

August 1999

DISTRICT OF
COLUMBIA

Authority Needs to
Improve Its
Procurement Practices





G A O

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United States General Accounting Office
Washington, D.C. 20548

General Government Division

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The Honorable Ernest J. Istook, Jr.
Chairman, Subcommittee on the District of Columbia
Committee on Appropriations
House of Representatives

The Honorable Thomas M. Davis
Chairman, Subcommittee on the District of Columbia
Committee on Government Reform
House of Representatives

This report responds to your requests for a review of the procurement practices of the District of Columbia Financial Responsibility and Management Assistance Authority (Authority).¹ As you are aware, the Authority was established by Congress in 1995 to repair the District's failing financial conditions and to improve the effectiveness of its various entities. To accomplish this, the Authority was given a wide range of statutory authority and responsibility, including awarding contracts itself and the review and approval of contracts awarded by the District, to ensure the most efficient and effective service delivery.

Based on concerns regarding allegations of procurement improprieties at the Authority, you requested that we determine whether applicable procurement regulations and procedures were followed in awarding and administering selected contracts on behalf of the Authority's former Chief Management Officer (CMO)² and to Thompson, Cobb, Bazilio and Associates, a private accounting firm that is responsible for auditing the Authority's financial statements. We reviewed a total of 12 contracts and their associated contract actions, which we selected based on your specific concerns.³ Ten of the contracts were awarded by the Authority and totaled \$13 million. The other two contracts were awarded by the District's Chief Procurement Officer (CPO) and totaled over \$1 million. Although we reviewed a total of 10 contracts that were awarded by the Authority, we only assessed whether 9 of them were awarded and administered in accordance with the Authority's procurement regulations

¹ The Authority is also referred to as the Control Board.

² In February 1999, the Authority accepted the resignation of its CMO.

³ Contract actions include contract awards, modifications, and options.

because 1 of the contracts in our review, Thompson, Cobb, Bazilio and Associates (contract number FY96/FRA#2) was awarded before the Authority's regulations were adopted in March 1996. The Authority did not provide us with any information on what procedures were followed in awarding this contract. Appendix II contains information on the award and administration of this contract.

As requested, we also determined whether the Authority and the District received the goods and services that they contracted and paid for in the contracts that we reviewed.

Results in Brief

The Authority did not always comply with its procurement regulations and procedures or follow sound contracting principles when it awarded and administered the nine contracts that we assessed. In addition, the Authority's contract files for these contracts were incomplete. The files did not generally contain documentation of the key contract award and administration decisions as required by the Authority's procurement regulations. As a result of the incomplete contract files, the Authority could not demonstrate that its objectives of (1) acquiring goods and services at the lowest price or best value and (2) treating offerors fairly were achieved for several of the contracts we reviewed.

The Authority's procurement regulations provide for a preference for competitively awarded contracts and require written justification and approval of sole source contracts. The Authority's contract files contained evidence that it sought competition for seven of the nine contracts we assessed. However, contrary to its regulations, the Authority did not (1) document its basis for contract selection for three contracts, (2) include written justification for one sole source contract award or a series of "modifications" to another contract that, in effect, was a sole source award, or (3) comply with other requirements in several cases.

The Authority's contract files and information we obtained from two contractors indicated that the Authority received the goods and services it contracted for in six of the nine contracts we assessed. No documentation was found in the Authority's contract files to show whether the required deliverables were received for the other two contracts. Contrary to the Authority's regulations, none of the contract files for the nine contracts we assessed contained certification or any other evidence that the contractor performed satisfactorily prior to payment of invoices. The Authority's procurement regulations do not specify any contract administration requirements other than the certification provision to ensure that the Authority gets what it paid for. Authority officials told us they relied on the

statements of work included in each contract to provide guidance in the administration of its contracts. However, the statements of work for the nine contracts and associated contract actions we assessed generally did not include standards for measuring the contractor's performance as required by the Authority's regulations.

For the two emergency sole source contracts awarded by the District government, the District's CPO did not comply with the Authority's contract review and approval regulations governing District contracts or the District's procurement regulations. First, the District's CPO entered into an emergency sole source contract totaling \$153,800 with a consultant firm for management reform services for the Authority's former CMO without justifying how the procurement qualified as an emergency procurement or obtaining the Authority's approval. Second, 4 months later, he awarded another emergency sole source contract for \$893,000 to the same firm, once again for management reform services for the Authority's former CMO, but did not justify the emergency procurement or receive the Authority's approval as required by the regulations.

Several factors appeared to contribute to the Authority's failure to comply with its procurement regulations. For example, when Digital Systems International Corporation (DSIC), a consultant firm retained by the Authority, reported the results of its review of over 100 of the Authority's contracts in January 1999, it identified some of the same problems we did and attributed the Authority's contracting problems, in part, to its emphasis on meeting mission requirements and lack of procurement expertise. According to the Authority's former Executive Director,⁴ with respect to the management reform contracts, the magnitude of the tasks and the short time frame in which the Authority had to complete them contributed to the Authority's procurements not being as "tidy" as the Authority would have liked.

DSIC made several recommendations to the Authority that, if effectively implemented, should help to improve the Authority's procurement process. We are making additional recommendations to the Authority's Chair.

Background

On April 17, 1995, the President signed the District of Columbia Financial Responsibility and Management Assistance Act of 1995, P.L. 104-8, which established the Authority to repair the District's failing financial condition

⁴ In May 1999, the Authority's original Executive Director resigned. He was hired as the Executive Director in June 1995. The Authority has since appointed another Executive Director.

and to improve the efficiency and effectiveness of its various agencies. The Act also permits the Authority to

- contract for goods and services for its own mission,
- contract for goods and services on behalf of District agencies, and
- review and approve contracts processed by District agencies.

In addition, on August 5, 1997, the President signed into law the National Capital Revitalization and Self-Government Improvement Act, Title XI of P.L. 105-33. Under the Act, the Authority was directed to develop management reform plans for nine agencies and four citywide functions. The Act also required the Authority to award the management reform consultant contracts within 30 days from the date of its enactment, unless the Authority notified Congress, in which case the Authority could take 60 days.

The Authority is an independent entity within the government of the District and is statutorily exempt from adhering to the District's procurement regulations. In addition, because the Authority is not an agency of the federal government, it does not have to comply with federal procurement statutes or regulations, such as the Federal Acquisition Regulation. In March 1996, the Authority promulgated its own procurement regulations that are intended to permit the procurement of property and services efficiently and at either the least cost to or the best value for the Authority. The Authority's contracting authority is statutorily vested in its Executive Director, who is also the designated Contracting Officer. According to the Authority's regulations, the Executive Director may at any time waive⁵ any provisions of the regulations, with the exception of the provision regarding the avoidance of conflicts or impropriety and the appearance of conflict or impropriety.

The Authority's regulations prescribe some of the basic procurement principles, including

- the avoidance of conflicts or impropriety and the appearance of conflict or impropriety;
- a preference for competition among potential sources to ensure fair and reasonable prices and best value for the Authority;

⁵ The regulations do not state whether the waiver has to be in writing. According to the former Executive Director, the provisions in the procurement regulations have never been waived.

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- use of sole source contracting only when it makes good business sense or promotes the Authority's mission and is justified in writing and, if the contract exceeds \$100,000 on an annual basis is approved by the Authority's Chair;
 - identification of potential sources to achieve the benefits of competition;
 - publication of the Authority's requirements to make potential qualified sources aware of the Authority's requirements;
 - preparation of statements of work that include a thorough description of the required services, a delivery schedule, and standards for measuring the contractor's performance; and
 - monitoring of contractor performance and certification of satisfactory performance prior to payment of contractor invoices.

In addition, the Authority's regulations prescribe procedures for simplified and formal contracting. According to the regulations, the Executive Director shall determine the type of procurement action that is appropriate for the use of simplified contracting procedures. The regulations state that simplified contracting procedures must be used when the value of the procurement is not expected to exceed \$100,000 and/or when the nature of the goods or services to be provided is appropriate for these procedures. Under simplified contracting, the regulations prescribe procedures for obtaining competition, preparing written solicitations, evaluating proposals, and awarding contracts. For example, the Executive Director is responsible for making the final determination for contract selection based on the written recommendation of the technical evaluation team.

The Authority's regulations state that formal contracting procedures are mandatory for contract actions that may result in the Authority's expenditure of \$500,000 or more on an annual basis and may be used for competitive contract actions estimated at less than \$500,000. Under formal contracting, the regulations prescribe procedures for preparing written solicitations, evaluating proposals, and awarding contracts. For example, the Executive Director's decision for contract selection is required to be supportable, documented, and based on the evaluation factors. In addition, under the formal contracting procedures, the Executive Director may conduct negotiations with qualified offerors. The regulations also require that the negotiation sessions be fully documented whenever they occur. The Executive Director is also required to perform cost/price analysis when a single offer is received in response to a competitive solicitation or when the contract will not have a fixed price. The regulations further state that when fair and adequate price competition is obtained, a comparison among proposed prices and to the Authority's estimate is generally adequate to verify that the prices offered are reasonable.

Other than some requirements on the preparation and use of statements of work, the Authority's regulations do not prescribe specific requirements governing contract actions between \$100,000 and \$500,000, nor do they set forth specific requirements governing contract modifications or contract options.

The Authority also promulgated regulations in November 1995 for reviewing and approving contracts submitted by the District government. These regulations describe in detail the proposed contracts that are required to be submitted to the Authority for review and approval. Examples include sole source contracts, contracts for services exceeding \$25,000, and any contract proposed as an emergency procurement. The regulations further state that no contract that is required to be submitted to the Authority shall be awarded unless the Authority has approved the proposed contract or unless the Authority specifically declined to exercise its power to review and approve the contract prior to award. Subsequently, most recently on February 26, 1998, the Authority adopted resolutions amending the regulations by modifying the definition of contracts required to be submitted for review and approval.

According to the Authority's procurement regulations, the Executive Director may from time to time delegate specific contracting and procurement responsibility and authority to various members of the Authority's staff. The Authority's regulations also require that when authority is delegated to a staff member to serve as a contracting officer, the delegation is to be in writing. Prior to reorganizing in December 1997, the Authority's contracting staff consisted of a Director of Procurement and full-time complement of five staff persons, including a Procurement Analyst and two Contract Specialists⁶. In early 1998, the Authority changed the scope and magnitude of its procurement operations by reducing the number of procurements done to support its own mission and reducing the number of District contracts to be reviewed and approved. As of April 1999, there were two full-time staff— a Senior Procurement Specialist and an independent contractor who served as the Contract Specialist— involved in the award and administration of Authority contracts. The Authority's Executive Director, Deputy General Counsel, and Chief Financial Officer also assisted these staff members. In addition, the District's CPO also awarded and administered several Authority contracts on behalf of the Authority.

⁶ According to the Authority, one of its two Contract Specialists was an independent contractor.

In January 1998, the Authority hired a CMO to assist the Authority in carrying out its management reform responsibilities. The CMO reported to the Chairperson of the Authority and was responsible for overseeing the management reform efforts for nine District agencies and four citywide functions, including procurement. In February 1999, the CMO resigned from her position.

From its inception in April 1995 through September 30, 1998, the Authority reports that it awarded 141 contracts for almost \$81 million. These contracts include procurements done by the Authority to accomplish its own mission or done by the Authority on behalf of the District.

Scope and Methodology

We reviewed a total of 12 contracts and their associated contract actions that were awarded in fiscal years 1996 through 1998. Ten of the 12 contracts were awarded by the Authority and the other 2 were awarded by the District's CPO. As stated previously, although we reviewed a total of 10 contracts awarded by the Authority, we assessed compliance with the Authority's regulations for 9 contracts because 1 contract (Thompson, Cobb, Bazilio and Associates, contract number FY96/FRA#2) was awarded before the Authority's regulations were adopted in March 1996.

As you specifically requested, we focused on the contracts that were awarded for the Authority's former CMO and to Thompson, Cobb, Bazilio and Associates. According to the Authority, 17 of its 141 contracts were awarded on behalf of its former CMO; we judgmentally selected six of those contracts to obtain a mix of management reform and executive recruitment services contracts. We selected the other six contracts because you specifically requested that we examine them. They include the four contracts awarded to Thompson, Cobb, Bazilio and Associates by the Authority and the two contracts awarded to Smart Management Services by the District's CPO. Appendix I provides additional information on the contracts we reviewed, and appendix II contains additional information on the award and administration of the contract awarded prior to the adoption of the Authority's regulations.

We reviewed the contract files to determine whether the Authority and the District's CPO followed applicable procurement regulations when they awarded the contracts we assessed. For example, we reviewed the contract files to determine whether (1) competition was sought, (2) the basis for contract selection was documented, (3) sole source contracts had written justification, (4) contractors' performance was monitored, and (5) the Authority received the required deliverables before payment of invoices. To supplement our contract file review, we judgmentally selected

three of the eight contractors who were retained by the Authority and the District's CPO to obtain a mix of contractors who were required to provide management reform or executive recruitment services and visited them at their offices to obtain information on the Authority's procurement process.

For the contract that was awarded prior to the adoption of the Authority's regulations, we reviewed the information in the contract file to determine what information was available to document key contract award and administration decisions, including the basis for contract selection and whether the file contained evidence that the Authority received the services it paid for.

As stated previously, the regulations provide that the Executive Director shall determine whether a particular request for procurement is appropriate for simplified contracting. However, we found no documentation in the contract files that this was done. Consequently, it was not apparent which method of contracting was used by the Authority to award Boulware a \$105,000 contract because the regulations do not specify which procedures, simplified or formal, apply to contracts that are between \$100,000 and \$500,000.

In addition, we reviewed the Authority's and District's procurement regulations and procedures, the Authority's review and approval regulations governing submission by the District for contracts, and interviewed Authority and District officials involved in contract award and contract administration. We also reviewed several reports of studies done by other entities on the Authority and District's procurement process.⁷ However, as agreed with your offices, we did not review the Authority's process or controls for ensuring that its review and approval regulations governing District contracts were being followed.

Although our findings can only be applied to the contracts we reviewed, other reviews of the Authority and District's procurement processes have reported similar findings and conclusions. For example, DSIC reviewed

⁷ Report of Investigation Into The District's Awarding of Certain Contracts and The Termination of Employment of Mr. Michael T. Hemon, Government of the District of Columbia, Office of The Inspector General, March 1999.

Report of the Audit of the District of Columbia Financial Responsibility and Management Assistance Authority Contracts, Digital Systems International Corporation, January 1999.

A Crisis in Management: An Assessment of the Contracting Operations of the District of Columbia, District of Columbia Financial Responsibility and Management Assistance Authority, March 6, 1997.

over 100 Authority contracts that totaled \$47.2 million and were awarded between August 1995 and September 1998.

We conducted our review in Washington, D.C.; Houston, TX; and Chicago, IL; from September 1998 to July 1999 in accordance with generally accepted government auditing standards. We obtained comments on a draft of this report from the Authority and the District's CPO. These comments are summarized in the agency comment section of this report and are discussed in the report where appropriate. Appendix III contains the Authority's written comments and our specific responses to those comments.

The Authority Did Not Always Comply With Its Procurement Regulations

Although the Authority's procurement regulations set forth some basic requirements for contract award, we found that the Authority did not always comply with its procurement regulations or follow sound contracting principles for the nine contracts that we assessed. As stated previously, the Authority's former Executive Director was able to waive almost any provision of the regulations; however, he stated that a waiver was not granted for any of the contracts awarded by the Authority.

In its comments on a draft of this report, the Authority said that our statement that "according to the former Executive Director, the provisions in the procurement regulations have never been waived" is not quite accurate. The Authority commented that its former Executive Director said that its regulations had never been waived in writing. The former Executive Director did not make this distinction when we met with him. While the Authority's regulations do not state whether the waiver has to be in writing, we disagree with the Authority's position that once a contract is executed by its Executive Director and approved by the Chair, any irregularities with respect to its award have been waived.

The failure to follow the Authority's regulatory requirements could occur at several stages in the contracting process, and the Executive Director may not necessarily be aware of what regulatory requirements his contracting staff may have failed to follow. If the execution of a contract by the Executive Director constitutes a waiver of any Authority contracting requirement, regardless of whether the Executive Director knew of a contracting deficiency, there would be essentially no accountability for the actions of the Authority or its employees. Such a process would, in effect, render the regulations useless.

The contract files we reviewed indicated that the Authority sought competition for seven of the nine contracts we assessed. However, the

contract files contained little or no evidence that the Authority (1) documented its basis for contract selection for the three contracts where it is specifically required by the regulations; (2) prepared written justification for one sole source contract award or a series of “modifications” to another contract that, in effect, was a sole source award; or (3) documented its contract negotiations as required by the regulations for the two contracts where the Authority stated that negotiations had occurred.

After we completed our review of the ten contract files, we notified the Authority of missing documents and requested that they be provided. On May 21, 1999, the Authority’s former Executive Director provided us with a letter to explain how he made his contract selection decisions, but did not provide any additional documentation.

Basis for Contract Selection Generally Not Documented

Of the 9 contracts we assessed, we found that the Authority did not document its basis for contract selection, as specifically required by its regulations, for the three contracts that were awarded to Managing Total Performance, Management Partners, and the Urban Center. The Authority’s regulations require the Executive Director’s decision for contract selection to be supportable, documented, reasonable, and based on the technical evaluation report for contracts that total \$500,000 or more. For example, there was no evidence in the contract file documenting the Authority’s basis for awarding to Managing Total Performance a \$796,600 contract for phase I management reform work or adding \$10.6 million in modifications to this contract. The contract file also contained information that indicated that the Authority received several other proposals but contained no documentation explaining why Managing Total Performance was selected or the other proposals were not selected.

In addition, under simplified contracting, when written proposals are received the evaluation panel is required to document the basis for its initial recommendation for contract selection, including a brief description of why the recommended proposal offers the best value of all proposals received. The evaluation panel’s basis for its initial recommendation for contract selection was not documented in the contract files for the four contracts where simplified contracting procedures applied. For example, the Authority awarded a \$54,000 contract which was later modified to \$94,500 to the Gaebler Group to establish a management task force to provide management and technical assistance to its former CMO. The Authority’s contract file contained six proposals in response to the solicitation, but there was no evidence in the contract file documenting the Authority’s basis for selecting the Gaebler Group. There also was no evidence in the contract file that the other five firms were not qualified or

were less qualified to provide the required services. In addition, the Authority's technical evaluation panel and its former CMO both initially recommended another contractor.

The other cases involve the three contracts the Authority awarded to Thompson, Cobb, Bazilio and Associates totaling over \$153,000 to audit its financial statements and the enrollment in the District's public schools. However, the Authority did not document its basis for selecting this particular contractor for any of the three contracts. The absence of a clearly documented selection process left no written record to review the basis for contract selection for the contracts we assessed or to determine whether the awards were made at the lowest cost or best value and whether offerors were treated fairly.

In response to our request for the basis for contract selections for the contracts we reviewed, with respect to the former CMO contracts, the Authority's former Executive Director said that the proposals submitted were evaluated by the selection committee. However, the final decisions concerning contract awards to vendors, the acceptability of individuals proposed as members of the team, and the tasks to which teams and individuals were assigned were made by the former CMO. In addition, the former Executive Director specifically acknowledged that the Gaebler Group was not the recommendation of the selection committee and said that the former CMO determined that she needed additional management assistance and believed that the Gaebler Group could perform the tasks within the time constraints. There was nothing in the contract file to explain the former CMO's position.

The former Executive Director also said that he determined that it was in the Authority's best interest to approve the \$10.6 million in modifications to the Managing Total Performance contract, even though the total price of the modifications was greater than the original contract price, because the Authority and District agencies had already fallen behind in implementing management reform. Finally, the former Executive Director said that he awarded the three contracts to Thompson, Cobb, Bazilio and Associates based on recommendations from the Authority's contracting staff and his personal knowledge and experience with the firm.

In commenting on a draft of this report, the Authority said that the basis for contract selection for the contracts awarded to the Gaebler Group, Management Partners, the Urban Center, and Managing Total Performance is contained in memorandums dated March 18, 1998, and September 4, 1997. However, these documents do not contain the Executive Director's

basis for contractor selection. In addition, the contract files contained no explanation of the difference between the evaluation panel's recommendation and the selection of the Gaebler Group as previously discussed.

The Authority commented that the Executive Director's signature on the contract as the contracting officer constitutes documentation for the basis for contract selection. The Authority also believes that the award of a contract in accordance with the recommendation of the selection team is an adoption of that recommendation and is thus the basis for contract selection. We agree in cases of simplified contracting where the Executive Director accepts the panel's recommendation that the Executive Director's signature on the contract constitutes documentation of the basis for contract selection, as asserted by the Authority. However, according to the Authority's regulations, specifically chapter 5, section F.1., the Executive Director is required to prepare a memorandum detailing the procurement and the rationale for the contract selection for contracts over \$500,000. Therefore, under these formal contracting procedures, the Executive Director's signature on the contract would not satisfy this regulatory requirement.

Justification for Sole Source Contracts Not Always Substantiated

We found that the Authority did not comply with its regulations when it awarded one sole source contract and executed a series of "modifications" to another contract that became, in effect, a sole source award. The Authority's regulations require that all sole source contracts be accompanied by a written justification and, if the contract exceeds \$100,000 on an annual basis, be approved by the Authority's Chair. However, we found that the Deputy Management Officer for the Authority's former CMO entered into a verbal agreement on a noncompetitive basis without written justification or the Authority Chair's approval. The contractor, Boulware, was to provide executive recruitment services for six senior-level management positions that were already included in the scope of work for another contract. Authority officials said that the verbal agreement was an unauthorized procurement but later ratified the agreement and awarded a \$105,000 sole source contract to Boulware.

According to the written justification that was prepared 3 months after the verbal agreement, the Authority's basis for the sole source award was twofold. First, the original contractor was not performing in accordance with the terms of the contract; however, we found nothing in the original contractor's file to substantiate this assertion. Second, as stated in the justification the selected firm was the only firm with the requisite

knowledge and skills to perform the required services; however, this assertion was also not substantiated by any documents in the contract files. To the contrary, documentation in the Boulware contract file suggests that Boulware's original proposal to perform similar services was initially rejected by the Authority because it contained the highest hourly rate among the five proposals received in response to another solicitation, according to Authority officials. In addition, there was nothing in the contract files that indicated that the other firms were not qualified or were less qualified to perform the required services.

It should also be noted that our review of the Authority's justification for the noncompetitive procurement to Boulware determined that, the contract files contained conflicting information. The Authority's April 24, 1998, justification for awarding a sole source contract to Boulware to provide search and recruitment services for six positions stated that the current contractor, PAR Group, working for the Authority in the area of executive recruitment, had been unable to deliver candidates within the desired time frame, which affected the CMO's office and other District agencies. The justification further stated that, as a result of PAR Group's poor performance, it was necessary to enter into a contract with a firm that had a track record for performance in the area of executive recruitment. However, also in the PAR Group contract files was another Authority justification dated the same day—April 24, 1998—for noncompetitive procurement of a proposed modification to expand the PAR Group's search and recruitment activities to include six additional positions. The justification stated that the PAR Group was doing an excellent job in a cost-effective and timely manner. Further, the justification said that, under these circumstances, it was considered unlikely that another contractor, unfamiliar with the proposed work, would perform the required tasks as cost effectively or in as timely a manner as the PAR Group had done. According to the Authority, the conflicting dates on the memorandums were the result of a typographical error.

In reference to the two sole source justifications for the PAR Group and Boulware, the Authority commented that a comparison of the two justifications is initially confusing and said that the date of the Boulware sole source justification is incorrect and is a typographical error. We agree that the two sole source justifications are confusing and brought this to the Authority's attention on several occasions during our review. However, the Authority did not provide us with a definitive response until we received its written comments on the draft. We revised our report to reflect the Authority's comments.

Notwithstanding the Authority's explanation of the dates, our point is that the sole source justification for Boulware was based in part on the Authority's statement that the PAR Group was performing poorly. However, nothing in the PAR Group contract file showed that PAR Group was performing poorly as asserted in the sole source justification. Further, there is nothing in the contract file to support the former Executive Director's assertion that the Authority's Board had imposed very tight 30-day schedules for filling certain positions. Additionally, the PAR Group contract did not contain any evidence of the cited 30-day schedule for filling the positions.

In another contract, the Authority did not substantiate the award of sole source contracts to Managing Total Performance. On September 4, 1997, the Authority awarded a \$796,600 management reform contract to Managing Total Performance with a base term of 90 days. This contract also provided for an option and further provided that, if the option were exercised, the option term of the contract was from December 1, 1997, through December 1, 1998. Authority officials confirmed that this modification was not exercised by December 4, 1997, when the contract expired.

When a contract has expired, the contractual relationship that existed is terminated and that the issuance of a modification after the expiration date, in effect, would be the award of a new sole source contract.⁸ However, the Authority did not treat this award as a new sole source contract or justify it in writing, and there was no evidence of approval by the Authority's Chair in the contract file, as required by the Authority's regulations. Further, according to Authority officials, the District's CPO, who signed the modification that purported to exercise the option, was authorized to prepare the proposed modifications for the Authority. However, Authority officials said that they did not intend for the District's CPO to execute modifications without the Authority's approval because the contract was an Authority contract.

In explaining this situation to us on June 17, 1999, Authority officials said that the Managing Total Performance contract was similar to several other management reform contracts awarded by the Authority. These contracts, they said, were intended to have two phases—development of proposed reforms and the implementation of proposals accepted by the Authority; however, events did not turn out entirely as planned. They said that phase I resulted in many more proposals than could be funded. Consequently, the

⁸ 65 Comp. Gen. 25 (1985); 85-2 C.P.D. ¶ 435.

Authority had to analyze them and decide which ones to approve. At the same time, Authority officials said that they were under a lot of pressure from Congress and others to move more quickly toward producing results. Accordingly, they asked the District's CPO to perform the administrative tasks necessary to modify the contracts to proceed with the implementation phase. However, while these actions were under way, Authority officials said the Managing Total Performance contract expired. Finally, Authority officials said that they did not realize that the District had not done or documented cost/price analysis or negotiations for modifications 1 through 14 of the Managing Total Performance contract.

In written comments on a draft of this report, the Authority questioned our conclusion that it failed to "substantiate the award of sole source contracts to Managing Total Performance." As recognized by the Authority, this conclusion was based on our view that the initial Managing Total Performance contract, awarded on September 4, 1997, with an option clause, had expired before the option was exercised. We concluded that since the contract had expired, the issuance of a modification exercising the option after expiration, was in effect the award of a new sole source contract that should have been justified in writing and approved by the Authority's Chair. The Authority stated that it does not interpret the Managing Total Performance contract as having expired. It further stated that for a variety of reasons, the Authority and Managing Total Performance "understood and agreed" that the contract would remain in effect beyond the stated term in order to allow for the future exercise of options for implementation work. The Authority further stated that it, not GAO, is "the most appropriate interpreter" of what its contracts provide and noted, as we did in the report, that the Authority is exempt from District and federal procurement law.

We do not agree with the Authority's position. The Authority suggests, without actually stating so, that the Authority and Managing Total Performance had an oral agreement to extend the contract beyond its stated term. However, we found no evidence or documentation in the contract file to suggest when the Authority and Managing Total Performance might have reached this agreement to extend the contract or to show that such an understanding and agreement existed. The letter from the Executive Director to the District's CPO, dated months after the contract had expired, authorizing him to process modifications for the Managing Total Performance contract and the subsequently issued modifications contain no reference to a prior extension of the contract by oral agreement. In essence, the Authority has asked us to accept that the

contract had been extended, not based on any additional documentation, but rather on its current explanations of its past intentions.

The Comptroller General decision we refer to in the report is cited for the proposition that, as a matter of general contract law, not federal or District procurement law, the attempt to exercise an option on an expired contract can only be viewed as the execution of a new contract. When a contract expires, an unexercised option provision that was part of the contract would expire as well. The Authority's view— that, despite the lack of evidence in the contract file, we should not question its statement that the contract was extended— highlights the problems caused by the Authority's failure to document key contract actions. If these actions are not documented, there is no way for the Authority, or any organization reviewing its actions, to know whether it followed its own regulations and the provisions of its own contracts. Also, the lack of adequate documentation makes it difficult to hold the Authority or its employees accountable for their actions.

**Inadequate Documentation
of Contract Negotiations,
Cost/Price Analysis, or
Independent Cost Estimates**

Of the nine contracts we assessed, the Authority's former Executive Director said it conducted contract negotiations for 2 of the 3 contracts awarded under the formal contracting procedures which require the documentation of negotiations whenever they occur. However, there was no documentation of negotiations in the contract files for the contracts awarded to Management Partners and the Urban Center for \$513,000 and \$562,800, respectively. Based on the Authority's regulations, these 2 contracts should have been awarded using the formal contracting procedures because they were for \$500,000 or more.

In another case, the Authority executed 14 modifications totaling \$10.6 million to an expired contract with Managing Total Performance, which, in effect, constituted a sole source award. Since the Authority erroneously viewed these actions as modifications to an existing contract, the contract files contained no documentation of negotiations, cost/price analysis, or other steps that may have been taken to determine best value or least cost or would be required for the award of a new contract. While the Authority's regulations state that the Authority is to provide goods and services at the least cost or representing the best value for the Authority, the regulations do not specify how to accomplish these objectives when it executes contract modifications.

In addition, although the regulations do not require negotiations or documentation of negotiations whenever they occur for contracts under \$100,000, the former Executive Director said that the Authority conducted

negotiations with qualified offerors for four of the remaining six contracts we assessed. However, evidence in the contract files indicated that negotiations occurred for only one of the four contracts for which the Authority said it conducted negotiations. This was a contract with Boulware for which a contract approval form stated that the Authority's Chief Financial Officer negotiated down Boulware's proposed rates and terms of the contract to the extent possible. However, the contract files did not contain a record of the negotiation process, and the contractor told us that negotiations did not take place and that the Authority's Chief Financial Officer dictated the price.

In its comments, the Authority said that it believes that the dictation of a maximum price is included in the definition of negotiations. While we agree, our purpose was to describe the nature of the negotiation and to point out that the documentation in the contract file did not describe the nature of the negotiation that took place or the Authority's rationale for arriving at the dictated price. Nonetheless, we recognize that the contractor could have said that the price was too low and then attempted to negotiate or simply declined the contract.

While the Authority's regulations do not require independent cost estimates for all of its contracts, the regulations do authorize the Authority to develop its own cost/price estimate to help assess the reasonableness of contractor proposals. For example, the regulations state that, when fair and adequate price competition is obtained, a comparison among proposed prices and to the Authority's estimates is generally adequate to verify that the prices offered are reasonable. The contract files for two of the three contracts we assessed where the former Executive Director said price comparisons were performed did not contain documentation of these comparisons to show how the Authority determined price/cost reasonableness.

DSIC also reported that contract negotiations were generally not documented for several of the contracts it reviewed and that cost/price analyses were frequently not documented. DSIC also found little evidence that the Authority prepared or used independent cost estimates for several contracts and pointed out that the number of hours proposed by some offerors, within the competitive range, differed by as much as 50 percent. According to DSIC, the absence of an independent cost estimate makes it difficult to reconcile differences of such magnitude. DSIC recommended that the Authority develop independent cost estimates of the hours needed to perform required services to use as a basis for evaluating technical proposals and costs.

In his May 21, 1999, letter, the Authority's former Executive Director said that the Authority's staff obtained and evaluated cost and pricing information and that, after negotiations by the staff, he determined that the prices were fair and reasonable for 9 of the 10 contracts we reviewed. However, he did not provide any additional documentation or other evidence of actual negotiations or cost/price evaluations.

In commenting on a draft of this report, the Authority said that contract negotiations, a cost/price analysis, or an independent cost estimate are not mandatory for all of the contracts we assessed. Although we did not say that these were mandatory for all the contracts we assessed, we further clarified our report in this regard. However, our point continues to be that we did not see any documentation of negotiations the Authority said occurred. We believe that contract negotiations, cost/price analyses, and an independent cost estimate are important tools for ensuring best value and fair and reasonable prices and thus represent good contracting practices.

The Authority also commented that the provision for cost/price analysis in its regulations does not require that cost/price analysis be documented in the contract file. In addition, the Authority said that most of its contracts reviewed by GAO are competitive and that documentation for the cost/price analysis is contained in the cost proposal submitted by offerors. We agree that the Authority's regulations do not specifically require that the cost/price analysis be documented in the contract file, and our report does not state that it is a requirement. We also agree with the comment regarding competitive contracts; however, we question the Authority's assertion that an offeror's price proposal constitutes a cost/price analysis by the Authority.

District's CPO Did Not Comply With Authority or District Procurement Regulations

The District's CPO did not comply with the Authority's or the District's procurement regulations when he entered into an emergency sole source contract totaling \$153,800 and when he awarded a subsequent contract for \$893,000 as an emergency sole source contract without justifying the emergency procurement or obtaining approval from the Authority. Both of these contracts were to Smart Management Services to provide management reform services to the Authority's former CMO.

Concerning the first contract, according to the District's CPO, in February 1998, he received an oral procurement request from the Authority's former CMO to obtain consulting services to assist her with reconciling the District's fiscal year 1998 budget and management reform anomalies. According to the District's CPO, the former CMO provided him with the

names of five or six firms that she considered qualified to perform the tasks and said that she needed a firm that could start to work immediately. The District's CPO said that he phoned the firms on the list and that only one firm—Smart Management Services—was available to start to work immediately. However, he did not maintain a record of his telephone conversations with the firms. He said that a list of the firms was not retained because the initial contract was processed as a sole source procurement. Shortly thereafter, the District's CPO entered into an emergency sole source contract totaling \$153,800 with Smart Management Services without either justifying how the procurement met the terms of an emergency procurement, as the District's procurement regulations require, or obtaining the Authority's approval. The Authority's review and approval regulations for District contracts require that all sole source contracts and modifications issued under the direction of the District's CPO be submitted to the Authority for review and approval prior to award. In addition, the District's CPO did not comply with District procurement regulations when he modified the purchase order agreement three times to increase the scope of services and costs. The District's procurement regulations state that contracts done on an emergency basis are not to be modified to expand the scope or extend the time of the procurement unless a limited number of additional services are needed to satisfy an ongoing emergency requirement.

The contract file for the second contract, which was also awarded to Smart Management Services 4 months after the first emergency sole source contract, did not contain evidence that the District's CPO justified how the procurement met the terms of an emergency procurement as the regulations require or submitted the \$893,000 emergency sole source contract to the Authority for review and approval. The contract required Smart Management Services to provide consultant services to the Authority's former CMO for a 1-year period. The Authority's review and approval regulations for District contracts specifically require that sole source contracts and contracts for consultant services issued by or under the direction of the CPO be submitted to the Authority for review prior to award. The District's regulations define an emergency procurement as one responding to a situation, such as a flood, epidemic, riot, or other reason set forth in a proclamation by the Mayor, that creates an immediate threat to the public, health, welfare, or safety of its citizens. Moreover, under the District's procurement regulations, an emergency procurement is limited to not more than 120 days, and the contracting officer is required to initiate a separate nonemergency procurement if a long-term requirement for services is anticipated.

In comments on a draft of this report, the District's CPO said that the draft report incorrectly links the term "emergency" to the regulatory context of fire, flood, or endangerment to public health when no such context was cited or intended and said that the justification was clearly stated in writing. We disagree and believe that the District's procurement regulations, which were used by the District's CPO as the basis for justifying the emergency sole source contract, are specific on what constitutes an "emergency" procurement as stated in our report. In addition, our draft report states that the written justification did not explain how the procurement met the terms of an emergency procurement as required by the District's regulations.

According to the District's CPO, he was advised by his General Counsel, after consulting with the Authority's Deputy General Counsel and Chief Financial Officer, that the contract did not have to be submitted to the Authority for approval because the contract, which obligated approximately \$330,000 during fiscal year 1998, was less than the \$500,000 threshold specified in the Authority's February 26, 1998, resolution, which requires District contracts in excess of \$500,000 to be submitted for review and approval. We believe that, based on Section 4.1.E of the Authority's review and approval regulations governing District contracts, the District's CPO was required to submit this contract to the Authority for its review and approval. Section 4.1.E states that all proposed sole source contracts awarded by the CPO must be submitted to the Authority prior to award.

In commenting on our finding that the Smart Management Services contract for \$893,000 should have been submitted to the Authority for review and approval, the District's CPO commented that the value of the contract was less than the \$500,000 approval threshold prevailing at the time and therefore did not require Authority review and approval. This is not consistent with our understanding of the regulations or the value of the contract. As our report states, our basis for concluding that the District's CPO was required to submit this sole source contract to the Authority for review and approval is Section 4.1.E of the Authority's review and approval regulations for District contracts.

In August 1998, the Authority terminated this contract because it believed that the contract contained several deficiencies. In particular, the Authority stated that the contract was awarded on a sole source basis and that under federal statutes and Authority resolutions, the Authority should have approved it. The Authority also said that it appears that the principal consultant who performed the main task under the contract was designated as a Deputy Management Officer reporting directly to the CMO

and spent most of her time in a staff function. Thus, the Authority concluded that the compensation terms for the principal consultant and the two additional senior consultants were in excess of the levels that could be paid and justified for even the most senior positions in the District government.

This same contract was also the source of an investigation by the District's Office of Inspector General at the request of the Authority. The Inspector General issued a report on the results of the investigation and concluded that the District's CPO was required to submit the \$893,000 emergency sole source contract to the Authority for approval, but failed to do so, and also improperly awarded the contract as an emergency procurement. With regard to the submission of the contract to the Authority for review and approval, the Inspector General considered the Authority's February 26, 1998, resolution to be clear on what type of contracts are required to be submitted to the Authority for review and approval, and we agree.

Further, the Inspector General said that the District's procurement regulations have their own very strict definition of an emergency. For example, an emergency includes such conditions as a flood, epidemic, riot, or other reason set forth in a proclamation by the Mayor. As such, the Inspector General concluded that the CPO acted outside the scope of the District's procurement regulations when he awarded the \$893,000 contract as an emergency sole source contract because the situation did not constitute an emergency as prescribed in the regulations. However, because the Authority subsequently terminated the contract in August 1998, the Inspector General did not recommend any further action and deferred the issue to the Mayor for final disposition.

Weaknesses in the Authority's Contract Administration

Contract administration constitutes an integral part of the procurement process that ensures that the government gets what it paid for. It involves those activities that are performed after a contract has been awarded to determine how well the contractor performed with regard to meeting the requirements of the contract. The Authority's procurement regulations do not contain detailed provisions on contract administration. The regulations state that the Authority plans to monitor contractor performance and certify satisfactory performance prior to payment of any contractor invoice.

We saw little or no evidence of how the Authority monitored or certified satisfactory contractor performance for the nine contracts we assessed. According to Authority officials, they relied on the contractor's work statements to monitor the contractor's performance. However, we found

that the statements of work for these nine contracts generally did not contain thorough descriptions of the required services, expected results, and standards for measuring the contractor's performance and effectiveness as required by the Authority's procurement regulations. For example, we found that three separate firms had contracts with the same statements of work that required them to "develop and execute strategies for implementing existing management reform and improvement projects and work with, and within agencies to develop an overall operational improvement strategy." Additionally, the work statements for these three contracts did not have standards for measuring the contractor's performance as required by the Authority's regulations. The development of statements of work is important because they provide a basis for monitoring the contractor's performance to ensure that the contractor has performed satisfactorily and delivered the required goods and services before payment of invoices.

Equally important, for the nine Authority contracts we assessed, the Authority contracted and paid for goods and services totaling \$13 million; yet, there was no evidence in the contract files that it received the required deliverables for three of the nine contracts. The Authority's contract files contained evidence indicating that it received the required deliverables for four contracts. For two of the five contracts where there was no evidence in the contract files, we relied on the documentation maintained by two of the three contractors we visited to determine whether the contractor provided the required deliverables. Those two contractors provided us with copies of their required deliverables that indicated that they met the terms of their contracts. Although the contract files for the other three contracts contained invoices, there was no evidence that they were always reviewed and approved and did not contain statements that the contractor's performance was satisfactory, thus making it difficult to determine whether the deliverables were received for these three contracts.

In commenting on a draft of our report, the Authority said that our finding that it lacked a system for contract administration is incorrect and that it has a definitive system that is understood by its staff. While the Authority acknowledges, as our report states, that its procurement regulations contain few provisions concerning contract administration, it did not provide any evidence to support its statement that it has a definitive contract administration system that is understood by its procurement staff. The Authority further states that under its system, staff are expected to keep the Executive Director and contracting staff informed of any changes, significant problems, and the general status of contract work.

This system was not documented in the contract files. To the contrary, we found that, with respect to the Boulware contract, Authority staff entered into a verbal agreement without the Authority's knowledge.

In reference to our statement that we found little evidence of how the Authority monitored or certified satisfactory contractor performance for the nine contracts we assessed, the Authority commented that it has always interpreted the requirement for certification of satisfactory performance in its regulations to mean approval by cognizant Authority personnel of contractor invoices submitted for payment. The Authority also said that all contractor invoices must be reviewed and approved by the cognizant staff member. We agree that contractors' invoices should be reviewed and approved by appropriate Authority staff prior to payment. However, we also believe that the signing of an invoice authorizing payment does not constitute certification of satisfactory performance as described by the Authority's regulations.

In addition, we noted that there were several invoices stamped paid with no apparent signature authorizing payment. For example, the Authority payment records provided to us for the Urban Center contract included copies of five checks and invoices paid to the contractor totaling \$514,325. For two of the five payment records, where the invoices totaled \$140,350, there was no indication on the invoices that they had been reviewed or approved. Two other checks, totaling \$250,075, had no invoices to support the amount of or purpose for the payment. We noted that the file contained a document stating that the contract was terminated due to "possible fraudulent invoices." This document was dated subsequent to the paid dates of the checks and invoices cited above. In another example, the contract file contained a payment record of an invoice for the Gaebler Group in the amount of \$18,073. We noted, however, that the invoice contained in the contract file was not annotated to show that the Authority reviewed the invoice and there was no signature approving it for payment.

The Authority also disagreed with our finding that the statements of work for the nine contracts we assessed did not contain thorough descriptions of the required service, expected results, and standards for measuring the contractor's performance and effectiveness. As our report clearly states, the Authority's regulations require that statements of work contain thorough descriptions of the required services, expected results, and standards for measuring the contractor's performance and effectiveness. The statements of work for the nine contracts we assessed did not contain such information. The Authority further commented that with regard to the former CMO contracts, performance type statements of work were not

feasible and that the management task force contracts, in essence, provided a group of personnel with municipal management experience to act as the newly appointed staff of the former CMO. We believe that the situation the Authority described is similar to a personnel situation and do not believe that performance expectations would have been unreasonable.

The Authority commented that, contrary to the statement in the draft report that invoices in the contract files for the Gaebler Group, Management Partners, and the Urban Center were not always reviewed and approved, no invoice was ever paid without approval. We do not state that invoices were paid without approval. We state that there was no evidence in the contract files that invoices provided by the Authority were always reviewed and approved. We did, as previously pointed out, find instances of invoices stamped paid without annotation of approval or written certification of satisfactory contractor performance.

Finally, in reference to our statement that there was no evidence in the contract files that the Authority received the required deliverables for three of the nine contracts we assessed, the Authority commented that it has never been the Authority's practice to require that copies of deliverables and invoices be kept in the contract files. We do not state that copies of deliverables should be maintained in the contract files. However, we believe that a document in the file certifying that the contractor met the terms of the contract and provided the required deliverables is a good procurement practice. The Authority further stated that most of its contracts provide that payment be made after satisfactory delivery of specified deliverables and that it has never made such a payment without receipt of satisfactory work. Our report does not state that the Authority made payments without receipt of satisfactory work. We state that, based on our review of the contract files, there was no evidence in three of the nine contract files we assessed that the Authority received the required deliverables and that we were able to find evidence indicating that the Authority received the deliverables for the other six contracts.

Evidence That the District's CPO Monitored Contractor's Performance Was Not Available

We found no documentation in the contract files that the District's CPO monitored the contractor's performance or received required deliverables for the two contracts that he awarded. The District's procurement regulations state that it is the responsibility of the contracting officer to ensure that the contractor performs in accordance with the terms of the contract before payment of any contractor invoice. In addition, as stated previously, the Authority transferred the Managing Total Performance contract to the District's CPO for administration. District officials told us that they have an individual who is responsible for monitoring the

contractor's performance to ensure that the terms of the contract are met before payment of invoices. However, there was no evidence in the contract file to substantiate this assertion.

In commenting on a draft of this report, the District's CPO said that the draft report incorrectly states that contract administration was the responsibility of the District's Office of Contracting and Procurement. As our report states, according to the District's procurement regulations, it is the responsibility of the contracting officer to ensure that the contractor performs in accordance with the terms of the contract before payment of any contractor invoice.

Factors Contributing To Procurement Problems

Several factors appear to have contributed to the Authority's contracting problems. The Authority's former Executive Director attributes the contracting problems to the short period in which the Authority had to carry out its "massive and formidable" tasks. We do not believe that the existence of statutory timeframes should exempt the Authority from fully complying with its procurement regulations.

In its January 1999 report, DSIC, which reviewed over 100 Authority contracts awarded between August 1995 and September 1998, said that the Authority generally followed its streamlined procurement regulations. However, DSIC also identified some of the same problems we did. DSIC attributes the Authority's contracting problems, in part, to the Authority's emphasis on achieving its programmatic mission in a short time period and its lack of procurement expertise. DSIC also identified such problems as no independent cost estimates, no documentation of actual analysis of the Authority's declaration of fair and reasonable price for modifications and sole source contracts, inadequate training for contracting staff, and lack of documentation in the contract files.

In its written comments on a draft of this report, the Authority points out that DSIC, the consultant firm retained by the Authority, concluded in its report that the Authority generally followed its procurement regulations. We acknowledge this in our report. However, we believe that it is equally important to point out that, although DSIC's report contained many examples of the problems it found with the Authority's procurement practices, the report did not explain the basis for the statement that the Authority generally followed its streamlined procurement for all the contracts reviewed. The report was unclear as to whether this conclusion applied to all of the 109 contracts or some portion of the contracts. In addition, DSIC officials were not able to provide any documentation to support this statement.

DSIC made several recommendations to the Authority to address the problems it identified and said in its January 1999 report that the Authority had begun to act on them. In a January 13, 1999, letter to DSIC, the Authority stated that it

- would begin developing cost estimates of the hours needed to perform required services,
- had assigned a procurement specialist to maintain its contractor files and use a standardized contract file folder and checklist to maintain accountability,
- had established an informal 3 week minimum response time for all its solicitations to encourage competition resulting in lower costs, and
- would continue to make resources available to incorporate education and training for all staff involved in its contracting activities.

We believe that, if effectively implemented, the actions the Authority says it has taken and plans to take should help correct some of the problems that both DSIC and we identified.

In addition, we believe other factors that were not addressed by DSIC's recommendations may have contributed to the failure of Authority staff to follow the procurement regulations. First, while the Authority's Executive Director delegated contracting responsibilities to various members of the Authority's staff, he had not fully defined areas of responsibility and accountability among the contracting staff. For example, while the Authority's former Executive Director signed the contracts as the Contracting Officer, it was not always apparent who was responsible for ensuring that key contract award and administration decisions were documented and maintained in the contract files.

In its comments on a draft of our report, the Authority disagreed with our statement that its Executive Director had not fully defined the areas of responsibility and accountability among the contracting staff and that it was not always apparent who was responsible for ensuring that key contract award and administration decisions were documented and maintained in the contract files. The Authority said that members of its professional staff have always been fully aware of their contracting responsibilities. Our report points out that there was no documentation in the contract files to show who was responsible for contract administration, and the Authority did not provide any additional information with its written comments.

Second, the Authority had not provided its contracting staff with guidance on how to implement its procurement regulations to ensure compliance. For example, the Authority's regulations state that they are intended to permit the Authority to award contracts based on least cost or best value, and require that statements of work contain performance standards, contractors' performance be monitored, and certification be provided that the contractor performed satisfactorily. However, the Authority had not issued guidance to its contracting staff on how these requirements are to be implemented to comply with the procurement regulations. Equally important, the Authority had not provided its contracting staff with guidance for awarding and administering those procurement actions not specifically covered by its regulations, such as contracts over \$100,000 and below \$500,000, or for executing contract modifications, or contract options.

In its comments on a draft of this report, the Authority disagreed with our statement that it had not provided its contracting staff with guidance on how to implement its procurement regulations. Our report states that we found no written guidance on how the Authority's staff was to implement its procurement regulations. In addition, when we asked the Authority for supporting documentation, none was provided. DSIC also found this to be a problem and recommended that the Authority improve its procurement process by providing standardized procedures on how to implement its procurement regulations.

Finally, the lack of specific requirements in the Authority's procurement regulations for all of its contracting activities appeared to have contributed to the problems that we found with the Authority's procurement practices. For example, the regulations do not specify the procedures that should be followed for awarding contracts between \$100,000 and \$500,000, and for executing contract modifications and contract options. In addition, there was no evidence in the contract files we reviewed that the Executive Director determined the type of procurement method—that is simplified or formal— that should be applied to the contracting situations stated above.

Regarding the two contracts awarded by the District's CPO without the Authority's approval, we did not determine whether the Authority had an adequate mechanism for ensuring that these contracts are submitted to the Authority for review and approval prior to award.

Conclusions

The Authority was established essentially to repair the District's failing financial condition and to improve the effectiveness of its various entities. We recognize that, as the Authority has pointed out, it was a newly

established organization and was expected to accomplish the majority of its tasks in a relatively short period of time, and thus had to award many contracts quickly. However, we believe that it was also important for the Authority to lead by example by better adhering to its own regulations, ensuring accountability and integrity, and by not following the same type of practices that it was established to correct in the District.

We also recognize that any new organization is bound to experience start-up difficulties and take some time to operate effectively. However, the majority of the Authority's contract actions that we reviewed were awarded almost 3 years after the Authority was established. We believe that this was a sufficient amount of time after establishment to expect an effective procurement operation that follows its own requirements and provides assurance that the objectives of its requirements are met.

The actions that the Authority says it has taken or plans to take based on DSIC's report, if effectively implemented, should help correct some of the problems both DSIC and we identified. However, we do not believe that these actions are likely to fully resolve the problems we found. They do not fully address findings that the Authority did not fully define the roles and responsibilities of its procurement staff or provide guidance to its staff on how to (1) determine best value; (2) develop performance standards for work statements; (3) monitor contractors' performance and certify satisfactory performance; (4) document its basis for contractor selection and justification for sole source awards; and (5) provide its contracting staff with guidance for awarding and administering those procurement actions not specifically covered by its regulations, such as contracts between \$100,000 and \$500,000, and for executing contract modifications, or contract options.

Perhaps even more importantly, we do not believe that the Executive Director's position on waiver of the Authority's regulations, certifying satisfactory performance, or extending and modifying an expired contract reflect sound contracting principles. We believe that in accordance with good procurement practices

- any waivers by the Executive Director of the Authority's contract regulations should be justified and in writing;
- the basis for contract award should be documented, particularly when the selected source is different from the source recommended by the technical evaluation panel;

- contract files should contain a written certification, signed by an appropriate official, stating that the contractor's performance was or was not satisfactory; and
- all contract extensions should be in writing and cannot be modified or extended.

We did not determine whether the Authority had processes or controls to ensure that its review and approval regulations governing the submission of District contracts were being followed. However, it was apparent that the two contracts we reviewed that were awarded by the District's CPO were awarded without being reviewed and approved by the Authority as required by the Authority's regulations governing District contracts.

Recommendations to the Chair of the Authority

To improve its contracting operations, we recommend that the Chair of the Authority

- require the Executive Director to (1) approve and justify all waivers of Authority contracting regulations in writing, (2) only extend contracts in writing and prohibit the Executive Director from extending or modifying expired contracts, and (3) include in contract files a written certification, signed by an appropriate official, stating that the contractor's performance was or was not satisfactory;
- direct the Executive Director to (1) fully define the roles and responsibilities of the Authority's procurement staff; (2) prepare a written plan for contracting that includes methods for ensuring compliance with the procurement regulations; (3) provide guidance to the procurement staff on areas, such as determining best value, developing performance standards for work statements, monitoring and certifying contractors' performance, preparing written justifications for sole source awards, documenting the basis for contract selection, awarding contracts that are between \$100,000 and \$500,000, and executing contract modifications, or contract options;
- hold the Executive Director and other procurement staff accountable for ensuring that they follow the Authority's procurement regulations; and
- require the Executive Director to assess whether the Authority's processes and controls for the review and approval of District contracts prior to award are effective and, if not, make appropriate changes.

Authority's and District CPO's Comments and Our Evaluation

On July 21, 1999, the Authority's Executive Director provided written comments on a draft of this report that are reprinted in appendix III. Although the Authority said it would seriously consider our proposed recommendations and recognized that its procurement practices have not been perfect, it expressed concern and disagreement with portions of the

draft that pertained to the contracts it awarded. The Authority did not provide any additional documentation with its written comments.

The Authority said that the 10 contracts we reviewed were not a representative sample and that 5 in particular were not typical of Authority contracts in general. Our report does not suggest that the contracts we reviewed were selected randomly. To the contrary, our report describes in detail how we selected the contracts we reviewed, and discusses the circumstances surrounding the award of the five contracts awarded on the behalf of the CMO that the Authority says are not representative of how it carries out its contracting function. Our report states that DSIC, the Authority's contractor, did identify some of the same problems we did but we do not state that these problems are representative of all Authority contracts.

The Authority also commented that the draft report assumed that its regulations applied to all 10 of its contracts we reviewed. Our report does not state that the Authority's regulations for formal contracting apply to all nine of the Authority's contracts we assessed for compliance. However, we agree that our report was not as clear as it could have been in this regard and clarified our report to the extent we could, given that the Authority had not specified what requirements applied to contracts between \$100,000 and \$500,000 or for contract modifications or options.

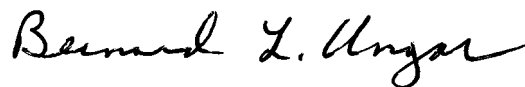
Finally, the Authority disagreed with several of our interpretations and application of its regulations, and believes that its procurement regulations and how the Authority interprets or implements them are generally adequate and appropriate in light of its situation. We continue to believe that our interpretation and application of Authority regulations are generally appropriate and that the manner in which the Authority has applied its regulations and has conducted its contracting activities in some instances is not consistent with sound contracting principles or practices. In particular, we believe that the Authority's views regarding waivers of its regulations, certification of satisfactory contractor performance, and the extension and modification of expired contracts may prevent the Authority from meeting its contracting objectives and does not provide adequate internal controls to prevent abuses from occurring. Another problem is the lack of clarity as to what requirements apply to contracts between \$100,000 and \$500,000.

The Authority's comments on issues that it disagrees with us on and our assessment of the Authority's comments are discussed as appropriate in the body of the report. We also made specific technical changes to clarify

our report based on suggestions by the Authority. Finally, we have made additional recommendations to the Authority to address our concerns in certain areas.

On July 12, 1999, the District's CPO provided comments on a draft of this report. He disagreed with our findings with respect to the contracts he awarded. We believe that our findings are well documented and are correct. His specific comments and our responses are discussed in the appropriate sections of our report.

We are sending copies of this report to Senator Kay Bailey Hutchison, Senator Richard J. Durbin, and to Representative James P. Moran and Representative Eleanor Holmes Norton in their capacities as Chair or Ranking Minority Member of Senate and House Subcommittees. We are also sending copies to the Honorable Anthony A. Williams, Mayor, District of Columbia; Ms. Alice Rivlin, Chair, District of Columbia Financial Responsibility and Management Assistance Authority; and other interested parties. Copies will also be made available to others upon request. GAO contacts and staff acknowledgments are listed in appendix IV. If you have any questions, please call me or Tammy R. Conquest on (202) 512-8387.



Bernard L. Ungar
Director, Government Business
Operations Issues

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Abbreviations

CMO	Chief Management Officer
CPO	Chief Procurement Officer
DSIC	Digital Systems International Corporation

Summary of Contract Terms for 12 Contracts Included in Our Review

Contract ^a	Contract date	Contract action	Contract type	Purpose	Dollar amount	Contract status as of 8/99
Boulware 98-C-018	9/1/98	Sole source award	Fixed fee	Executive recruitment service	\$105,000	In progress
PAR Group 98-C-007	3/9/98	Competitive award	Fixed fee	Executive recruitment service	38,500	Closed
Mod. 1	4/ /98		Fixed fee	Executive recruitment service	75,000	Closed
Managing Total Performance 97-C-031D ^b	9/4/97	Competitive award	Fixed fee labor hour	Management reform	796,600	Closed
Mod. 1-14	7/8/98 and 9/10/98	Sole source award	Fixed price	Management reform	10,600,000	In progress
The Gaebler Group 98-C-003C	3/24/98	Competitive award	Fixed unit price labor hour	Establish a management task force	94,500	Closed
Management Partners 98-C-003B	3/24/98	Competitive award	Fixed unit price labor hour	Establish a management task force	517,000	Closed
The Urban Center 98-C-003A	3/24/98	Competitive award	Fixed unit price labor hour	Establish a management task force	562,800	Terminated
Thompson, Cobb, Bazilio and Associates:						
FY96/FRA #2	10/18/95	Competitive award	Fixed price	Audit FY95 financial statement	23,392	Closed
FY96/FRA #2	1/3/97	Option 1	Fixed price	Audit FY96 financial statement	23,392	Closed
FY97/FRA #2	3/3/97	Option 2	Fixed price	Audit FY96 financial statement (Internal controls)	5,000	Closed
97-C-047	12/1/97	Option 3	Fixed price	Audit FY 97 financial statement	35,000	Closed
Thompson, Cobb, Bazilio and Associates 98-C-001	3/4/98	Competitive award	Fixed unit price labor hour	Audit DCPS enrollment	97,500	Closed
Thompson, Cobb, Bazilio and Associates 98-C-008	4/20/98	Sole source award	Fixed price	Prepare financial/accounting manual	20,900	Closed
Thompson, Cobb, Bazilio and Associates 98-C-010	8/20/98	Competitive award	Fixed fee	Audit FY98 financial statement	34,818	In progress

Appendix I
Summary of Contract Terms for 12 Contracts Included in Our Review

Contract ^a	Contract date	Contract action	Contract type	Purpose	Dollar amount	Contract status as of 8/99
Smart Management Services 8052-AA-NS-4-JW	2/27/98	Sole source award	Labor hour rate	Consultant services	153,800	Closed
Smart Management Services 8112-AA-NS-4-JW	6/15/98	Sole source award	Firm fixed price	Consultant services	893,416	Closed

^aWith the exception of the 2 Smart Management Services contracts, which were awarded by the District's CPO, the Authority awarded the other 10 contracts.

^bThis contract expired on December 4, 1997, because the Authority did not exercise its option. In addition, between July 8, 1998, and September 10, 1998, the District CPO, on behalf of the Authority, modified the expired contract 14 times, thus, in effect, awarding new sole source contracts. The modifications ranged in price from \$39,460 to \$5,250,000.

Source: Authority procurement files.

Review of Thompson, Cobb, Bazilio and Associates Contract (FY96/FRA#2)

As previously stated, 1 of the 10 contracts we reviewed was awarded before the Authority's regulations were adopted in March 1996. However, the Authority did not provide us with any information on what regulations, if any, it used to award this contract. This contract was awarded to Thompson, Cobb, Bazilio and Associates on October 18, 1995, for \$23,392. Thompson, Cobb, Bazilio and Associates was contracted to audit the Authority's financial statements. The contract provided for a base period and the option to renew the contract for two additional years. During our review of the Thompson, Cobb, Bazilio and Associates contract, we found that the basis for contractor selection was not documented in the contract file, nor was there a copy of the request for proposal.

In response to our request for documentation on its basis for selecting Thompson, Cobb, Bazilio and Associates, the Authority stated that this contract was an open market solicitation, meaning that only those firms that requested it were mailed a copy of the solicitation. In response to our follow-up request, the Authority stated that Thompson, Cobb, Bazilio and Associates submitted the only proposal received in response to the advertised solicitation. The Authority also said that the Executive Director's decision to award this contract was based on the firm's technical and cost proposals, the recommendations of members of his staff who handled the procurement, and his personal knowledge and experience with the firm.

The Authority also exercised three options over the 2-year term of this contract. Although the base contract required the Authority to negotiate the terms and conditions of these options, the contract file did not contain documentation that the Authority negotiated the terms and conditions for two of the options exercised. In addition, the file did not show that the Authority prepared a contract modification to exercise these two options. A confirmation letter from the contractor was the only evidence in the contract file that the Authority exercised the first two contract options. However, for option 3, the contract file contained a follow-on contract signed by the Authority that included the terms and conditions for this option as required by the base contract.

Although we did not find evidence that the Authority monitored or certified that the contractor performed satisfactorily, we noted that the contract file contained evidence that the Authority received the required deliverables for the base contract and the three options.

Comments From the Authority

District of Columbia Financial Responsibility
and Management Assistance Authority
Washington, D.C.

July 21, 1999

Bernard L. Ungar
Director, Government Business Operations Issues
United States General Accounting Office
Washington, DC 20548

Dear Mr. Ungar:

This letter responds to your letter of July 6, 1999 addressed to Dr. Alice Rivlin, Chair, District of Columbia Financial Responsibility and Management Assistance Authority ("Authority"). Your letter enclosed the GAO's draft report entitled District of Columbia: Authority Needs to Better Comply With Its Procurement Regulations and requested the Authority's comments thereon.

At the outset the Authority wishes to thank the GAO for the recommendations included in the draft report. We will certainly give them serious consideration.

I would like to share with you some general observations concerning your review and report, and then point out certain places where the findings contain inaccuracies or could benefit from clarification.

As you know, your review did not cover a representative sample of Authority contracts. It included only 10 Authority contracts, and they were highly selective rather than a random sample. Moreover, the main focus of your review are five contracts awarded by the Authority at the request of the Chief Management Officer (CMO) that are not representative of Authority contracts in general. The Authority's CMO commenced work on behalf of the Authority in January, 1998 with a separate staff and a separate office from the rest of the Authority, but without procurement powers. At the CMO's request the Authority's Executive Director entered into these five contracts to provide the CMO with a temporary management staff and to recruit a permanent management staff. These procurements were considered essential to launching the work of the CMO, in response to congressional mandates, and hence were carried out on the most urgent basis. Moreover, both the CMO and her staff actively involved themselves in these procurements, often without the knowledge of the Executive Director and staff. These factors significantly affected the award and administration of these procurements, and consequently they are not representative of Authority procurement in general. As you know, the Office of the CMO no longer exists.

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See p. 30.

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Your investigation and draft report includes two additional contracts awarded by the District's Chief Procurement Officer (CPO) to Smart Management, Inc. As you know, the District's CPO recently resigned. The Authority's position on the Smart Management contracts is well known, and the matter was thoroughly investigated and reported by the District's Inspector General. In the circumstances, further comment by the Authority is unnecessary.

Our comments on specific findings in the draft report are set forth below.

See p. 30.

1. Applicability of Provisions of Authority Regulations to the Contracts Reviewed. The draft report assumes that certain cited provisions in the Authority's procurement regulations apply to all ten contracts reviewed. However, certain of the provisions discussed in the draft report, including the provisions regarding documentation of the basis for contract selection, documentation of contract negotiations, and cost/price analysis are found in Chapter 5 of the Authority's regulations, which by its terms is applicable to "contracting actions that can be expected to result in the Authority's expenditure of \$500,000 or more on an annual basis." Your draft report does not mention this provision or take it into account in determining how many of the reviewed contracts do or do not comply with certain provisions of the regulations. In addition, the draft report does not mention the fact that the contract with Thompson, Cobb & Bazilio (TCB) for the audit of the Authority's annual financial statements was awarded in October, 1995, several months before the Authority's procurement regulations were adopted in March, 1996.

See pp. 5 - 6.

See pp. 1, 2, 12.

2. Basis for Contract Selection Generally Not Documented. The section of the draft report on this point, beginning on page 14, states that the basis for contract selection was not documented in 9 of the 10 contract files reviewed. Of the contracts specifically mentioned as not having such documentation, (1) award to the Gaebler Group is documented in the memorandum from the CMO's assistant, Dan Manyindo, dated March 18, 1998; (2) the contract award to Managing Total Performance (MTP) is documented in a selection committee memorandum dated September 4, 1997; and (3) the selection of TCB to audit the Authority's annual financial statements was made prior to adoption of procurement regulations by the Authority. Documentation in the file demonstrates that this was a competitive solicitation to which the Authority received only one response. The responding firm has an excellent reputation and substantial experience in District audit and related matters. (Also note that this latter contract is referred to here as four audit contracts when in fact it is one contract with three option periods, a structure that is common for annual financial audits of government entities. Other sections of the draft report correctly consider this to be one contract.) (4) And (5) the bases for award of the contracts to Management Partners and The Urban Center are documented in the CMO's memorandum dated March 18, 1998.

Now on pp. 10 - 12.

See p. 30.

Perhaps the problem here is that the draft report interprets the regulation provision concerning documentation of contract award selection to require that a separate memorandum authored by the Executive Director be placed in the contract file. However, the Authority's interpretation of this provision has always been that the

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Executive Director's award of a contract in accordance with the recommendation of the selection team is an adoption of that recommendation and the justifications therefor.¹

3. Justification for Sole Source Contracts Not Always Substantiated. The draft report states that the Authority did not comply with its regulations concerning justification for sole source procurements in the case of the Boulware contract for executive recruitment services, and with respect to certain modifications to the MTP contract. With respect to the Boulware executive recruiting contract, the draft report correctly states that the Authority's former CMO entered into a verbal agreement on a noncompetitive basis without written justification or the Authority Chair's approval. However, the report does not mention that the CMO had no procurement or contracting authority; that the Authority's Executive Director, the only official with such authority, did not learn of this unauthorized procurement until several months later; and that when the unauthorized agreement was discovered, the Executive Director took immediate steps to negotiate a written contract and require a written justification for the contract from the CMO. In fact, as the draft report acknowledges, there is a sole source justification in the file that was prepared at the time that a written contract with Boulware was executed by the Executive Director.

The draft report also finds that the sole source justification dated April 24, 1998 for the Boulware contract is inconsistent with the justification, also dated April 24, 1998, for a modification to the PAR executive recruiting contract. A comparison of the two justifications is initially confusing. However, a review of the two files reveals that the date of the Boulware sole source justification is incorrect, a typographical error. According to the Boulware file, the requirement for a written justification was discussed with the CMO's office in August and September, 1998. The memorandum from the CMO's office (which the Authority considers the justification for the Boulware contract) is dated September 30, 1998, and refers to an earlier memorandum prepared by that office dated August, 1998. The Boulware contract was issued in September 1998. The written justification prepared by a contract specialist could not have been prepared in April of 1998 which was prior to the Authority's procurement staff even knowing of the unauthorized Boulware verbal agreement. Moreover, a reading of the April 1998 and September 1998 written justifications for the PAR and Boulware recruitment contracts respectively, as well as other documentation in the files, indicates that the two justifications are not inconsistent. What is clear from review of the files is that (1) the CMO and the District had a very large and growing number of vacancies for high-level management positions to be filled, (2) the Authority Board had imposed very tight (30-day) schedules for filling certain positions, and (3) each of the two recruiting firms had certain strengths with respect to the types and expertise of the pool of potential recruits that they had developed. Hence, it made sense to have both firms retained to provide

¹ Based on recommendations of the independent firm the Authority retained to audit its contract files, a more formal process has been instituted for a separate staff memorandum to be signed or initialed by the Executive Director and the Chair. This procedure has been adopted to conform Authority procurement practices more closely with other government procurement systems, not because required by the Authority's regulations. It remains the Authority's belief that this additional paperwork does not add substantively to the information in a contract file.

See pp. 13 – 14.

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recruiting services and to assign certain management positions to one firm rather than the other.

See pp. 14 - 16.

The draft report also states that the Authority failed to substantiate the award of sole source contracts to MTP. This finding is based on the argument that the MTP contract was allowed to expire before the option for the implementation phase of the contract was exercised, and hence any task orders or modifications issued for management reform implementation were sole source contracts, even though the initial contract was competitively awarded. As we previously explained to the GAO investigators the Authority did not and does not interpret the MTP contract as having expired. Rather, the Authority and MTP understood and agreed that the contract would remain in effect beyond the stated term so as to allow future exercise of options for implementation work. This was done because implementation work had been delayed by the sheer magnitude of the management reform program, the limited funding available, and the cumbersome procedures mandated by Congress (the Management reform teams consisting of Authority, Council, Mayor and agency representatives). The draft report says that GAO believes otherwise, citing a Comptroller General decision. However, the Authority is the best and most appropriate interpreter of what its contracts provide. The draft report recognizes that the Authority is statutorily exempt from adhering to District procurement law and is not subject to Federal procurement law. We respectfully submit that the GAO should not second-guess the Authority in this regard. As you know, in early 1998 the District CPO was delegated responsibility for administering this contract.

Now on p. 16.

4. Little Evidence of Contract Negotiations, Cost/Price Analysis, or Independent Cost Estimates. The draft report states on page 21 that "Although the Authority said that it conducted negotiations with its qualified offerors, evidence in the contract files indicated that negotiations occurred for only 1 of the 10 contracts," namely the Boulware contract. The Authority never stated that it negotiated with respect to all 10 of the contracts reviewed. Negotiations did occur with the three Management Task Force contractors and with the Boulware firm. The Management Task Force contracts were the subject of telephonic negotiations over several hectic days. This was not an orderly process that lent itself to extensive formal documentation. Nor do the Authority's regulations provide that the documentation be in a particular form. The files contain documentation of the nature and extent of these negotiations, and although there are no formal reports of negotiation sessions, it is clear that contract terms were evolving as the parties analyzed and discussed the unusual nature of the services being requested. With respect to the MTP contract -- the only other contract subject to the requirement for documentation of negotiations, if any -- there is no indication that it was negotiated, hence no requirement for documenting negotiations.

See p. 17.

The draft report also criticizes the Authority's negotiations in the Boulware contract because the contractor complained, when interviewed, that negotiations did not take place and the Authority dictated the price. The Authority interprets the term "negotiations" to include a statement by one party that it will not pay (or accept) more (or less) than a certain price. However, if the contractor's interpretation is accepted, then

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there were no negotiations and hence no reason to document them. (The Authority's procurement regulations do not require negotiations.)

See p. 17.

The provision for cost/price evaluation in the Authority's regulations does not require that the cost/price evaluation be documented in the contract file. Most Authority procurements, including those reviewed by the GAO, are competitive, and hence documentation for the cost/price is contained in the cost proposals submitted by offerors. Moreover, most Authority procurements are for consulting services and are paid for based on hourly rates. The Authority has a significant amount of historical information concerning hourly rates charged by consultants. It also routinely uses the GSA MOBIS rates for comparison. Many Authority contracts provide for unusual, if not unique, services, making it difficult to estimate accurately the number of hours required. In such cases, the Authority uses not-to-exceed price provisions to allow it to monitor and control contract costs.

See pp. 21 - 24.

5. Contract Administration. The draft report finds that the Authority lacks a system for contract administration. This is incorrect. It is true, as the draft report states, that the Authority's procurement regulations contain few provisions concerning contract administration. However, the Authority has a definite system which is well understood by its staff. Each contract awarded by the Authority is assigned to a specific staff member or members for monitoring and administration. For contracts awarded on behalf of a District agency, one such staff member is usually an employee of that agency. The staff member who is assigned to perform monitoring duties is expected to confer with the contractor as often as required for adequate monitoring, which may be daily, weekly or bi-weekly. The staff member is expected to keep the Executive Director and staff members with contracting responsibilities informed of any changes in the contract schedule, any significant problems that arise, any contract changes required, and the general status of contract work. Where appropriate, individual Members of the Authority also participate in regular conferences with contractors concerning status of work and content of deliverables. All contract invoices must be reviewed and approved by the staff members with contract monitoring and administration authority. No payments are made without such approval. Authority staff members take their responsibilities for monitoring contract performance very seriously.

See pp. 22 – 23.

The draft report also states that GAO saw little evidence of how the Authority monitored or certified satisfactory contractor performance for the 10 contracts reviewed. The Authority has always interpreted the requirement for certification of satisfactory performance in its regulations to require approval by cognizant Authority personnel of contractor invoices submitted for payment. As stated above, all contract invoices must be reviewed and approved by the cognizant staff members.

See pp. 22 – 23.

The draft report also states that the statements of work (SOW) for the 10 contracts reviewed "generally did not contain thorough descriptions of the required service, expected results, or standards for measuring the contractor's performance and effectiveness." The Authority disagrees with this finding. The reviewed contracts that are susceptible of a performance type SOW, such as the TCB contracts, contain them.

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See p. 24.

For other reviewed contracts, notably the Management Task Force contracts and the recruiting contracts issued for the CMO, performance-type SOWs were not feasible. The three Management Task Force contracts in essence provided a group of specified personnel with appropriate municipal management experience to act as the newly appointed CMO's interim staff. The entire mission and daily responsibilities of the CMO were in the process of evolving. It would have been futile to attempt to formulate a detailed, performance-based statement of work. Rather, the contract provisions gave the Authority the power to terminate the services of any member of the interim team at any time under the termination-for-convenience clause. The CMO supervised and directed the interim management team on a daily basis. Members of the team were required to keep detailed records of hours worked. Approval of invoices by the CMO constituted certification of satisfactory performance. Contrary to the statement in the draft report that invoices in the contract files for the three Management Task Force contracts were not always reviewed and approved, no invoice was ever paid without approval. As the GAO investigators were told, the Authority maintains its records of contract invoices separate from the contract files. The GAO was given access to these records.

See p. 24.

The draft report also states that there was no evidence in the contract files that the Authority received the required deliverables for 5 of the 10 contracts. However, as the Authority explained to the GAO investigators, it has never been the Authority's practice to require that copies of deliverables and copies of invoices be kept in the contract files, nor do the Authority's regulations so require. Most Authority contracts provide that payment be made after satisfactory delivery of specified deliverables, and the Authority has never made such a payment without receipt of satisfactory work.

Now on p. 3.

Now on p. 4.

See p. 9.

Now on p. 6.

Now on pp. 9, 25, 26.

6. Other Statements in the Draft Report that Require Correction or Clarification. (1) The draft report in footnote 4 on page 5 states that the Authority's first Executive Director served from April 1995 to May 1999. The first Executive Director was hired in June 1995 and placed on the Authority's payroll in July 1995. (2) The draft report in footnote 5 on page 7 states that "According to the former Executive Director, the provisions in the procurement regulations have never been waived." This is not quite accurate. Mr. Hill, the former Executive Director, states that he said the provisions had never been waived in writing. This is an important distinction. It has always been the Authority's position that when a contract is executed by the Executive Director and approved by the Chair, the contract is fully valid and any irregularities with respect to its award have been waived. (3) The draft report on pages 9 and 10 states that as of April 1999 there were 2 full-time staff at the Authority involved in the award and administration of Authority contracts. One of the persons referred to, Chris Hallmark, was never a member of the Authority's staff. Originally she was an employee of the independent firm retained by the Authority from July 1997 through September 1998 to assist in administering its contracts. After that firm's services were terminated, she served as an independent contractor to the Authority until May 1999. (4) The draft report on page 12 states that other reviews of the Authority's procurement processes have reported similar findings and conclusions, citing the DSIC report that was based on a review of over 100 Authority contracts. However, as the draft report acknowledges on page 32, the DSIC report concludes that the Authority generally followed its procurement regulations. (5) The draft report on page 31 states

6

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Now on pp. 26 - 27.

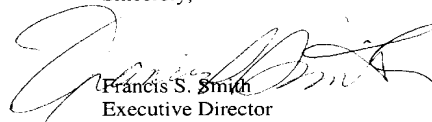
See p. 27.

that the National Capital Revitalization Act of 1997 required the Authority to award management reform contracts within 30 days from August 5, 1997², but that the Authority awarded only one of the four management reform contracts reviewed by the GAO within the mandated time frame, the other three contracts having been awarded almost 6 months later. This is incorrect. Only one of the 10 contracts reviewed was issued pursuant to Section 11103 of the 1997 Act, namely the contract with MTP. It was one of 12 contracts issued by the Authority pursuant to Section 11103. (6) The draft report on page 34 states that the Authority's Executive Director had not fully defined areas of responsibility and accountability among the contracting staff, and it was not always apparent who was responsible for ensuring that key contract award and administration decisions were documented and maintained in the contract files. The Authority disagrees. Members of the Authority's professional staff have always been fully aware of their contracting responsibilities. (7) The draft report states that the Authority had not provided its contracting staff with guidance on how to implement its procurement regulations. The Authority disagrees. Of course, any organization's staff could probably benefit from additional training and guidance. But this conclusion by the GAO appears to be based upon interpretations of Authority regulation requirements that the Authority does not share, as noted above.

The Authority certainly recognizes that its procurement practices have not been and indeed are not perfect. Over the past year it has taken a number of steps to institute procedures that, while they go beyond what is required by the Authority's regulations, assist in addressing the intense scrutiny to which the Authority's procurements are sometimes subjected. However, the Authority also continues to believe that in general its procurement regulations and procedures, as it interprets and implements them, are adequate and appropriate in light of its statutory missions and the budgetary constraints under which it operates.

The Authority requests that, taking the facts set forth above into consideration, the GAO revise a number of findings in its draft report and that it choose a title for its report that is more consistent with the revised findings. The Authority appreciates your interest and support.

Sincerely,



Francis S. Smith
Executive Director

² Section 11103 of the 1997 Act provides that not later than 30 days after the date of enactment, the Authority shall enter into contracts with consultants to develop the management reform plans provided for in the 1997 Act.

GAO Contacts and Staff Acknowledgments

GAO Contacts

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Acknowledgments

In addition to those named above, Geraldine Beard, Alan Belkin, John Brosnan, William Chatlos, Bruce Goddard, and Seth Taylor also made key contributions to this report.

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