



**The District May Have Forfeited Nearly
\$500,000 Through Changes to the
Contract for the H.D. Cooke Elementary
School Modernization Completed in 2010**

July 13, 2016

Audit Team:

Gregory Creighton, Audit Supervisor
Matt Separa, Lead Analyst

A Report by the Office of the District of Columbia Auditor
Kathleen Patterson, District of Columbia Auditor

The Honorable Phil Mendelson, Chairman
The Honorable Mary Cheh, Chairman, Committee on Transportation and the Environment
The Honorable David Grosso, Chairman, Committee on Education
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Chairman and Councilmembers:

On October 22, 2015, the Office of the District of Columbia Auditor initiated an evaluation of the H.D. Cooke Elementary School modernization, which was opened to students in August 2009 but formally completed in 2010. This review is one in a series of evaluations of the District's school modernization program pursuant to D.C. Official Code § 38-2973.05. I write to the three of you based on your oversight responsibilities for procurement, the Department of General Services (DGS), and the District of Columbia Public Schools (DCPS), respectively, to share our findings, and to let you know that we are concluding our work on H.D. Cooke with this letter report.

We chose to review the District's contract with Gilbane Building Company for the H.D. Cooke modernization because what was approved by the D.C. Council as a "guaranteed maximum price" (GMP) contract was changed at the end of the project to a lump sum contract. We sought to ascertain whether the District was disadvantaged financially by this change in contract type and whether the oversight agencies properly accounted for all costs and achieved all savings that should have accrued to the District as a result of savings-sharing contract clauses. I hope the information, though dated, is useful as you consider whether and how to improve the District's procurement practices.

Our findings:

1. An unexplained change to the scope of work, combined with changing the contract from a GMP to a lump sum contract at the project's conclusion, may have cost the District \$498,938 in contingency savings.
2. As we demonstrated was the case in five high school modernization projects evaluated in our July 1, 2015, [report](#), the Department of General Services was not able to provide evidence the general contractor submitted documentation to its predecessor agency detailing contingency savings on the H.D. Cooke modernization.

Background

The H.D. Cooke Elementary School was built in 1909, with an additional wing of classrooms added during the 1960s. The school currently serves students from PK3 and PK4 (by lottery) and those from kindergarten through fifth grade (by residency within school boundaries). Modernization began in 2001 under the former DC Public Schools (DCPS) Office of Facilities Management (OFM), with limited demolition and abatement activities.

In 2007, DCPS chose Quinn Evans Architects to design a 32,775 square foot modern space within the original historic building as well as the mid-century addition. The architects also designed a 9,100 square foot addition that contains an auditorium, gymnasium, and a dining hall. The District of Columbia Public Education Reform Amendment Act of 2007 (PERAA)¹ established the Office of Public Education Facilities Modernization (OPEFM) and OPEFM took over the project in July 2007. A series of contract change orders modified the design to meet OPEFM standards, most notably finish upgrades and the pursuit of the US Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building certification.

The contract for the modernization and addition was competitively awarded May 9, 2007² to Gilbane Building Company by DCPS as a Guaranteed Maximum Price (GMP) Contract—incorporating a maximum price the District agreed to pay for the work. The \$24.9 million construction contract was submitted to the D.C. Council for its review on April 27, 2007.³ After Gilbane completed all work to modernize and expand H.D. Cooke, OPEFM altered the form of agreement from a GMP and “close out the contract on a lump sum basis.”

Objectives, Scope, and Methodology

The primary objective of this evaluation was to determine whether OPEFM and DC Partners for the Revitalization of Education Projects, LLC (DC PEP)—program manager for school modernization projects—properly accounted for all modernization costs to the District and achieved all savings that should have accrued according to the GMP contract. We focus on the contract between the District and Gilbane Building Company (Contract Number GAFM-2007-C-0009A) and all change orders and modifications. We requested and analyzed relevant documentation, including the original contract, all change orders, the close-out agreement, and correspondence regarding the H.D. Cooke modernization from DGS (which succeeded OPEFM in managing the school modernization program) and DC PEP.

ODCA did not conduct the examination as an audit as defined by the Government Accountability Office's Government Auditing Standards.

¹ D.C. Law 17-9 (effective June 12, 2007).

² District of Columbia Public Schools. “Negotiated Contract for Goods and/or Services: Construction Management at Risk (CMAR) Design Build with a Guaranteed Maximum Price (GMP) for Construction at the H.D. Cooke Elementary School. Contract Number GAFM-2007-C-0009A” District of Columbia Government. Ratified May 9, 2007.

³ DCPS submission to the Council of the District of Columbia. “City Council Contract Summary.” District of Columbia Government. April 27, 2007. Available at: <http://lirms.dccouncil.us/Legislation/CA17-0134>

Results of the Auditor's Analysis

- 1. District officials made an unexplained change to the H.D. Cooke scope of work that re-allocated \$712,768 of contingency funds to general contractor fees. This change cost the District \$498,938 in savings, based on the original GMP contract terms requiring the District to receive 70 percent of any remaining contingency balance. The last change order submitted by the builder and approved by the District altered the contract from a GMP to a lump sum contract.**

Under a GMP form of contract, the total project cost was memorialized in a price breakdown, a detailed outline of the portions of the total GMP dollar value according to the type of work to be done (e.g. concrete, masonry, metals, doors and windows, contractor fees, etc). The price breakdown, commonly referred to in the construction industry as a schedule of values (SOV), also contained a set amount allocated to the project's contingency fund designed to cover "cost[s] incurred in the work from unforeseen causes or details."

The contract also identified a savings split for any unspent contingency fund dollars or savings due to the buyout of subcontractors—instances where the contractor is able to subcontract individual portions of the work at a lower price: "Unspent contingency shall become project savings. Savings will be split 70/30 (DCPS/Contractor). Buyout savings shall remain in the GMP as additional contingency and to the extent needed, shall be used to ensure completion of the work within the GMP. Any remaining portion of this additional contingency shall be subject to the shared savings split." This means that if the total construction costs for the project came in at \$1 million under the GMP, the District would receive \$700,000 and Gilbane would receive \$300,000. This savings split is designed to incentivize the general contractor to seek out subcontractors who might be able to do certain specialized portions of the work at lower rates.

The original contingency fund balance was set at \$1,870,348. At some point during the project, the SOV was altered in OFM or OPEFM's records to a value of \$1,017,603—a reduction of \$852,745—and other values within the scope were increased by the same amount, namely \$139,983 to the various "divisions of work" comprising materials and labor for the actual construction of the school and \$712,768 to the fixed lump sum fees paid to the general contractor including labor and field support, bonds and insurance, and the general contractor's work fee. DGS could not provide any written documentation, such as a project change order, memorializing the re-allocation of the contingency fund or the reason for it. When ODCA asked for documentation, DGS replied:

HD Cooke was a legacy project from [District of Columbia Public Schools' Office of Facilities Management] and already being implemented when OPEFM began management in 2008....There is no OFM change order establishing this Schedule of Values in OPEFM electronic records.

The adjustment to the schedule of values was presumably done when more information about the project was available at the time of construction and more information known about the actual cost of work by division and lump sum service for the progressed design and conclusion of the pre-construction phase.

- *There was no change to the overall GMP value of \$24,930,000.*
- *This Schedule of Values was then used to tracking (sic) progress until completion.*
- *That contingency totaled \$1,017,603.*

The contract states, “All trade contracts in Divisions 2 through 16 within the GMP, bonds, insurances, and [Construction Manager] contingency shall be direct pass through costs [i.e. billable to the District for the amount spent]. Remaining components within the GMP shall be lump sum [i.e. fixed price] and invoiced in accordance with a schedule to be provided by the [Construction Manager] prior to the first construction phase invoice.” In essence, any amounts not spent on the project under the GMP components would have been refunded to the District according to the 70/30 savings split, but after being transferred to the lump sum fees, the \$712,768 was automatically paid to the contractor. By providing this increase in the fixed fee, absent any documentation on the change, the District may have forfeited nearly \$500,000 it would have otherwise received as part of the agreement to split contingency savings.

The District also altered the form of contract from a GMP with a fixed fee for service to a lump sum contract with its final change order on the project which reduced the total contract price by \$99,594. In the project’s close-out agreement, issued in January 2010, OPEFM changed the form of contract to a lump sum through a single sentence: “The final contract price is hereby established as a lump sum of \$28,095,294.” The close-out agreement is included as Appendix A.

DCPS had instructed Gilbane at the outset to submit a proposal as a GMP, indicating that Gilbane initially proposed a lump sum contract. DCPS stated: “We have a number of issues with the price proposal....the proposal is in the form of a lump sum. [Gilbane’s] preconstruction contract and [the District’s Request for Proposal] requires (sic) a guaranteed maximum price.” DCPS instructed Gilbane to submit a best and final offer to address that concern, which they did on March 28, 2007. That offer was in the form of a GMP with the 70/30 savings split of any unspent dollars and was accepted by DCPS.

2. DGS was not able to locate and provide evidence that their predecessor agency required the general contractor to submit a final buyout log detailing contingency savings.

DCPS’s school modernization GMP contracts typically require that savings, resulting from the general contractor’s use of subcontractors and any remaining contingency fund balance, be retained by the owner of the building or split between the general contractor and the owner. To track the cost of these items, the general contractor submits payment requests that follow the project’s schedule of values (SOV). The project’s initial price breakdown or schedule of values is included as an exhibit in the GMP contract where the original dollar amount is established. Throughout the course of a project, the SOV is used as the basis of progress payments to the contractor.

A buyout log (or buyout schedule) is a document prepared by the contractor that mirrors the schedule of values and shows the variance between purchased subcontractor work relative to what was budgeted in the GMP. Savings are added to the contingency while any cost overruns are funded by the contingency. Some jurisdictions (including the District) incentivize contractors both to prepare buyout logs and to get subcontractors to do work efficiently by granting the contractor a portion of any savings on the actual cost of work compared to the GMP. Although not required by a GMP contract, the

presence of a buy-out log or similar document comparing funds spent to the project's original SOV is necessary in order for the District to successfully capture the savings split laid out in the contract.

ODCA requested the final buyout log for the H.D. Cooke project from DGS and the agency's program manager, DC PEP. They provided us with two documents including a "construction change request" dated December 17, 2009, and a "project management cost report" produced on January 3, 2011. The first represents a change order for the contract altering the total price and does not contain schedule of values level detail between the amounts paid to subcontractors and the budgeted GMP amount. The second document provided by DGS contained a list of subcontractors alongside line items associated with those companies, but did not compare the cost of those items against the originally budgeted schedule of values. DGS has provided no additional documentation to indicate that a detailed buyout log was ever produced for the H.D. Cooke project.

Recommendations:

We recommend that the Department of General Services (DGS):

1. Initiate a review of all completed and closed out school modernizations to ensure that the agency and its program manager, DC PEP, received and maintain necessary documentation (such as final buy-out logs) as contracts were concluded.
2. Determine whether the District is owed any savings that it has not already collected on completed school modernizations and if not, recoup said savings.

We recommend that the Office of Contracting and Procurement (OCP):

1. Review school modernization contracts to determine whether the District has been or could be disadvantaged by changes in contract form. Such a review should include Alice Deal Middle School and Moten Elementary School. Moten Elementary School's modernization contract was converted from a guaranteed maximum price contract to a lump sum contract via a change order that was approved by the Council in 2012 while Alice Deal was administered as a lump sum contract by both DCPS and OPEFM despite one section in the contract noting that "The Contractor shall furnish Construction Management Services at Risk (CMAR) with a Guaranteed Maximum Price (GMP) that will result in the modernization of Alice Deal."

We submitted this letter report in draft to the Department of General Services and the Office of Contracting and Procurement for comment, and their written comments follow, followed by an ODCA response to the agency comments.

Sincerely,


Kathleen Patterson
District of Columbia Auditor

026:16:GC:MS:cm:LP:KP

Appendix A: Close-out Agreement (highlight added) and Cover Email

Page 1 of 1

Kirkman, MaryBeth

From: nvacopier@gilbaneco.com
Sent: Tuesday, January 12, 2010 2:39 PM
To: Luria, Mark A.; Kirkman, MaryBeth
Subject: Attached Image
Attachments: Cooke cls agree-executed_001.pdf

1/12/2010

Close-out Agreement
CONTRACT NUMBER GAFM-2007-C-0009A

THIS CLOSE AGREEMENT ("Agreement") is made this ____ day of January 2010 by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION** (the "Office") and the **GILBANE BUILDING COMPANY** (the "Contractor").

Recitals:

R.1 The District of Columbia Public Schools ("DCPS") awarded contract number GAFM-2007-C-0009A (the "Contract") to the Contractor to modernize H.D. Cooke Elementary (the "Project");

R.2 Pursuant to the Education Reform Amendment Act of 2007 and Mayor's Order 16-134, the responsibility for the management of the Contract was transferred to the Office;

R.3 The Contractor has successfully completed the Project; and

R.4 The parties desire to enter into this Agreement to fully and finally adjust all amounts due under the Contract and pursuant to which the Contractor agrees to fully and finally release any claims that it may have against the Office, and the Office agrees to release certain claims as more fully set forth in Section 4.3 of this Agreement; provided, however, it is understood that this Agreement does not settle any claims or disputes related to (i) exterior light bulb change; (ii) generator exhaust; and (iii) installation and/or modification to the Hartford Loop as directed by the DC Boiler Inspector.

Agreement:

NOW, THEREFORE, for good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged and intending to be legally bound, the Office and the Contractor agree as follows:

Section 1 Prior Agreement. Except as expressly set forth herein, the Contract, as the same as been amended from time to time prior hereto, shall remain unaffected and all of its terms, conditions and provisions shall remain in full force and effect.

Section 2 Contract Sum. The Contract Price is hereby decreased by Ninety Nine Thousand Five Hundred Ninety Four Dollars (\$99,594). The final Contract Price is hereby established as a lump sum of Twenty Eight Million Ninety Five Thousand Two Hundred Ninety Four Dollars (\$28,095,294) (such amount, the "Final Contract Price"). The parties further acknowledge and agree that to date, the Contractor has been paid Twenty Seven Million ~~One~~ ^{Two} Hundred ~~Sixty Seven~~ ^{Fifty Two} Thousand ~~Six~~ ^{Seven} Hundred ~~Sixty nine~~ ^{Forty} Dollars (~~\$27,167,669~~ ^("27,252,740")) and that ~~Nine~~ ^{Eight}



Forty Two *Five* *Fifty Five* *(82,554)*
Hundred ~~Twenty Seven~~ Thousand Six Hundred ~~Twenty Five~~ Dollars ~~(82,625)~~ remains
outstanding (such amount the "Unpaid Portion of the Final Contract Price").

Section 3 Revised Scope of Work. It is the intent of the parties that this change order will fully and finally settle all pending adjustments to the Contract Sum. Without limiting the generality of the foregoing, this Agreement settles: (i) any and all outstanding change requests; (ii) any change events or other circumstances that would otherwise entitle the Contractor to an increase in the Contract Sum and regardless of whether such change events have been submitted to the Office or whether such events known by the Contractor. The events and changes covered by this Agreement include, but are not necessarily limited to, the items described on the Contractor Change Request attached as Exhibit A ("Change Proposal"); provided, however, it is understood that this Agreement does not settle any claims arising from: (i) costs incurred by the Contractor after the date of this Agreement if the Office directs the Contractor to relamp the exterior light fixtures; or (ii) costs incurred after the date of this Agreement related to the installation and/or modification to the Hartford Loop as directed by the DC Boiler Inspector (collectively, items (i) and (ii) are referred to as the "Retained Claims").

Section 4 Conditional Release.

Section 4.1 Except for the Retained Claims, the Contractor on behalf of itself, its successors and assigns and its subcontractors, in consideration of payment in full of the Final Contract Price and other valuable consideration, and conditioned only upon its receipt of payment of the Unpaid Portion of the Final Contract Price, hereby waives, releases and forever discharges the Office, and its respective officers, agents, employees, representatives, affiliates, successors and assigns (the "Released Parties"), from any and all claims, actions, causes of action, debts, liens, stop notice or bond rights, demands, suits, liabilities, judgments, damages, or expenses, whether known or unknown, which the Contractor now has or may have in the future, arising out of or in connection with work performed and/or materials, supplies or equipment furnished for the improvement of the Project.

Section 4.2 The Contractor, on behalf of itself, its successors and assigns, further agrees to defend, indemnify and hold harmless the Released Parties, from and against any and all claims, actions, causes of action, debts, liens, stop notice or bond rights, demands, suits, liabilities, judgments, damages or expenses ("Claims"), including all attorneys fees and costs, whether arising out of injury or damage to person or property in connection with the work performed on the Project, or whether arising from claims by the Contractor's subcontractors, material suppliers, laborers, or their unions or union benefit plans for non-payment of materials, services, labor, or equipment, except for Claims caused by the sole negligence of a Released Party.

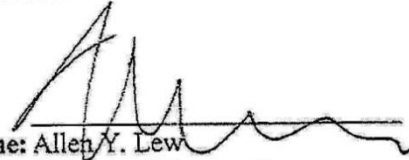
Section 4.3 The Office hereby waives, releases and forever discharges the Contractor, and its respective officers, partners, agents, employees, representatives, affiliates, successors and assigns, and surety, from any and all claims, actions, causes of action, debts, liens, suits, demands, liabilities, judgments, damages, or expenses, whether known or unknown, which the Office now has or may have in the future, that (i) seek to further adjust the final Contract Price; or (ii) seek to recover for costs or damages incurred by the Office or the District of Columbia

Public Schools as a result of the actual substantial completion date differing from the original substantial completion date (collectively, items (i) and (ii) are referred to as the "Released Claims"). In the interest of clarity and without otherwise altering the release granted by the preceding sentence, it is understood and agreed that claims for arising under any warranty owed by the Contractor under the Contractor or for latent defects are not included within the Released Claims.

Section 4.4 The Contractor certifies the following: (1) there has been no assignment or other transfer of its interest arising from the Contract/Subcontract; (2) the work performed by the Contractor to the best of its knowledge has been completed in full accordance with the terms and conditions set forth in the Contract/Subcontract/Order; and (3) all the Contractor's subcontractors, laborers and material suppliers, have been paid in full for their work under the Contract/Subcontract/Order, including, but not limited to taxes, wages and fringe benefits for which previous payments were received by the Contractor.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative.

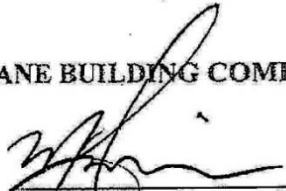
**OFFICE OF PUBLIC EDUCATION
FACILITIES MODERNIZATION**

By: 

Name: Allen Y. Lew

Title: Executive Director &
Chief Contracting Officer

GILBANE BUILDING COMPANY

By: 

Name: Mark Lucia

Title: V.P.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



July 11, 2016

Kathleen Patterson, Auditor
Office of the D.C. Auditor
717 14th Street NW 9th Floor
Washington D.C. 20005

Re: Department of General Services' (DGS) Response to the Office of the District of Columbia Auditor ("ODCA") draft report entitled: *"The District Forfeited Nearly \$500,000 Through Changes to the Contract for the H.D. Cooke Elementary School Modernization Completed in 2010 (the "Draft Report")."*

Dear Ms. Patterson:

Thank you again for the opportunity for ("DGS") to provide comments to the Draft Report. As always, we value the opportunity to review and improve the District's implementation of the school modernization program. We offer the following insights and comments with respect to the Draft Report. As background, H.D. Cooke was procured and awarded by DC Public Schools ("DCPS") in 2007. A contract (GAFM-2007-C-009A) was fully executed with Gilbane Building Company on May 9, 2007. These activities occurred prior to the establishment of the Office of Public Education Facilities Modernization ("OPEFM") in July 2007 and also, long before the creation of DGS in 2011.

DCPS chose a Construction Management at Risk ("CMAR") Design-Build with a Guaranteed Maximum Price ("GMP") delivery method for the construction at H.D. Cooke Elementary School. OPEFM concluded that the contract terms lacked sufficient clarity as it pertained to the project delivery method. As a result of this concern, OPEFM converted the GMP contract to lump sum via a closeout agreement with Gilbane that was executed at the end of the project. The change was made at the end to avoid delaying the start of construction. Contrary to the ODCA's finding, the end result was a \$99,594 savings to the District and not the forfeiture of \$500,000 as suggested by the ODCA.

We provide the following responses to specific ODCA findings described in the Draft Report:

1. **Finding:** "An unexplained change to the scope of work, combined with changing the contract from a GMP to a lump sum contract at the project's conclusion, cost the District \$498,938 in contingency savings."

Response – DGS disagrees with this finding because it is inaccurate. ODCA is calculating savings based on a line item by line item basis, when it should be based on the final cost of the work. As communicated to the ODCA, an undocumented transaction which pre-dated our assumption of responsibility for the project occurred that amended the GMP's overall schedule of values in the amount of \$712,768 for site services not originally reflected in Division 1. The site services were for such items as; storage trailers, LSDBE consultant, MBE sessions, enhanced off hours security / watchman, etc., in which these project costs utilized project contingency. As previously cited, H.D. Cooke was procured and negotiated by DCPS prior to the existence of OPEFM. Once OPEFM assumed management of the H.D. Cooke contract, it elected to change the project delivery method via a closeout change order. It is important to note that Gilbane's job cost report dated January 3, 2011, reflects a total job cost of \$28,252,903, and per the closeout agreement, the final contract value was \$28,095,294. The \$157,609 difference was a financial loss incurred by Gilbane, not the District. Lastly, Gilbane's GMP fee never increased; it remained the same, as shown in the job cost report dated January 3, 2011. The end result was a \$99,594 savings to the District and not the forfeiture of nearly \$500,000 as suggested by the ODCA.

2. **Finding:** "...the Department of General Services provided no evidence the general contractor submitted documentation detailing contingency savings on the H.D. Cooke modernization."

Response – Although Gilbane was not required contractually to provide a subcontractor buy-out log, they did provide a monthly contingency log, included in the payment application. These reports detailed contingency utilization and owner savings, as did Gilbane's job cost report dated January 3, 2011.

In summary, OPEFM inherited a project that was procured by DCPS. An undocumented amendment to this contract's GMP's schedule of values occurred prior to OPEFM's assumption of responsibility. OPEFM elected to amend the original GMP agreement to reflect a lump sum delivery method. This change resulted in a savings of \$99,594 to the District prior to the contractor finalizing its costs.

We provide the following responses to specific ODCA recommendations described in the Draft Report:

1. "Initiate a review of all completed and closed out school modernizations to ensure that the agency and its program manager, DC PEP, received and maintain necessary documentation (such as final buy-out logs) as contracts were concluded."

Response: DGS agrees with the importance and necessity of ensuring that all project managers receive and maintain necessary contract documentation. This recommendation fails to recognize that the subject H.D. Cooke contract did not actually require submission of final buy-out logs. This recommendation highlights the limited value of stale audit findings related to contracts which pre-date the audit by nearly a decade. The H.D. Cooke contract executed by DCPS does not reflect current DGS contracting forms

or practice and the assumption of responsibility for this legacy project by OPEFM many years ago does not reflect current DGS practices.

2. “Determine whether the District is owed any savings that it has not already collected on completed school modernizations and if not, recoup said savings.”

Response: Although DGS disagrees with the findings and basis for the recommendation, DGS agrees that DGS has the responsibility for ensuring that the District realizes and recovers any savings to which it is entitled under contracts for school modernization. We also recognize that a review of all completed modernizations is a considerable undertaking and we will need to assess the impact upon resources and other competing priorities before agreeing to such a task.

DGS welcomes the recommendations from the ODCA and the opportunity to improve upon the school modernization program. As provided previously, DGS and DCPS have already implemented various improvements to the school modernization program to enhance planning, accountability and cost controls. Such improvements have consisted of DCPS leading all planning efforts, stakeholder engagement, and communication, as outlined below. Furthermore, both agencies have employed a methodology in which feasibility studies or concept plans with multiple approaches and associated costs to the proposed school’s modernization are considered earlier in the budget cycle process to inform not only the budget, but to advance the development of the educational specification, and stakeholder engagement as well. The improvements in the process of developing educational specifications, prioritization in the capital improvement planning process and enhancements in the school improvement team engagement process.

Educational Specifications (Ed Specs) – DCPS, with support from DGS, is re-writing the Educational Specifications (Ed Specs). Ed Specs serve as the guiding document and benchmark for future school renovations and new construction projects. The updated baseline Ed Specs will include the threshold programmatic spaces required for instruction and may be modified only for unique needs and existing school program requirements. The updated Ed Specs will be completed in late 2016 and will inform the FY2017-FY2023 CIP and ensure estimates incorporate programmatic spaces discussed in the Ed Specs.

Capital Improvement Plan (CIP) Prioritization – DCPS, with support from DGS, developed a data driven approach to rank and prioritize schools in the CIP. There are 18 schools in the current DCPS portfolio that have not received a significant capital investment (modernization) and were not in the CIP plans for FY16 through FY18 in the FY16-21 CIP. Data was gathered for these 18 schools in four key focus areas and weights were applied based on the overall importance of the category. The categories and weights used in the analysis can be found on the DCPS website (<https://sites.google.com/a/dc.gov/dcps-school-modernizations/home>). The schools were inserted into the CIP based on this prioritization, but the sequencing may have been impacted by swing space availability, District priorities or anticipated cost of projects. The goal of this approach is to provide a fair and transparent methodology for the prioritization and sequencing of projects in the CIP. DCPS will continue to work with DGS and the City Council to improve the prioritization process.

SIT Process – During school year 2015-2016, DCPS took control over the school improvement team (SIT) process. This will provide the community with a clear point of contact and ensure DCPS is driving the decision of modernization projects. DCPS defined the roles and responsibilities of the SIT team and how the SIT will be involved in modernization projects. DGS' focus will be on implementing the modernization projects and providing information for DCPS decision-making and community updates. DCPS continues to add staff resources to improve the SIT process.

Additionally, in February 2016, DGS hired a dedicated Senior Manager (Cluster Leader) to lead the schools' implementation program. This cluster, like other DGS Capital Construction clusters, is fully supported by DGS' internal resources, including the Project Management Office (PMO), the internal quality control/quality assurance program and the Project Turnover Manager. The cluster also has several internal DGS project managers dedicated to the school program.

Again, DGS and DCPS recognize the continuing need for improvement within the school modernization program and both agencies are taking affirmative steps to make improvements to the existing program, as highlighted above. Please do not hesitate to contact me at 202.727.2800 if you have questions or require additional information.

Sincerely,



Christopher E. Weaver
Director

Cc: Betsy Cavendish, EOM
Jonathan Kayne, DGS
Camille Sabbakhan, DGS
Jeff Bonvechio, DGS
Dr. Nathaniel Beers, DCPS

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CONTRACTING AND PROCUREMENT**



OFFICE OF THE DIRECTOR

July 8, 2016

The Honorable Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th St, N.W. Suite 900
Washington, DC 20005

Re: The District Forfeited Nearly \$500,000 through Changes to the Contract for the H.D. Cooke Elementary School Modernization Completed in 2010

Dear District of Columbia Auditor Patterson:

In response to the referenced draft letter report, we respectfully submit our comments to the recommendation directed to the Office of Contracting and Procurement.

Auditors Recommendation for the Office of Contracting and Procurement (OCP):

- Review school modernization contracts to determine whether the District has been or could be disadvantaged by changes in contract form .Such a review should include Alice Deal Middle School and Moten Elementary School. Moten Elementary School's modernization contract was converted from a guaranteed maximum price contract to a lump sum contract via a change order that was approved by the Council in 2012 while Alice Deal was administered as a lump sum contract by both DCPS and OPEFM despite one section in the contract noting that "The Contractor shall furnish Construction Management Services at Risk (CMAR) with a Guaranteed Maximum Price (GMP) that will result in the modernization of Alice Deal."

OCP's Response

DC Code §10-551.01(b)(1) establishing the Department of General Services (DGS) sets forth a specific list of their functions, one of which is to:

Manage the capital improvement and construction program for District government facilities, including the modernization or new construction of District facilities by approving and authorizing decisions at every stage of modernization and new construction, including planning, design, procurement, and construction....

Accordingly, as a matter of both statute and in practice, DGS, not the Office of Contracting and Procurement (OCP), is in the best position, to determine and apply those contracting

methods and practices that, in their judgment, best meet the requirements of the projects they manage.

In addition, OCP is unable at this time to complete a robust school modernization review as recommended by the District of Columbia Auditor as our Office of Procurement Integrity and Compliance (OPIC) team is currently engaged in auditing a wide range of activities directly under the purview of OCP.

However, the Procurement Accountability Review Board (PARB) does review audit findings germane to District contracting with a view towards widespread improvement in procurement practices. If there are relevant findings, as a result of your final report I would welcome them and consider them for discussion at the PARB.

If you have any further questions or comments regarding this response, please contact me.

Respectfully,

A handwritten signature in dark ink, appearing to read "George A. Schutter, III", written in a cursive style.

George A. Schutter, III
Chief Procurement Officer
Office of Contracting and Procurement

Auditor's Response to Agency Comments

The Office of the District of Columbia Auditor (ODCA) thanks the Department of General Services (DGS) and the Office of Contracting and Procurement (OCP) for their written responses.

With regard to the finding that the District may have forfeited nearly \$500,000, DGS cites the Gilbane job cost report dated January 3, 2011 as support for its calculation of \$99,954 in overall savings. During our review, ODCA requested and reviewed this report and deemed it to be an unreliable record. The cost report notes zero variance among the "Approved budget", "Forecasted Budget", and "Projected Final Cost" which is nearly impossible. Additionally we note that despite the report carrying a date of January 2011, a full 17 months after the ribbon cutting ceremony commemorating the school opening, the "Billed To Date" contained nothing but "0"s. We therefore stand by our finding.

With regard to OCP's comment that DGS and not OCP is best positioned to review school modernization contracts, we note that legislation given final approval by the D.C. Council on July 12, 2016, *B21-0334 - Procurement Integrity, Transparency, and Accountability Amendment Act of 2015*, states that "the CPO may review and monitor procurements, including for construction and related services under Title VI, by any agency, instrumentality, employee, or official exempt under this chapter or authorized to procure independently of OCP."