center ultimately winning the contract due to lower prices and better technical expertise.

[30]*See* Federal Acquisition Regulations, section 8.401 (a).

[31]*See* 27 DCMR 2100.1 which provides the order of priority for use of government supply sources including the Federal Supply Schedule.

[32]*See* 27 DCMR § 2103.4

of OHR. The method proved most desirable because it afforded flexibility in 1) eliminating the requirement to advertise the solicitation, 2) substantially shortening the solicitation period, and 3) limiting the manner and range of competition, thus lowering the public visibility of this transaction.

Under the Determinations and Findings ("D&F") used to justify Solicitation No. DCHM-T-0048, the District found that the estimated cost of $296,500 was considered to be "fair and reasonable" based on historical data and the contractor's GSA pricing. As stated above, the District's procurement regulations require the use of the FSS if it is determined that minimum requirements are met and when the schedule delivers the lowest price. The Auditor was unable to find evidence that these two prongs of 27 DCMR § 2103.4 had been met. Further, there is no information or evidence to support that Curtis Lewis's price was the lowest price available–moreover, it appeared to be the only price. Because Curtis Lewis was the only contractor to submit a proposal in response to this solicitation, there was no basis upon which OCP could objectively determine whether Curtis Lewis's prices were competitive.

The solicitation was issued on July 9, 2001 and the closing date for submitting proposals was originally July 17, 2001, eight calendar days or five business days from the date of issue.[33] Because this solicitation used the GSA schedule, there was not a need to advertise or publicize the solicitation for 30 days. Instead, OCP indicated to the Auditor that it had "mailed" solicitations out to at least three other contractors also on GSA's FSS--Lee Kramer, Lee Kramer & Associates, Washington, DC, Susan Grimes, Susan Grimes Associates, Washington DC, and Mae Smith, MS & Associates, Memphis, Tennessee. Lee Kramer verbally informed the Auditor that his firm had not received a solicitation and Susan Grimes provided the Auditor with written confirmation that her firm had not received a solicitation either. Mae Smith informed the Auditor that her firm had submitted a responsive proposal by the July 20, 2001 deadline. However, the Auditor was notified by the contracting officer that individuals responsible for handling the proposal, discovered Mae Smith's proposal in a safe, almost three months after the award of the contract to Curtis Lewis. Thus, it was never considered.

The abbreviated response time on one hand had the effect of limiting the amount of time competitors had to develop, prepare, and submit a responsive proposal and discouraging the participation of potential competitors. On the other hand, Curtis Lewis had an advantage due to the

[33] The solicitation deadline was subsequently amended to July 20, 2001.

proposal he had submitted under the previous solicitation. The level of effort put forth by Curtis Lewis was substantially less than other competitors. Taken together, all of these factors suggest an orchestrated effort to ensure the award of a more lucrative contract to Curtis Lewis.

LAW FIRM OF CURTIS LEWIS & ASSOCIATES WAS PAID A CONSIDERABLY HIGHER RATE ON AVERAGE THAN THE TRAINING CENTER FOR ESSENTIALLY THE SAME SCOPE OF WORK

The Auditor found that the sole source, non-competitive rates paid to Curtis Lewis exceeded the rates that were competitively negotiated with The Training Center for essentially the identical scope of work. For example, the $700 rate paid to Curtis Lewis during the second contract was $100 more per LOD than the $600 rate competitively obtained by OHR during its second contract with The Training Center. This represented a rate increase of 17 percent. In addition, the sole source, non-competitive rate of $950 paid to Curtis Lewis during the third larger contract was $350 more per LOD than the $600 competitive rate paid to The Training Center under the second contract, which was a 58 percent increase and $50 less than the $1,000 rate increase request that ultimately led to OHR terminating the contract with The Training Center. Further, the $2,490 per case rate paid to Curtis Lewis for investigations was $240 more than the $2,250 competitive rate paid by OHR during its second contract with The Training Center, resulting in an increase of 11 percent. Please see rate comparisons between The Training Center and Curtis Lewis in Table II below.

Table II

Comparison of Rates Paid to The Training Center and Curtis Lewis & Associates

	The Training Center ("TTC")	**Curtis Lewis**	
	Contract from June 2000 through June 2001 (terminated November 2000)	**Contract from May 2001 through August 2001**	**Contract from September 2001 through September 2002**
LODs	$600	$700	$950
Increase from contract with TTC		17%	58%
Investigations	$2,250		$2,490
Increase			11%

CONCLUSION:

The Auditor's examination of the processes and circumstances leading to the award of contracts to the law firm of Curtis Lewis & Associates revealed questionable procurement practices, ethical lapses by employees of the Executive Office of the Mayor, and improper political influence and intervention, providing Curtis Lewis & Associates with a direct competitive advantage.

A new director was appointed in February 2001 to the Office of Human Rights. That office had been plagued by a rising case inventory and backlog, and in an effort to reduce the backlog, during his tenure, the new director awarded a total of three sole source, non-competitive contracts to the firm of Curtis Lewis. The director being unfamiliar with procurement regulations awarded a sole-source contract to Curtis Lewis from an unsolicited proposal in violation of District procurement laws. Curtis Lewis was later awarded an even larger contract that was obtained through the use of political influence and ethical practices by EOM staff that appeared to violated employee standard of conduct rules. Curtis Lewis capitalized on his ability to have access to the new director and positioned his firm to receive the benefits of a contract awarded through the political intervention of a former president of the Washington Teacher's Union.

The Auditor found that employees of EOM as well as procurement officials improperly engaged in activities that adversely affected the confidence of the public in the integrity of the District of Columbia government. The Auditor found that excessive entanglement of the District government with private interests compromised the process and allowed Curtis Lewis to gain an unfair foothold in the contracting process.

Respectfully submitted,

Deborah K. Nichols
District of Columbia Auditor

APPENDIX

CURTIS LEWIS & ASSOCIATES, P.C.
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April, 2001

By Courier
Charles F. Holman, III, Director
Office of Human Rights
GOVERNMENT OF THE DISTRICT OF COLUMBIA
441 Fourth Street, N. W., Suite 970 North
Washington, D.C. 20001

Re: **Proposal for Preparing Letters of Determination:**
Contracting Procedures Options

Dear Mr. Holman:

I have enclosed pursuant to your request information on the General Services Administration's Federal Supply Service (FSS), the vehicle through which Federal agencies, including the District of Columbia, contract for professional, administrative and management support services. I have also included some observations on the significant features of FSS's contract schedules. Of course, for particular guidance on utilizing the FSS schedules, you should consult your contracting officer.

I hope the information proves helpful. We remain prepared to meet with you at your convenience.

Sincerely,

CURTIS LEWIS & ASSOCIATES, P.C.

By: ______________________
Curtis J. Lewis, Esquire

General Services Administration Federal Supply Schedules

- The General Services Administration's (GSA) Federal Supply Schedules (FSS) is a simplified process that allows Federal agencies to purchase products and services at prices associated with volume buying.

- The District of Columbia is an authorized and lawful user of GSA's FSS.[1]

- Generally, ordering agencies need not seek further competition; GSA has already determined the price of items under FSS contracts to be fair and reasonable.

- Ordering agencies may use Blanket Purchasing Agreements (BPAs) to establish accounts with contractors to fill recurring requirements.

- Ordering agencies are encouraged to consider small, women-owned small, and/or small disadvantaged business scheduled contractors, and to give preference to them, when two or more contractors, can performed the requested service at the same firm-fixed or ceiling price. Such orders are counted against the ordering agencies' small business goals.

- For purposes of the District of Columbia, Curtis Lewis & Associates is a Local, Small Disadvantaged Business Enterprise.

- Generally, the use of the sole source contracting procedure is not applicable to the GSA's FSS purchases. Under certain circumstances, however, ordering agencies may use the "sole source" option when the particular requirement is for a certain brand name, product or feature.

- The ordering procedures include: (1) a Request for a Quote; (2) transmitting the request to the contractor; (3) evaluating the response(s); (4) selecting the contractor; (5) establishing a BPA for recurring work when steps (1) to (4) have been followed; and (6) giving preference to small business concerns.

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[1]Curtis Lewis & Associates has performed services for other District of Columbia agencies who utilized GSA's FSS's contracting procedures, including the Superior Court of the District of Columbia and the Washington Convention Center.