

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Inspector General**

Inspector General



January 30, 2014

The Honorable Vincent C. Gray  
Mayor of the District of Columbia  
Mayor's Correspondence Unit  
1350 Pennsylvania Avenue, N.W., Suite 316  
Washington, D.C. 20004

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Avenue NW, Suite 504  
Washington, D.C. 20004

Dear Mayor Gray and Chairman Mendelson:

The purpose of this Management Implication Report<sup>1</sup> (MIR 14-A-01) is to inform you that the District of Columbia Office of the Inspector General (OIG) was unable to complete its audit of the Information Technology Staff Augmentation (ITSA) Contract (OIG Project No. 10-1-19TO(a)) because District contractor, Optimal Solutions and Technologies Incorporated (OST), failed to provide the OIG with adequate access to its financial books and records. The audit sought to determine if the negotiated contract price for OST's services was fair and reasonable. The OIG's inability to complete its duties poses a significant risk to eliminating fraud, waste, and abuse within the District of Columbia.

The ITSA contract audit remains incomplete. As a result, the OIG will not be able to ascertain whether the District obtained a fair and reasonable contract price of \$194,184,241 from OST during fiscal years 2009 through 2013 or whether defective pricing existed in the ITSA contract price. It is our hope that you and the Council of the District of Columbia (Council) will consider reviewing, evaluating, and if necessary changing current legislation or taking other appropriate action that will enable the OIG to obtain adequate access to records of contractors who provide goods and services to the District so that it may adequately perform its mission.

**The OIG's Authority to Conduct Audits and Access Records**

The OIG is authorized to audit District contractors. Among other things, as part of its mission, the OIG is directed to conduct audits of District of Columbia programs and operations. D.C. Code § 1-301.115a(a-1)(1). The OIG's statutory authority reaches all contractors with the

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<sup>1</sup> The OIG issues MIRs on matters of priority concern that affect multiple District agencies.

District government. D.C. Code § 1-301.115a(f-3) further provides that a contractor's failure to provide requested documents needed for the performance" of an OIG audit may result in termination of an existing contractual relationship. In addition, D.C. Code § 1-301.115a(c)(1) grants the OIG access to books, accounts, records, etc. belonging to or in use by, among others, departments, agencies (subordinate to the Mayor and independent), boards, and commissions of the District government, which are, necessary to facilitate an OIG audit, inspection, or investigation. The OIG's authority to access records reaches all contractors with the District government through Section 18 of the March 2007 Standard Contract Provisions, which provides, in pertinent part, that "[T]he Inspector General ... shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract." Moreover, the OIG is granted authority to audit any District contractor's books and records for any non-firm fixed price contract pursuant to D.C. Code § 2-354.18(b).

## **Background**

On August 19, 2008, the D. C. government signed a contract (ITSA) valued at \$75 million with OST to be the prime contractor for the provision of IT staff augmentation services to the District. The intent of the contract was to replace D.C. Supply Schedule contracts for IT services and, in doing so, realize significant cost savings from supply schedule prices and reduced staff requirements from the Office of Contracts and Procurement (OCP).

The OIG issued the first audit report related to the ITSA contract on August 3, 2011. The objectives of the audit were to determine whether (1) the contract was awarded in compliance with requirements of applicable laws, rules, regulations, policies, and procedures; (2) the contract was administered in an efficient, effective, and economical manner; and (3) internal controls safeguarded against fraud, waste, and abuse. The audit revealed that OCP did not obtain certified cost or pricing data as required by D.C. Code § 2-303.08(a) (2006) prior to the award of OST Contract Number DCTO-2008-C-013. OCP also did not determine the reasonableness of cost and profit under the contract in accordance with 27 DCMR § 1626.1, which required a cost analysis when a contract award or modification exceeds \$500,000. Therefore, the OIG revised its audit objective for the second audit to determine whether the negotiated contract price was fair and reasonable.

The OIG began work on the second audit in August 2011. For the second audit, OIG officials requested that OST officials provide all the necessary documents and data (including computations and projections related to negotiating, pricing, etc.) to support OST's disclosure certification. OST officials agreed to do so within a 3 week timeframe. A month or so later, OST officials voiced confidentiality concerns with respect to the requested information.

In mid-October, the OIG provided OST with a comprehensive and specific list of requested documents for the purpose of conducting an alternative audit procedure (cost analysis). A week or so later, OST responded, providing the OIG with a computer disk containing financial

information. However, upon review, the OIG auditors determined that the documents provided by OST did not include a substantial amount of the information requested by the OIG.

### **Subpoena Enforcement**

Negotiations between the OIG and OST failed to resolve the impasse; that is, OST refused to provide the OIG auditors with the necessary financial books and records to complete the audit. Consequently, on November 4, 2011, the OIG, based upon its subpoena authority pursuant to D.C. Code § 1-301.115a(c)(2)(A), issued a subpoena to obtain the necessary records. The IG subpoena sought, among other things, OST's general ledgers, job cost ledgers, payroll records, and indirect costs. On November 18, 2011, OST, through counsel, raised several objections to the subpoena. Nonetheless, the parties continued to negotiate the matter, in hopes of avoiding litigation. OST however never produced the financial books and records (the general ledgers); to support the general and administrative overhead rate and the financial statements covering calendar years for the necessary time period that were needed to complete the audit.

Even though discussions between the OIG and OST continued, it became clear that OST was never going to deliver its general ledgers to the OIG. Hence, the OIG requested that the Office of the Attorney General (OAG) proceed to litigate the matter in the Superior Court of the District of Columbia. The OAG moved to enforce the subpoena. On February 15, 2013, a Superior Court judge declined to enforce the subpoena stating that the subpoena compelled the production of records that were not related to OST's performance under the ITSA contract and was arguably beyond the OIG's authority, and the subpoena was overly broad.

While the OIG did not agree with the Court's ruling, the OIG subsequently issued another subpoena, narrower in scope in an attempt to comply with the Court's ruling. However, to date, OST has not honored that subpoena and produced the documents. In light of the Court's ruling, among other things, the OIG finds that it is not beneficial to further litigate the matter in the courts. Accordingly, the OIG believes that administrative and/or legislative action is warranted to address the matter.

### **Request for Legislation/Other Action**

District contractor OST remains noncompliant with D.C. Code § 2-354.18, which requires District contractors to allow the Inspector General access to their books and records for the purposes of the OIG auditing District contracts. Consequently, this report is for informational purposes and may be useful to District leaders, and other stakeholders, in evaluating areas in which the OIG's access to District contractor's records may need to be strengthened.

It is our hope that you and the Council consider reviewing, evaluating, and if necessary changing the current legislation (D.C. Code § 1-301.115a(f-3) and/or taking other appropriate action to enable the OIG to obtain adequate access to records of contractors who provide goods and services to the District. This action may include taking measures to ensure that the Chief Procurement Officer: (1) terminates an existing contractual relationship for a contractor's failure

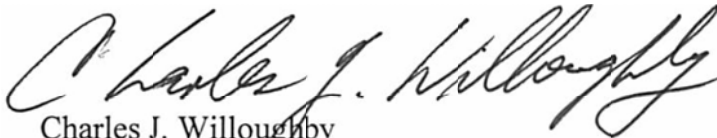
to cooperate "by not providing requested documents . . . needed for the performance" of an OIG audit; and (2) obtains certified cost or pricing data and perform a cost analysis to determine reasonableness of cost and profit when required, prior to the award of a contract.

## **Conclusion**

In light of the far reaching ramifications of this matter on District contracting and procurement for goods and services, particularly as it relates to reasonable and fair price determinations, we believe that it is imperative for you and the Council to consider reviewing, evaluating, and if necessary, reenacting legislation that was in effect for the period covered by the attempted OIG audit, but was subsequently repealed (see Report on Noncompliance With the Requirement to Perform Cost Analyses (OIG No. 10-1-19TO(b)).<sup>2</sup> In addition, I ask that you and the Council take any other action that you deem appropriate to enable the OIG to obtain adequate access to records of contractors' who provide goods and services to the District.

If you have questions about this report, please contact me or Ronald W. King, Assistant Inspector General for Audits, at (202) 727-2540. Thank you in advance for your attention to this matter and your continued cooperation.

Sincerely,



Charles J. Willoughby  
Inspector General

CJW/fg

cc: See Distribution List

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<sup>2</sup> See OIG's website at [http://app.oig.dc.gov/news/PDF/release10/OIG%20%2010-1-19TO\(b\).pdf](http://app.oig.dc.gov/news/PDF/release10/OIG%20%2010-1-19TO(b).pdf) (last visited Jan. 24, 2014).

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