



**FINDINGS AND RECOMMENDATIONS
OF MARY M. CHEH
ON THE
DEPARTMENT OF GENERAL SERVICES
CONTRACTING AND PERSONNEL MANAGEMENT**

MARY M. CHEH, CHAIR
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT
THE COUNCIL OF THE DISTRICT OF COLUMBIA

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I. Introduction

In early September 2016, in response to public concern and multiple media stories about the handling of two contracts awarded by the Department of General Services (DGS) and personnel actions taken in response to those contracts (including the resignation of the DGS Director, Christopher Weaver), the Committee on Transportation and the Environment inquired about the circumstances surrounding how the contracts were evaluated and awarded, as well as the why the personnel actions were taken. Given the public interest in these matters, the Committee believed it was important to determine whether improper actions were taken and for the public to know if something improper occurred or to know if nothing improper occurred.

As part of the inquiry, the Committee requested thousands of pages of documents from the Executive branch, including emails, correspondence, meeting records, personnel files, and documents related to the contracts in question. The Executive Office of the Mayor (EOM) provided these documents on a rolling basis and the Committee reviewed them as they became available. The Committee heard over twenty hours of testimony in an executive-session hearing held on December 1st, 2nd, and 5th.¹ The Committee also conducted numerous interviews with individuals involved in these matters. This report summarizes the basic information learned from this inquiry and makes a number of findings and recommendations.

II. Limitations on the Committee's Inquiry

The Committee was limited in its review. First, over the course of the Committee's inquiry, the Executive repeatedly invoked various legal privileges, including the deliberative process privilege, the attorney work product privilege, and the attorney-client privilege. Despite the significant amount of information the Committee received and otherwise compiled, a number of materials responsive to its requests were withheld based on these claims of privilege. This frustrated the Committee's ability to establish a complete picture of what transpired. In particular, the Committee was hampered by the Executive's recurrent use of the deliberative-process privilege. The goal of the privilege—chiefly, to promote candor among

¹ The hearing was held in executive session and closed to the public due to the potentially privileged and confidential nature of the disciplinary and personnel matters to be discussed. After the hearing, the Committee reviewed the record to determine whether all or some of the testimony could be released. Upon review and in consultation with the General Counsel's Office, the Committee determined that the potentially privileged or confidential information provided in testimony for the hearing was either already in the public domain or was not objected to by the separated personnel who are the subject of this inquiry. Accordingly, the Committee voted to release the official transcript of the executive session hearing, submitted written testimony, and other relevant documents at its meeting held on June 14, 2017. These documents are appended to this report.

government staff without fear that those deliberative discussions may later be subject to public scrutiny—is certainly important; however, privileges need not be asserted and, where government misconduct is alleged, the public interest should weigh in favor of revealing the deliberative material.² Moreover, the invocation of these privileges may have been overbroad. But, without the resources or staff time required to adequately challenge these privileges, the Committee was forced to let them stand as asserted.

Second, the Committee’s work was further frustrated by the lack of cooperation by witnesses central to Committee’s inquiry. In particular, despite requests, the two separated employees—Mr. Yinka Alao and Mr. Carlos Sandoval—did not appear before the Committee to provide oral testimony. Similarly, no representative or employee of Fort Myer Construction, the losing bidder in the contracts at issue, appeared. Mr. Alao, Mr. Sandoval, and Mr. Lewis Shrensky, Vice President of Fort Myer Construction, did submit written responses to questions posed by the Committee. Relying only on written testimony, however, denied the Committee the benefit of receiving answers to possible follow-up questions in a practical or timely manner. Additionally, both Mr. Jonathan Kayne, former Chief Operating Officer of DGS, and Mr. Kerry Pearson, a Fort Myer lobbyist, failed to respond to the Committee’s requests to appear.

Third, although most of the witnesses who did appear were cooperative and forthcoming, at times, other witnesses seemed intent on evading what the Committee considered straightforward questions, including questions about operations within the Office of the City Administrator, the frequency with which particular events or actions occurred, and other basic facts the Committee attempted to establish.

Finally, records provided to the Committee regarding meetings and conversations were incomplete, inexact, and vague. These records were prepared for the purpose of this inquiry and do not appear to have been kept in the regular course.

III. Background

A. The Buzzard Point and St. Elizabeths Contracts

At the beginning of 2016, the Department of General Services issued two Requests for Proposals (RFP) for District infrastructure projects. The first, issued on January 21st, sought a contractor to oversee and implement the infrastructure work associated with the development of the future site of the DC United Soccer Stadium

² See *In re Sealed Case*, 121 F.3d 729, 738 (D.C. Cir. 1997).

at Buzzard Point (Buzzard Point RFP or Buzzard Point Contract).³ The second, issued on February 12th, sought a contractor to complete the construction plans and construct the transportation and infrastructure improvements necessary to develop the future site of the entertainment and sports facility at St. Elizabeths East Campus (St. Elizabeths RFP or St. Elizabeths Contract).⁴

Each RFP had two bidders:

- **Buzzard Point:** W.M. Schlosser Company; Fort Myer Construction
- **St. Elizabeths:** Gilbane Building Company; Fort Myer Construction

1. The Buzzard Point Contract

Fort Myer Construction was not awarded either contract, despite receiving more points than the other bidder in each procurement's bid evaluation process, as will be discussed in more detail later. Fort Myer was not awarded the Buzzard Point contract because DGS concluded that it was a "non-responsible" bidder, thus disqualifying it from receiving the award.⁵ Fort Myer was not awarded the St. Elizabeths contract because its price submission was many millions of dollars higher than the other bidder.⁶

The Buzzard Point project originated in the Office of the Deputy Mayor for Planning and Economic Development (DMPED) pursuant to the Amended and Restated Development Agreement between the District and DC Stadium LLC,⁷ the District of Columbia Soccer Stadium Development Act of 2014,⁸ and the Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015.⁹ The effectuated agreement between the District and DC Stadium LLC included strict construction deadlines, meaning that the contracting agency would need to move much more quickly than on a typical construction project to issue the RFPs for pre-

³ DCAM-16-CS-0074, *Construction Management At-Risk Services for Infrastructure Work in Connection with the DC United Soccer Stadium* (Jan. 21, 2016) (available at [http://dmped.dc.gov/sites/default/files/dc/sites/dmped/page_content/attachments/RFP%20for%20CM%20Services%20for%20DC%20United%20Infrastructure%20as%20issued%20\(00219839-3xB0C44\)%20Complete.pdf](http://dmped.dc.gov/sites/default/files/dc/sites/dmped/page_content/attachments/RFP%20for%20CM%20Services%20for%20DC%20United%20Infrastructure%20as%20issued%20(00219839-3xB0C44)%20Complete.pdf)).

⁴ DCAM-16-CS-0084, *Design Build Services for St. Elizabeths East Campus Stage 1 Phase 1 Infrastructure Improvements* (Feb. 12, 2016) (available at <http://dgs.dc.gov/sites/default/files/dc/sites/dgs/publication/attachments/RFP-St%20Elizabeths%20Infrastrucutre%20Phase%201.pdf>).

⁵ Testimony of Yinka Alao, *Committee on Transportation and the Environment Public Oversight Hearing*, at 7-8 (Dec. 15, 2016) (hereinafter "Alao Test.").

⁶ Alao Test., at 11-12.

⁷ CA21-0078, *Amended and Restated Development Agreement by and between District of Columbia and DC Stadium LLC* (available at <http://lims.dccouncil.us/Download/33947/CA21-0078-Introduction.pdf>).

⁸ D.C. Act 20-556, *Soccer Stadium Development Amendment Act of 2014* (available at <http://lims.dccouncil.us/Download/31817/B20-0805-SignedAct.pdf>).

⁹ D.C. Act 21-59, *Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015* (available at <http://lims.dccouncil.us/Download/33639/B21-0154-SignedAct.pdf>).

construction site improvements and select winning contractors.¹⁰ DMPED and the EOM determined that DGS would be best equipped to issue the RFP in an accelerated manner.¹¹ The Mayor delegated authority to DGS to implement the necessary infrastructure improvements through a Mayor's Order dated September 9, 2015.¹²

The Buzzard Point contract awarded to W.M. Schlosser is a Contract for Construction Management At-Risk Services in the amount of \$26,707,088.¹³

2. The St. Elizabeths Contract

The RFP for the St. Elizabeths contract did not originate at DGS. On June 15, 2011, Mayor Vincent Gray signed a Mayor's Order establishing the Saint Elizabeths Redevelopment Initiative, placing DMPED in charge of overseeing the redevelopment of the Saint Elizabeths East Campus.¹⁴ Over a three year period, the District's Office of Contracting and Procurement (OCP), on behalf of the District Department of Transportation (DDOT), issued (and then canceled) two solicitations for the infrastructure improvements at St. Elizabeths that ultimately became the DGS RFP issued in February 2016. In the fall of 2015, DMPED and DDOT determined that DGS, rather than DDOT, was best suited to conduct the procurement.¹⁵ Accordingly, DMPED transferred the project from DDOT to DGS. On February 12, 2016, DMPED, DDOT, and DGS entered into a Memorandum of Understanding, which outlined the

¹⁰ *A Pay-To-Play Culture in D.C. Government?*, The Kojo Nnamdi Show (Oct. 15, 2016) (available at <https://thekojonnamdishow.org/shows/2014-10-15/pay-play-culture-dc-government>).

¹¹ Transcript of *Committee on Transportation and the Environment Public Oversight Hearing*, Vol. III, at 25 (Dec. 5, 2016) (hereinafter "Trans., Vol. III").

¹² Mayor's Order 2015-209 (Sept. 9, 2015).

¹³ The work to be performed includes relocating water utilities and constructing roadway and streetscape improvements. The project is occurring in two phases: utility relocation work was completed in 2016 and the remainder of the work will occur between September 2017 and March 2018. The contract established a lump sum price of \$13,752,000 for the first phase (water utility relocation), and \$11,325,000 for the second phase, which includes a management fee of \$325,000 for coordination of the streetscape improvements, and a guaranteed maximum price of \$11,000,000 for the streetscape construction, which includes a \$2,300,000 construction management fee. See CA21-0385, available at <http://lims.dccouncil.us/Download/35836/CA21-0385-Introduction.pdf>. On December 20, 2016, the Council approved two Change Orders, in the amount of \$992,429 and \$637,659, respectively, bringing the first phase contract amount to \$15,382,088 and the total contract amount to \$26,707,088. See CA21-0385, *Proposed contract with W.M. Schlosser Company, Inc.* (available at <http://lims.dccouncil.us/Download/35836/CA21-0385-Introduction.pdf>)

¹⁴ Mayor's Order 2011-109 (June 25, 2011).

¹⁵ According to DDOT Director Leif Dormsjo, the primary reason for DDOT's initial handling of the project was that federal funds within DDOT's control were going to be used for at least some part of the project. Once the Executive decided to break the project up into phases, it determined that federal funds would no longer be used. Additionally, because the use of the first phase of development was going to be vertical infrastructure in the form of a sports and entertainment arena, DGS (with its expertise in vertical development) became the more obvious choice for managing the project. See Trans., Vol. III at 221-22.

parties' responsibilities with respect to the project.¹⁶ That same day, DGS issued the RFP that is the subject of the Committee's inquiry.¹⁷

The St. Elizabeths contract awarded to Gilbane is a design-build construction contract,¹⁸ which means that Gilbane is responsible for completing the construction plans and for overseeing and coordinating the construction team to make the prescribed transportation and infrastructure improvements. Prior to the issuance of this RFP, the engineering firm CH2M Hill had completed 65% of the project's design.¹⁹ Under the terms of the contract, Gilbane is responsible for completing the remainder of the design as well as the improvements to the property for a fixed price of \$10,000,000.²⁰

B. The Three DGS Employees

Yinka Alao started in his role as Associate Director of Contracts and Procurement at DGS on November 8, 2015, where he directed contracting and procurement operations for the agency.²¹ Mr. Alao had the authority to approve all contract awards valued below \$500,000.²² Any contract above \$500,000 required review and approval by Director Christopher Weaver.²³ Mr. Alao's previous District government experience included work as a Deputy Inspector General for Risk Assessment and Future Plans at the Office of the Inspector General (OIG) (2015); a Compliance Officer, Assistant Director of Operations, and Chief of Staff at the Office of Contracting and Procurement (2010-2015); a Performance Auditor at the DC Auditor (2009-2010); and as a Management Analyst at the Metropolitan Police Department (2006-2009).²⁴ His personnel file does not include any adverse information or disciplinary actions against him prior to his separation from DGS on August 15, 2016.²⁵

Carlos Sandoval began working as Deputy General Counsel at DGS on September 6, 2015.²⁶ Mr. Sandoval provided legal services to the agency, including

¹⁶ Memorandum of Understanding between The Deputy Mayor for Planning and Economic Development, the District Department of Transportation, and the District of Columbia Department of General Services, *Design and Construction of the Transportation Infrastructure for the East Campus of Saint Elizabeths* (Feb. 12, 2016).

¹⁷ DCAM-16-CS-0084 (Feb. 2016).

¹⁸ CA21-0452, *Early Release Package Agreement for Design-Build Services Stage 1 Phase 1 Infrastructure Improvements for Saint Elizabeth's East Campus (DCAM-16-CS-0084)* (available at <http://lims.dccouncil.us/Download/36135/CA21-0452-Introduction.pdf>).

¹⁹ *Id.*

²⁰ *Id.*

²¹ District Government Personnel File, Yinka Alao (on file with the Committee).

²² Alao Test., at 2-3.

²³ *Id.* at 3.

²⁴ *Id.* at 2.

²⁵ Alao Personnel File.

²⁶ District Government Personnel File, Carlos Sandoval (on file with the Committee).

on the two contracts in question. His previous District government experience included work as a trial attorney for government contracts at the Office of the Attorney General (OAG) (2009-2015).²⁷ Mr. Sandoval was honored with four awards during his tenure at OAG, including twice being recognized with the Distinguished Service Award, which is the highest honor conveyed by the Attorney General.²⁸ His personnel file does not include any adverse information or disciplinary actions against him prior to his separation from DGS on August 15, 2016.²⁹

Christopher Weaver began working as Director of DGS on September 8, 2015.³⁰ Director Weaver was responsible for overseeing the operations of the Department, including the operations of the Contracting and Procurement Division, as well as review and approval of all contracts valued at more than \$500,000.³¹ Before serving as Director of DGS, Adm. Weaver was a consultant, Commander of Navy Installation Commands, and Commandant of the Naval District of Washington.³² As the Commander of Navy Installations Command, Adm. Weaver managed the Navy's \$126 billion plant property account, which includes airports, seaports, office structures, industrial facilities, and medical facilities, among other government properties.³³ As Commandant of the Naval District of Washington, Adm. Weaver implemented various operational reforms, applied sustainable technologies to Navy infrastructure, and improved processes to improve efficiency.³⁴ His personnel file does not include any adverse information or disciplinary actions against him.³⁵ He resigned from DGS on August 10, 2016, and his resignation became effective on August 12th.³⁶

C. Legal Action Initiated against the District

Both Mr. Alao and Mr. Sandoval filed lawsuits against the District. Mr. Sandoval filed a civil complaint in DC Superior Court on October 4, 2016 against the District of Columbia; Mark Tuohey, Director of the Mayor's Office of Legal Counsel (MOLC); and Ronald Ross, Deputy Director of the MOLC, alleging wrongful discharge, invasion of privacy – false light, and intentional infliction of emotional

²⁷ Testimony of Carlos Sandoval, *Committee on Transportation and the Environment Public Oversight Hearing*, at 2 (Dec. 15, 2016) (hereinafter "Sandoval Test.").

²⁸ Sandoval Personnel File.

²⁹ *Id.*

³⁰ Trans., Vol. III. at 113.

³¹ District Government Personnel File, Christopher Weaver (on file with the Committee).

³² Trans., Vol. III at 113-114.

³³ Committee Report, *Director of the Department of General Services Christopher Weaver Confirmation Resolution of 2015*, Committee on the Transportation and the Environment, Council of the District of Columbia 3 (Nov. 23, 2015) (available at <http://lims.dccouncil.us/Download/34477/PR21-0323-CommitteeReport1.pdf>).

³⁴ *Id.*

³⁵ Weaver Personnel File.

³⁶ Email from Christopher Weaver, Director, Department of General Services, to All Personnel - DGS (Aug. 10, 2016, 12:25 EST).

distress.³⁷ As of March 10, 2017, this matter is listed as dismissed with consent.³⁸ Mr. Sandoval also filed an appeal of his separation from DGS to the Office of Employee Appeals. On March 15, 2017, Mr. Sandoval submitted a Stipulation of Dismissal, indicating that he had settled with the District. Thus, the Office of Employee Appeals dismissed Mr. Sandoval's petition.³⁹ Mr. Alao filed a civil complaint in DC Superior Court on December 5, 2016 against the District of Columbia and Rashad Young, City Administrator, alleging violation of the District's Whistleblower Protection Act,⁴⁰ wrongful discharge, defamation of character – libel and slander, and invasion of privacy – false light.⁴¹ As of March 3, 2017, Mr. Alao's case is listed as settled and dismissed.⁴²

IV. Contracting and Personnel Actions

After starting as Director of DGS in the fall of 2015, Christopher Weaver⁴³ sought to reform DGS's contracting and procurement division.⁴⁴ Prior to Adm. Weaver's arrival, DGS lacked a permanent Associate Director of Contracting and Procurement, the senior level employee responsible for the agency's Contracting and Procurement Division.⁴⁵ Mr. Alao impressed Director Weaver with his professional background and leadership skills and, as a result, Director Weaver brought him on board.⁴⁶

Shortly after Director Weaver's tenure at DGS began, he, along with Mr. Alao, began what Director Weaver considered a top-to-bottom reform of the way DGS handled procurements.⁴⁷ Director Weaver sought to bring the evaluation and scoring of contracts in-house, as well as the drafting of contracting agreements, work previously performed by outside contractors.⁴⁸ Adm. Weaver testified that he and his team at DGS wanted to make the contracting process friendlier to small and local businesses, also known as Certified Business Enterprises (CBE).⁴⁹ And, as a mark of

³⁷ Complaint, *Sandoval v. District of Columbia*, 2016 CA 007311 B (D.C. Superior Court, Oct. 4, 2016).

³⁸ See case summary, *Sandoval v. District of Columbia*, 2016 CA 007311 B (available at <https://www.dccourts.gov/cco/maincase.jsf>).

³⁹ Order, *Sandoval v. D.C. Department of General Services*, OEA Matter No. 1601-0016-17 (Mar. 17, 2017) (available at <https://oea.dc.gov/sites/default/files/dc/sites/oea/publication/attachments/sandoval%20v%20dgs.pdf>).

⁴⁰ D.C. Code § 1-615.51 *et seq.*

⁴¹ Complaint, *Alao v. District of Columbia*, 2016 CA 008748 B (D.C. Superior Court, Dec. 5, 2016).

⁴² See case summary, *Alao v. District of Columbia*, 2016 CA 008748 B (available at <https://www.dccourts.gov/cco/maincase.jsf>).

⁴³ In this report, Christopher Weaver is referred to as Director Weaver during the time he served as Director of DGS. In all other instances, he is referred to as Admiral Weaver.

⁴⁴ Trans., Vol. III at 116-17.

⁴⁵ *Id.*

⁴⁶ *Id.* at 117.

⁴⁷ *Id.* at 116-17.

⁴⁸ *Id.*

⁴⁹ *Id.* at 120-21.

his team's success, Adm. Weaver noted that by mid-2016 the agency was already at 300% of its target for contracts awarded to CBEs.⁵⁰

A. Changes to DGS scoring system

In early 2016, as part of the CBE-focused reforms to the contracting process, DGS leadership discussed changes to the way the agency scored competitively bid proposals.⁵¹ According to Mr. Alao, Director Weaver and representatives of the DGS Capital Construction Division “expressed the need to enhance the Department’s evaluation methodology in order to place a greater emphasis on the technical aspects of offerors’ proposals. At that time, the Department had terminated a number of contracts ‘for convenience’ due to vendors’ poor workmanship. These ‘for convenience’ terminations cost the District a substantial amount of money in re-work and scheduling delays.”⁵² Around this time, at the request of Director Weaver and the Capital Construction Division, Mr. Alao proposed to Director Weaver a change in DGS’s point scale from a 112 point scale (100 + 12 CBE preference points) (“100-point scale”) to a 200 or 212 point scale (188 + 12 CBE points or 200 + 12 CBE points) (“200-point scale”).⁵³ Director Weaver approved the change.⁵⁴

On March 3rd, after DGS began issuing RFPs under the new scale, Malik Edwards, the Deputy General Counsel of the Department of Small and Local Business Development (DSLBD), contacted DGS to say that DSLBD’s compliance team had identified an issue with the St. Elizabeths RFP.⁵⁵ Specifically, DSLBD expressed concern that the new scale used by DGS to evaluate the proposals “appears to be in violation of District laws⁵⁶ what [sic] award preference points to proposals from Certified Business Enterprises (CBEs).”⁵⁷ Mr. Edwards argued that, because the statute interchangeably referenced 12 points and 12 percent and there was an implied maximum of 100 percent due to the nature of percentages, the points scale must be similarly limited to 100 points.⁵⁸ DGS staff disagreed with Mr. Edwards’s

⁵⁰ *Id.* at 147.

⁵¹ Trans., Vol. III at 120-21.

⁵² Alao Test. at 4.

⁵³ Trans., Vol. III at 120-21.

⁵⁴ Sandoval Test. at 3.

⁵⁵ Email from Malik K. Edwards, Deputy General Counsel, Department of Small and Local Business Development, to Jamar Spruill, Department of General Services (Mar. 3, 2016, 14:26 EST).

⁵⁶ The relevant section of the D.C. Code, § 2-218.43(b), reads: “A certified business enterprise shall be entitled to any or all of the preferences provided in this section, but in no case shall a certified business enterprise be entitled to a preference of more than 12 points or a reduction in price of more than 12 percent.”

⁵⁷ Email, M. Edwards to J. Spruill (Mar. 3, 2016).

⁵⁸ Email from Malik K. Edwards, Deputy General Counsel, Department of Small and Local Business Development, to Carlos M. Sandoval, Deputy General Counsel, Department of General Services (Mar. 8, 2016, 05:26 EST).

conclusion.⁵⁹ Mr. Sandoval pointed out that the statute does not explicitly require a 100-point scale and that DGS was not otherwise aware of any limitation on a Contracting Officer's ability to change the number of points used to evaluate proposals.⁶⁰ Mr. Alao told Mr. Edwards that the changed scoring method was intended to aid CBEs and "place emphasis on technical requirements whilst positioning our CBEs to win in open market competition" and, further, that DGS had at least one example of the new evaluation's "successful application."⁶¹ By increasing the number of points in the technical categories, DGS believed that "smaller businesses could still compete against the larger companies, which, through economies of scale, could always bid well below a CBE and win the award if price was the sole determining factor."⁶²

During the second week of March, DSLBD staff contacted the District's Office of Contracting and Procurement for more information regarding the District's practice of using a 100 point scale for evaluating proposals. Jody Harrington, Associate General Counsel at OCP, explained that, although there was no explicit policy requiring the use of a 100-point scale, District employees working in contracting and procurement agreed at the time of the law's drafting that CBE preference points awarded would be proportional to a 100-point scale.⁶³ If not, she noted, "the impact of the preferences would be diluted if an RFP had more than 100 points."⁶⁴

Mr. Sandoval argued that the intent of the CBE law is to apply CBE preference points to the *price* of the goods or services being procured and not to any other aspect of the proposal.⁶⁵ Because the RFPs for which DGS used its new scale involved both a price evaluation and a technical evaluation, as long as DGS applied the points to the price evaluation score in a proportional and consistent manner, the agency was free to change the point scale for the technical component in any manner that it saw fit.⁶⁶

⁵⁹ Email from Carlos M. Sandoval, Deputy General Counsel, Department of General Services, to Malik K. Edwards, Deputy General Counsel, Department of Small and Local Business Development (Mar. 9, 2016, 11:46 EST).

⁶⁰ Email from Carlos M. Sandoval, Deputy General Counsel, Department of General Services, to Malik K. Edwards, Deputy General Counsel, Department of Small and Local Business Development (Mar. 8, 2016, 04:36 EST).

⁶¹ Email from Yinka T. Alao, Associate Director, Department of General Services, to Malik K. Edwards, Deputy General Counsel, Department of Small and Local Business Development (Mar. 3, 2016, 15:39 EST).

⁶² Alao Test. at 6.

⁶³ Email from Jody Harrington, Associate General Counsel, Office of Contracting and Procurement, to Ronnie Edwards, Deputy Director, Department of Small and Local Business Development (Mar. 8, 2016, 17:17:23 EST).

⁶⁴ *Id.*

⁶⁵ Email, C. Sandoval to M. Edwards (Mar. 9, 2016).

⁶⁶ *Id.*

On March 21st, Ron Magnus, a staff member for then-Councilmember Vincent Orange (who was, at the time, chairperson of the Committee on Business, Consumer, and Regulatory Affairs, which had oversight of DSLBD), contacted William Sharp, the Chief Contracting Officer at OCP.⁶⁷ Mr. Magnus told Mr. Sharp that some members of the CBE community had indicated that there was a possible change in scoring at DGS from a 100-point scale to a 200- point scale.⁶⁸ Mr. Magnus expressed his belief that the change “waters down the benefits intended by the legislature to roughly half of what was originally intended by District law” and would “frustrate the purpose of the law.”⁶⁹ In his reply, Mr. Sharp said that this was the first he had heard of the change and that “we have provided preference points proportionately and consistently with the Act. I have no information to indicate any upcoming changes or intention of revising that approach.”⁷⁰

A week later, on March 28th, Director of DSLBD Ana Harvey forwarded a copy of the email chain between Councilmember Orange’s Office and OCP, as well as the March 3rd email chain between DGS and DSLBD staff, to Director Weaver, and suggested that DSLBD and DGS discuss and resolve the expressed concerns about dilution of CBE preference points.⁷¹ That same day, DGS issued an Addendum to the St. Elizabeths RFP with responses to requests for information by potential bidders.⁷² In that Addendum, in response to a question by Fort Myer Construction asking whether DGS would adjust CBE preference points to a 100-point scale, DGS responded by saying, “No, District law does not require a 100-point scale in the evaluation of responses to RFPs.”⁷³

On April 7th, Director Weaver responded to DSLBD Director Harvey’s March 28th email, defending Mr. Sandoval’s argument that a 100 point scale is not required in evaluating RFPs, and that District law does not specify a particular point scale that must be used.⁷⁴ He explained that the agency moved to a 200 point scale to give DGS “greater granularity of assessment for the technical area of evaluation.”⁷⁵ When CBE preference points are added to the bidder’s final score at the end of the

⁶⁷ Email from Ron L. Magnus, Legislative Counsel, Office of Vincent B. Orange, to William E. “Bill” Sharp, Chief Contracting Officer, Office of Contracting and Procurement (Mar. 21, 2016, 15:26 EST).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Email from William E. “Bill” Sharp, Chief Contracting Officer, Office of Contracting and Procurement, to Ron L. Magnus, Legislative Counsel, Office of Vincent B. Orange (Mar. 21, 2016, 15:41 EST).

⁷¹ Emails from Ana Harvey, Director, Department of Small and Local Business Development, to Admiral Christopher Weaver, Director, Department of General Services (Mar. 28, 2016, 16:06 EST).

⁷² Addendum No. 4, Design Build Services for St. Elizabeths East Campus Stage 1 Phase 1 Infrastructure Improvements, Solicitation No. DCAM-16-CS-0084, Department of General Services (Mar. 28, 2016).

⁷³ *Id.* at Exhibit 1- RFI Responses.

⁷⁴ Email from Admiral Christopher Weaver, Director, Department of General Services, to Ana Harvey, Director, Department of Small and Local Business Development (Apr. 7, 2016, 12:06 EST).

⁷⁵ *Id.*

evaluation process, CBEs “maintain the same comparative advantage today as they did under the 112-point scale.”⁷⁶

A full two months later, on June 10th, Director Harvey responded to Director Weaver’s email with DSLBD’s official position.⁷⁷ In this email, Director Harvey noted that she conferred with the MOLC and concluded that DGS had not violated existing law by evaluating RFPs using the 200-point scale; however, after changing its scale, the statute required DGS to proportionally adjust the preference points made available to CBEs.⁷⁸

The Executive Office of the Mayor contends that it was not aware of the change to the evaluation method until long after the change was implemented and that the EOM should have had the opportunity to fully vet the change.⁷⁹ Such decisions, according to the Executive, contributed to Mr. Alao and Mr. Sandoval’s separation.⁸⁰ DGS Chief of Staff Latrena Owens testified that she discussed DGS’s change to the scoring methodology with the Mayor’s Chief of Staff, John Falcicchio, after the change had been implemented.⁸¹ Although Mr. Falcicchio testified that he could not recall a one-on-one conversation with Ms. Owens about such a change, he did testify to an April 11th meeting that he and Ms. Owens attended where the change was discussed.⁸² Ms. Owens’s testimony and documents she provided to the Committee corroborate this testimony.⁸³ Mr. Falcicchio testified that the Mayor’s Office should have been asked to approve such a change, stating that “[a] decision of this magnitude should have, at a minimum, been handled with a decision point memo or a proposal to be considered by the Mayor and senior staff at a meeting. No such process was followed.”⁸⁴ Mr. Alao testified, however, that the conversation between Mr. Falcicchio and Ms. Owens occurred “sometime after the District experienced a large snowstorm in early 2016.”⁸⁵ That is, after January 22nd or 23rd.⁸⁶ Per Mr. Alao, “Latrena Owens

⁷⁶ *Id.*

⁷⁷ Email from Ana Harvey, Director, Department of Small and Local Business Development, to Admiral Christopher Weaver, Director, Department of General Services (June 10, 2016, 15:18 EST).

⁷⁸ *Id.*

⁷⁹ Trans., Vol. III at 52-54.

⁸⁰ The Kojo Nnamdi Show (Oct. 15, 2016).

⁸¹ Testimony of Latrena Owens, *Committee on Transportation and the Environment Public Oversight Hearing Testimony*, at 3 (Dec. 28, 2016) (hereinafter “Owens Test.”).

⁸² Testimony of John Falcicchio, *Committee on Transportation and the Environment Public Oversight Hearing Testimony*, at 3 (Dec. 15, 2016) (hereinafter “Falcicchio Test.”).

⁸³ Owens Test. at 3, 7-9.

⁸⁴ Falcicchio Test. at 2-3. Mr. Falcicchio went on to say “I regularly see decision point memoranda, and did not see it there. I attend senior staff meetings twice a week and it was not discussed there in my presence.... It was not raised at the many meetings on legislation, meetings I attend. I also review regulations before they are published in the Register, and the change did not go through that process. I also attend regular meetings with the [the Mayor and her senior team] and the change was not discussed there prospectively.”

⁸⁵ Alao Test. at 4.

⁸⁶ See Ashley Halsey III, Michael Laris, and Patricia Sullivan, “A blizzard for the Ages Shuts Down Washington Area,” *Washington Post* (Jan. 23, 2016) (available at

advised that the Mayor's office expressed no concerns about the methodology change. Ms. Owens also expressed that DGS had the green light to proceed..."⁸⁷ and that "...this was not a change that I [Mr. Alao] initiated, nor did I have the authority to implement it."⁸⁸ Even if Mr. Alao's account is accurate, such discussions would still have occurred after DGS issued the first RFP using the altered scale on January 14th.⁸⁹

The Executive's issue with the change was not merely procedural. As noted above, members of the Executive branch were concerned that the change would disadvantage CBEs and undercut the policy goal of providing preferences to small, local, and disadvantaged businesses.⁹⁰ Adm. Weaver testified, however, that the entire purpose of the change was to *aid* CBE participation. He stated, "From the beginning, that entire 200-point system was focused on...increasing, not decreasing, the ability of CBEs and especially small CBEs to do well."⁹¹

Records of contracts awarded by DGS during this time show that the changed evaluation scale was used on thirteen RFPs issued from January 2016 to March 2016, and then in three additional RFPs issued in June and July of 2016.⁹² DGS amended the three RFPs issued in June and July back to the 100-point scale before the bid submission deadlines⁹³. Accordingly, the new point scale was not used to evaluate any awards for procurements issued after March 2016. Of the thirteen procurements that evaluated submissions under the new scale, three of those contracts were not awarded to CBEs, but two of those three were the contracts at issue in this matter, where CBE preference points played no role in the award decision.⁹⁴ In the remaining case, the Committee did not have access to the final scores to determine whether the change in points had any effect on the award of the contract.⁹⁵ In short, it appears that the change in the point scale was well-intentioned by DGS, was limited in time (effectively operating from January to March 2016), was approved by Director Weaver, and had little or no effect on the ability of CBEs to win contracts.

https://www.washingtonpost.com/local/double-digit-snowfall-blankets-the-dc-region-with-more-to-come/2016/01/23/30b7a46e-c1bb-11e5-bcda-62a36b394160_story.html?utm_term=.81d6c61b0610

⁸⁷ Alao Test. at 4

⁸⁸ *Id.*

⁸⁹ Supplemental Testimony of Camille Sabbakhan, *Committee on Transportation and the Environment Public Oversight Hearing Testimony*, at Attachment 1 (Dec. 7, 2016; rev'd Dec. 12, 2016) (hereinafter "Sabbakhan Supp. Test.").

⁹⁰ Emails, M. Edwards to J. Spruill, C. Sandoval (Mar. 3, 2016, Mar. 8, 2016); The Kojo Nnamdi Show (Oct. 15, 2016).

⁹¹ Trans., Vol. III at 147.

⁹² Sabbakhan Supp. Test.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ DCAM-16-NC-0045, *Facility Security Assessment Services*, was awarded to MBL Technologies, which is not registered as a CBE in the District. *Id.* The losing bidders, Tricore Systems LLC and Veritas Consulting Group LLC are registered CBEs.

B. Buzzard Point Evaluation and Award

On February 16, 2016, W.M. Schlosser and Fort Myer Construction submitted proposals for the Buzzard Point contract.⁹⁶ On March 10th, the DGS Technical Evaluation Panel (TEP) for the Buzzard Point RFP met to consider the panel's evaluations of the contractor bids and to arrive at a consensus technical score for each offeror.⁹⁷ On March 15th, the TEP submitted its Consensus Technical Evaluation to James Marshall, the DGS Contracting Officer for the project, giving Fort Myer Construction a significantly higher technical score than W.M. Schlosser.⁹⁸ On price, Fort Myer scored one point higher than W.M. Schlosser.⁹⁹ With the addition of 11 CBE points (to W.M. Schlosser's zero points), Fort Myer outscored W.M. Schlosser by more than 40 points.

On April 18th, after reviewing the TEP's evaluation, Mr. Alao submitted to Director Weaver a Determination & Finding of Non-Responsibility ("D&F" or "Non-Responsibility Determination") for Fort Myer Construction regarding the Buzzard Point contract.¹⁰⁰ Under DGS contracting regulations, the contracting officer for a procurement must determine whether an offeror is responsible prior to award of the contract.¹⁰¹ To be considered responsible, a contractor must meet several requirements, including financial requirements, facility and equipment requirements, and compliance with various District laws.¹⁰²

Mr. Alao determined that Fort Myer Construction did not meet the standards for responsibility.¹⁰³ Notably, when Fort Myer submitted its Buzzard Point proposal, rather than completing and submitting the Bidder/Offeror Certification form that was supplied by DGS in the RFP, Fort Myer submitted a version of the form from 2013.¹⁰⁴ The 2016 form required significantly more information than the 2013 form regarding related business interests, suspensions, debarments, and other illegal activity.¹⁰⁵ For example, the 2013 form required disclosure of certain information from only the previous five years, while the 2016 form asked for this same information

⁹⁶ Consensus Technical Evaluation, DCAM-16-CS-0084 (Mar. 15, 2016) (on file with the Committee).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Memorandum from Yinka T. Alao to Christopher E. Weaver, Director/Chief Contracting Officer, *Award Memo* (April 18, 2016) (on file with the Committee).

¹⁰⁰ Memorandum from Yinka T. Alao to Christopher E. Weaver, Director/Chief Contracting Officer, *Determination & Finding of Non-Responsibility for Fort Myer Construction Corporation* (Apr. 18, 2016, rev'd Apr. 29, 2016) (hereinafter "Determination & Finding of Non-Responsibility").

¹⁰¹ 27 DCMR 4706.

¹⁰² 27 DCMR 4706.1 (a) – (i).

¹⁰³ *Determination & Finding of Non-Responsibility*, at 1.

¹⁰⁴ Fort Myer Construction Corporation, *Bidder/Offeror Certification Form*, DCAM-16-CS-0074 (Feb. 10, 2016) (on file with the Committee).

¹⁰⁵ *Id.*

without limitation.¹⁰⁶ The Executive,¹⁰⁷ OAG,¹⁰⁸ and DGS¹⁰⁹ all agreed that such information is important and is relevant to determine whether a bidder is responsible. In particular, disclosure of companies in which a bidder owns an interest or has another position is essential given that the winning bidder will be awarding subcontracts that could potentially go to those related interests.¹¹⁰

DGS staff reached out to Fort Myer to provide the form that was included in the solicitation.¹¹¹ When Fort Myer submitted the newer form, a number of its answers to questions about business responsibility changed, indicating that supplying a form that only asked about the previous five years could serve to advantage Fort Myer because they would not have to disclose information about business practices that they were required to disclose with the more comprehensive form.¹¹² Additionally, when Fort Myer submitted the required form, DGS noticed that Fort Myer had responded “Not Applicable” to a question asking Fort Myer to list its principals, shareholders, directors or employees who own an interest or have a position in another entity in the same or similar line of business as Fort Myer.¹¹³ DGS staff, including Mr. Alao and Mr. Sandoval, believed they possessed evidence of connections between Fort Myer principals and other companies in a similar line of business that Fort Myer failed to disclose.¹¹⁴

Additionally, DGS found that Fort Myer failed to adequately disclose unethical business practices.¹¹⁵ In their testimony, Mr. Alao and Mr. Sandoval contend that Fort Myer failed to disclose a September 2014 federal settlement regarding claims of discrimination and harassment.¹¹⁶ Fort Myer was required to pay \$900,000 for failing to provide equal employment opportunities to employees and job applicants.¹¹⁷ Such failures contributed to DGS’s finding of non-responsibility.¹¹⁸

In addition to the aforementioned matters, the Non-Responsibility Determination submitted by Mr. Alao also included a comparative risk analysis, which analyzed the relative risk of each offeror to the District, based on factors such

¹⁰⁶ Alao Test. at 8.

¹⁰⁷ Trans., Vol. III at 60-61.

¹⁰⁸ Transcript of *Committee on Transportation and the Environment Public Oversight Hearing*, Vol. I, at 115-16, (Dec. 1, 2016) (hereinafter “Trans., Vol. I”).

¹⁰⁹ Alao Test. at 8.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Compare* Fort Myer Construction Corporation, *Bidder/Offeror Certification Form*, DCAM-16-CS-0074 (Feb. 10, 2016) (on file with the Committee), *with* Fort Myer Construction Corporation, *Bidder/Offeror Certification Form*, DCAM-16-CS-0074 (Apr. 14, 2016) (on file with the Committee).

¹¹³ Memo from Y. Alao at 4-6 (Apr. 2016).

¹¹⁴ *Id.*

¹¹⁵ Determination & Finding of Non-Responsibility, at 6-7.

¹¹⁶ Alao Test. at 7.

¹¹⁷ Sandoval Test. at 6-7.

¹¹⁸ *See generally*, Determination & Finding of Non-Responsibility.

as the offeror's litigation risk. DGS deemed Fort Myer a "moderate risk" and W.M. Schlosser a "minimal risk."¹¹⁹

This finding of non-responsibility meant that Fort Myer was no longer eligible for the contract award, overriding Fort Myer's higher scores on price and technical evaluation, their receipt of eleven CBE preference points, and their subsequent higher overall score. Because of Fort Myer's disqualification, DGS awarded the contract to W.M. Schlosser.

Members of the Executive argue that the D&F submitted by DGS put the District at legal risk; that the conclusions DGS reached were, in places, erroneous; and that DGS did not follow best practices in forming such conclusions.¹²⁰ According to the testimony of the City Administrator, Rashad Young, the execution of the D&F by DGS contributed to Mr. Sandoval's and Mr. Alao's separation from the District government.¹²¹

First, the Executive argues that the D&F put the District at legal risk. After DGS sent the proposed award package to the Office of the Attorney General for a legal sufficiency memorandum, Robert Schildkraut, Chief of the Procurement Division at OAG, emailed Mr. Alao and Mr. Sandoval and stated that OAG would not grant legal sufficiency. Mr. Schildkraut testified that DGS "ha[d] a duty to go and talk to Fort Myer about [their responses on the Bidder/Offeror Certification form]"¹²² and that "[i]t was an unnecessary litigation risk not to at least talk to Fort Myer about these issues...I very well could have lost [a potential] bid protest if there was a perfectly good reason for [Fort Myer's] responses."¹²³

Mr. Schildkraut testified that the Office of the Attorney General does "try to give a great deal of discretion to the contracting officer of a Non-Responsibility Determination."¹²⁴ Indeed, case law states that, generally, responsibility determinations "will not be overturned absent allegations of fraud or bad faith," as noted in the D&F.¹²⁵ Mr. Schildkraut testified in this case that the OAG found the Non-Responsibility Determination "so lacking that we could not clearly state that there was not an unreasonable determination or bad faith involved."¹²⁶ Therefore, OAG was unprepared to grant legal sufficiency.

Once the Office of the City Administrator learned from DGS that OAG was not prepared to grant legal sufficiency, the City Administrator, Rashad Young, asked

¹¹⁹ *Id.* at 8-9. Notably, this analysis is absent from a subsequent iteration of the D&F.

¹²⁰ Trans., Vol. III at 61-62.

¹²¹ Trans., Vol. III at 64-66.

¹²² Trans. Vol. I at 11.

¹²³ *Id.* at 117.

¹²⁴ Trans., Vol. I at 112-13.

¹²⁵ *See generally*, Determination & Finding of Non-Responsibility, at 3.

¹²⁶ Trans., Vol. I at 113.

Nancy Hapeman, General Counsel of OCP, to review the D&F. Ms. Hapeman agreed with Mr. Schildkraut's conclusions that DGS should have done more to resolve its questions regarding Fort Myer's responsibility.¹²⁷

Second, the Executive argues that the conclusions that DGS reached were, in places, erroneous. In her testimony, Ms. Hapeman questioned the accuracy of the litigation history DGS relied on in determining Fort Myer's risk to the District. She testified that of the 19 legal matters DGS identified in its D&F, "seven of those matters...related to OAG legal sufficiency reviews of million-dollar contracts and did not represent at all litigation filed by Fort Myer."¹²⁸

Finally, the Executive argues that DGS did not follow best practices in forming its conclusions in the D&F. With respect to Mr. Alao's use of a comparative analysis to determine each offeror's relative risk to the District, Mr. C. Vaughn Adams, DGS Deputy General Counsel; Ms. Sabbakhan; and Mr. Schildkraut all testified that they had never seen such an analysis conducted before its use in the Buzzard Point D&F.¹²⁹ Mr. Schildkraut testified that Mr. Alao's reliance on litigation risk in the Non-Responsibility Determination was improper.¹³⁰

DGS believes it gave Fort Myer adequate notice of what it was asking for in the Bidder/Offeror Certification form, and, particularly given Fort Myer's long experience in contracting in the District, that it properly understood what was being asked of it.¹³¹ Obviously, as detailed above, there was a sharp difference in opinion between DGS and other Executive branch officials—the City Administrator, Ms. Hapeman, and Mr. Schildkraut—about whether DGS had done enough or should have done more to allow Fort Myer to establish bidder responsibility.

On April 29th, Director Weaver told the EOM that he was "shocked" by OAG's refusal to grant legal sufficiency, and argued that OAG was "greatly exceeding its role of screening such contract packages for legal completeness" and, instead, was "attempting to govern our procurement process."¹³²

On May 1st, Deputy Mayor Brian Kenner asked the MOLC for direction on how to handle the legal sufficiency issue, noting that "we need for this award to move forward to keep timeline with [D.C. United],"¹³³ who could potentially pull out of stadium deal if the project was significantly delayed. In that vein, Ketan Gada, a

¹²⁷ Transcript of Committee on Transportation and the Environment Public Oversight Hearing Record, Vol. II, at 116-18 (Dec. 2, 2016) (hereinafter "Trans., Vol. II").

¹²⁸ Trans., Vol. II at 113.

¹²⁹ Trans., Vol. I at 111; at 182; Trans., Vol. II at 198.

¹³⁰ Trans., Vol. I at 112.

¹³¹ Trans., Vol. III at 154

¹³² Email, C. Weaver to S. Olpadwala (Apr. 29, 2016).

¹³³ Email from Brian Kenner, Deputy Mayor for Planning and Economic Development, to Mark Tuohey, Director, Mayor's Office of Legal Counsel (May 1, 2016, 19:11 EST).

DMPED staff member, stated in an email that the legal sufficiency issue was “a bit of a shocker...and if not fixed in the next few days this will derail the project from the scheduled delivery date of September 30th 2016.”¹³⁴ Such emails indicate the importance among members of the Executive of completing the project on time. The City Administrator and other members of the Executive also testified to the importance of avoiding delays.¹³⁵

On May 3rd, DGS held a debriefing for Fort Myer Construction to explain why Fort Myer had not been awarded the Buzzard Point Contract.¹³⁶ On May 6th, Fort Myer Construction’s Executive Vice President, Lewis Shrensky, sent a letter to Director Weaver, expressing his “astonishment” that the Fort Myer’s higher scoring proposal was rejected based on what Mr. Shrensky characterized as “an ambiguity that could have been easily clarified through a telephone call.”¹³⁷ In his letter, Mr. Shrensky argued that Fort Myer could not possibly answer “Yes” or “No” to questions asking a bidder to list its related entities because Fort Myer “possesses none of the interests or relationships that demand explanation by [the questions].”¹³⁸ Mr. Shrensky closed his letter by stating that Fort Myer “has no choice but to protest this decision,” yet also implored DGS to “reverse what we consider to be an ill-advised decision.”¹³⁹

Although DGS did not reverse its award to W.M. Schlosser, Fort Myer Construction also did not protest the award.¹⁴⁰ In written testimony, Mr. Shrensky stated that a Fort Myer’s lobbyist, Kerry Pearson, “advised Fort Myer that given the importance of the [Buzzard Point] procurement and the new soccer stadium, and the inevitable delay that a protest would cause, the District government hoped that Fort Myer would not protest” and “[w]hile this information was not dispositive in Fort Myer’s decision not to protest the procurement, it did influence the decision.”¹⁴¹ Per Mr. Shrensky’s testimony, “The District government is the largest and oldest client of Fort Myer. Because of its long business relationship with the District, Fort Myer saw no reason to unduly burden the District government protesting a procurement that, while desirable, was not vital to its financial health.”¹⁴²

¹³⁴ Email from Ketan Gada, Director, Hill East District Redevelopment, Office of the Deputy Mayor for Planning and Economic Development, to Sarosh Olpadwala, Director of Real Estate, Office of the Deputy Mayor for Planning and Economic Development (May 2, 2016, 10:38 EST).

¹³⁵ See Trans., Vol. III at 57.

¹³⁶ Letter from Lewis F. Shrensky, Vice President, Fort Myer Construction, to Christopher Weaver, Director, Department of General Services (May 6, 2016).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Testimony of Lewis Shrensky, *Committee on Transportation and the Environment Public Oversight Hearing*, at 8 (Dec. 19, 2016) (hereinafter “Shrensky Test.”).

¹⁴¹ *Id.*

¹⁴² *Id.*

As evidence by emails provided by the Executive, DGS drafted at least three versions of the D&F, indicating that DGS's rationale for the finding of non-responsibility changed over time.¹⁴³ Two of these drafts, one on May 4th¹⁴⁴ and another on May 9th¹⁴⁵ were prepared after W.M. Schlosser was notified that it had been awarded the contract and after Fort Myer had been debriefed on why it was not awarded the contract. Thus, it is unclear which D&F would have been relied on as the final version in the face of a Fort Myer protest.

Ultimately, DGS realized that the contract was sent to OAG in error and that OAG was not required to grant legal sufficiency for the contract because it did not require active approval by the Council.¹⁴⁶ Therefore, on May 12th, Mr. Sandoval drafted and signed the legal sufficiency review for the Buzzard Point Contract, which was transmitted to the Council on May 16th.

C. St. Elizabeths Evaluation and Award

After the May 3, 2016, debriefing regarding DGS's finding of non-responsibility for Fort Myer in relation to its bid for the Buzzard Point contract, Fort Myer representative Sam Patel emailed Mr. Alao with clarifications of the company's potentially non-responsive answers to portions of the St. Elizabeths RFP.¹⁴⁷ On May 10th, Mr. Alao responded to Mr. Patel's email, stating that, "following direction from Department/Administration leadership" DGS would follow up with Fort Myer to address all outstanding questions regarding its bid on that particular contract.¹⁴⁸ Indeed, Mr. Alao testified that "DGS was asked by the City Administrator 'to counsel [Fort Myer] through' the DGS disclosure form."¹⁴⁹ This response further suggests that EOM was displeased with how the Buzzard Point Contract was awarded and was

¹⁴³ The differences among the drafts were not merely technical. For example, the May 9th version completely eliminated the use of a comparative risk analysis to determine each offeror's relative degree of risk to the District.

¹⁴⁴ Memorandum from Yinka T. Alao to Christopher E. Weaver, Director/Chief Contracting Officer, *Determination & Finding of Non-Responsibility for Fort Myer Construction Corporation* (Apr. 18, 2016, rev'd May 4, 2016).

¹⁴⁵ Memorandum from Yinka T. Alao to Christopher E. Weaver, Director/Chief Contracting Officer, *Determination & Finding of Non-Responsibility for Fort Myer Construction Corporation* (undated). Although this version of the D&F is undated, in a May 9th, 2016 email from Carlos Sandoval to Camille Sabbakhan, Mr. Sandoval wrote, "Attached please find the final document" with an attachment to this file, entitled "DC United Buzzard Point Infrastructure Work – Fort Myer Determination FINAL FINAL." Email from Carlos Sandoval, Deputy General Counsel, Department of General Services, to Camille Sabbakhan, General Counsel, Department of General Services (May 9, 2016, 11:37:48 EST).

¹⁴⁶ Alao Test. at 9; Memorandum from Carlos Sandoval, Esq., to Christopher E. Weaver, Director/Chief Contracting Officer, *Legal Sufficiency Review* (May 12, 2016).

¹⁴⁷ Email from Sam Patel, Fort Myer Construction, to Yinka Alao, Associate Director, Department of General Services (May 4, 2016, 13:40 EST).

¹⁴⁸ Email from Yinka Alao, Associate Director, Department of General Services, to Sam Patel, Fort Myer Construction (May 10, 2016, 19:01 EST).

¹⁴⁹ Alao, *supra* note 52, at 7.

taking affirmative steps to ensure the same issues did not arise in DGS's review of the bids for the St. Elizabeths contract.¹⁵⁰

Director Weaver made clear his distaste for needing to follow up with Fort Myer to clarify omissions or errors in their bid submissions, writing to Deputy Mayor Kenner that "...this extra contact is typically not done at this level of sophistication and maturity of contractors since the vast majority answer fully and completely (and on the forms we provide) the RFP questionnaire requirements in their initial submissions. But we are prepared to go the extra mile in this and in all future procurements."¹⁵¹ Such emails speak to a general cultural or philosophical difference between DGS and EOM about how the review and award of solicitations should be handled. Adm. Weaver suggested as much in his testimony to the Committee, stating that he "come[s] from a world where...offers [are] disregarded or cast aside because they didn't...stick within the pages, the page number, or that they didn't...use the right font."¹⁵² It appears odd that such a long-time and sophisticated contractor such as Fort Myer would need to be guided through the bidding process. For whatever reason, in the St. Elizabeths evaluation, Fort Myer was found to be a responsible bidder. I could not determine what changed substantively in the intervening weeks.

On May 17th, the Technical Evaluation Panel for the St. Elizabeths RFP completed its Consensus Technical Evaluation.¹⁵³ In its Evaluation, the TEP awarded Fort Myer Construction a slightly higher technical score than Gilbane, the only other bidder on the project.¹⁵⁴ Nevertheless, the TEP noted that, "[t]hough Fort Myer had a very slight technical edge, the panel thought either company could successfully perform this Project."¹⁵⁵ In other words, on the technical score, the panel essentially called it a tie.

With respect to price, however, Gilbane and Fort Myer's bids differed substantially. Fort Myer's bid totaled \$17,014,680, while Gilbane's bid came in at \$6,630,003, over \$10 million less than Fort Myer.¹⁵⁶ DGS's evaluation process analyzed these price bids in five component parts: (1) Preconstruction fee, (2) Design Fee, (3) Design-Build Fee, (4) Lump Sum Price General Conditions, and (5) Above

¹⁵⁰ Similarly, on May 11, Director Weaver wrote to Deputy Mayor Kenner and said, "I honestly believe that the events of the past week or 10 days were a growing experience, both for us and for [Fort Myer]." Director Weaver stated that DGS would "hol[d] off on further evaluation/award action until we give [Fort Myer] a chance to reengage with us on the questions we have cited." Email from Admiral Christopher Weaver, Director, Department of General Services, to Brian Kenner, Deputy Mayor for Planning and Economic Development (May 11, 2016, 08:59 EST).

¹⁵¹ *Id.*

¹⁵² Trans., Vol. III at 153-54.

¹⁵³ Consensus Tech. Eval. at 6 (May 2016).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Opinion, *Protest of Fort Myer Construction Corporation*, CAB No. P-1012 (D.C. Contract Appeals Board, Sept. 20, 2016).

Grade Demo.¹⁵⁷ The bidder with the lowest proposal for each component wins all points for that component. Fort Myer’s price came in over Gilbane’s in each of the five categories.¹⁵⁸

Bidder	Preconstruction Fee	Pts	Design Fee	Pts	Design Build Fee	Pts	Lump Sum Price General Conditions	Pts	Above Grade Demo	Pts	Total Pts
Fort Myer	\$218,000	0.0	\$2,390,000	0.0	\$6,750,000	0.0	\$8,706,680	0.0	\$1,340,000	0.0	0.0
Gilbane	\$97,380	2.0	\$1,423,520	10.0	\$2,250,000	12.0	\$3,771,762	14.0	\$510,000	10.0	48.0

Adm. Weaver testified that he was prepared to make the award to Gilbane, based on its drastically lower price.¹⁵⁹ Detecting sensitivity on the part of Executive about how the Buzzard Point contract process occurred, Director Weaver attempted to be overly cautious about the award in the St. Elizabeths project and, although he believed the drastic price difference generally would be sufficient grounds to make an award, he was willing to “help the administration get what it wants in an ethical and legal way.”¹⁶⁰ According to Adm. Weaver, it was under these circumstances that Mr. Alao suggested, and the agency decided, on May 24th, to issue a Request for Best and Final Offers (BAFO) from Fort Myer and Gilbane.¹⁶¹

According to testimony provided by Mr. Alao, this BAFO “was not necessary, required, or even logical.”¹⁶² Testimony from Ms. Hapeman contradicts Mr. Alao’s impression of the necessity of the BAFO, explaining that, given the drastic difference in price between the two bids, it is likely that one or both bidders misunderstood the work required under the St. Elizabeths contract; in circumstances where there are such great disparities between bidders’ prices, it would be in the ordinary course for the evaluating panel to request a BAFO.¹⁶³ Further, Ms. Hapeman testified that the BAFO issued by DGS was deficient. DGS’s outreach to the two bidders regarding the BAFO was substantively identical, and neither letter included further direction or questions from DGS about how the bidders had come to their price points or where the proposals might be otherwise deficient.¹⁶⁴ Ms. Hapeman testified that before a request for a BAFO, the practice is to have an “identification of significant weaknesses or deficiencies in the proposals, and each offeror has to be notified of those and given an opportunity to respond.”¹⁶⁵

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Trans., Vol. III at 167.

¹⁶⁰ *Id.* at 169.

¹⁶¹ *Id.* at 169-70.

¹⁶² Alao Test. at 11.

¹⁶³ Trans., Vol. II at 137-43.

¹⁶⁴ *Id.* at 137-38.

¹⁶⁵ *Id.* at 137-38.

On May 31st, Fort Myer and Gilbane submitted their BAFOs to DGS.¹⁶⁶ In its BAFO, Fort Myer’s total bid went down by about \$440,000 to \$16,574,280.¹⁶⁷ Gilbane did not alter its pricing, maintaining a total bid of \$6,630,003. Gilbane still underbid Fort Myer by approximately \$9,900,000.

However, while Fort Myer’s total BAFO price had changed minimally from its original pricing bid, Fort Myer had reallocated its pricing among the five components to win 26 of the possible 48 points available.¹⁶⁸ Fort Myer accomplished this by reducing its costs in four of the five price components, and doubling its costs in the remaining component. For one component—“Design Fee”—DGS provided both Fort Myer and Gilbane with a set price, meaning both contractors’ proposal included that price, and each received points for that component.

	Preconstruction Fee	Pts	Design Fee	Pts	Design Build Fee	Pts	Lump Sum price General Conditions	Pts	Above Grade Demo	Pts	Total Price	Total Pts
Gilbane - Original Price	\$97,380	2.0	\$1,423,520	10.0	\$2,250,000	12.0	\$3,771,762	14.0	\$510,000	10.0	\$6,630,003	48.0
Fort Myer - Original Price	\$218,000	0.0	\$2,390,000	0.0	\$6,750,000	0.0	\$8,076,280	0.0	\$1,340,000	0.0	\$17,014,680	0.0
Percent Difference	55.30%		40.40%		66.70%		53.30%		61.90%		61.00%	
Gilbane - BAFO Price	\$97,380	0.0	\$1,423,520	10.0	\$2,250,000	12.0	\$3,771,762	0.0	\$510,000	10.0	\$6,630,003	32.0
Fort Myer - BAFO Price	\$86,000	2.0	\$1,423,520	10.0	\$12,342,000	0.0	\$3,076,280	14.0	\$1,070,000	0.0	\$16,574,280	26.0
Percent Difference	-13.20%		0.00%		81.80%		-18.40%		52.30%		60.00%	

The reallocation of price in Fort Myer’s BAFO appeared suspicious to DGS staff.¹⁶⁹ It appeared as if Fort Myer had sacrificed a single price component—Design Build Fee—to allow its bid to undercut Gilbane in the other categories without sacrificing a significant portion of their total price bid. More troubling, in two components—“Preconstruction Fee” and “Lump Sum Price General”—Fort Myer substantially reduced its price to just under that proposed by Gilbane. While making price changes in such a deliberate and precise manner would be unsurprising if the individual bids were made publicly available, the price bids provided by Fort Myer, Gilbane, and any other contractor responding to a District government RFP are protected and confidential. It is unclear how Fort Myer could have adjusted its bid in such a drastic manner, and to so narrowly undercut Gilbane, without knowledge of Gilbane’s pricing for each component of the St. Elizabeths project. According to testimony provided by Mr. Adams, Fort Myer would only be able to achieve this either by being “really lucky” or through “ESP.”¹⁷⁰ There is a third possibility: someone with access to the bid

¹⁶⁶ Opinion, CAB No. P-1012 (Sept. 2016).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Trans., Vol. II at 206; Trans., Vol. III at 173.

¹⁷⁰ Trans., Vol. II at 206.

proposals may have shared information about Gilbane's price proposal with Fort Myer, in violation of rules regarding maintaining the confidentiality of bids.¹⁷¹

Director Weaver, Mr. Alao, Mr. Sandoval, Mr. Adams, and Ms. Sabbakhan reviewed this BAFO.¹⁷² Adm. Weaver testified that he was deeply alarmed by Fort Myer's BAFO submission and the likelihood that someone at DGS had leaked confidential information to Fort Myer.¹⁷³ Adm. Weaver stated that he planned to mount a full investigation into the matter, including depositions with each staff member with access to the bids, but did not have the time or resources to pursue this investigation prior to his resignation.¹⁷⁴ In testimony before the Committee, Ms. Hapeman stated that she "ha[d] no insight into how Fort Myer developed its price proposal" and that she didn't come to the conclusion that illegal disclosure was most likely the reason. She did add, however, that "if somebody has nefarious motives, it certainly is one way they could've gotten [to the pricing submitted]."¹⁷⁵

Although Fort Myer gained an additional 26 points on price in the BAFO process, and had a greater overall total evaluation score than Gilbane, Fort Myer's overall price was still approximately \$9.9 million higher than Gilbane's. Because of this substantial price difference, Director Weaver and Mr. Alao determined that the District would be best served by awarding the contract to Gilbane, which is permissible under the terms of the RFP, as it notes that the contract will awarded based on the bid that is most advantageous to the District.¹⁷⁶ The City Administrator concurred with the decision to award to Gilbane.¹⁷⁷ On June 7th, DGS provided notice to Gilbane that it was the winner of the St. Elizabeths contract.

After the award to Gilbane was announced, the City Administrator tried to discourage Fort Myer from filing a protest in at least two significant ways. First, after complaints from Mr. Pearson that settlement negotiations between Fort Myer and the District for lawsuits filed by Fort Myer had languished for more than a year, the City Administrator agreed to "look into" accelerating the settlement of the claims.¹⁷⁸ The City Administrator accelerated those discussions and the Executive ultimately funded \$4 million in settlements to Fort Myer.¹⁷⁹

Second, the City Administrator asked OCP for a "fair and legitimate way to increase [CBE] participation" on the St. Elizabeths contract.¹⁸⁰ Ultimately, the City

¹⁷¹ 27 DCMR 1638.5. *See also* 27 DCMR 1629.1.

¹⁷² Trans., Vol. III at 173.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 173-74.

¹⁷⁵ Trans., Vol. II at 146.

¹⁷⁶ Alao Test. at 11-12.

¹⁷⁷ Trans., Vol. III at 80-81.

¹⁷⁸ *Id.* at 84.

¹⁷⁹ *Id.* at 69-76.

¹⁸⁰ *Id.* at 85.

Administrator's Office instructed DGS to increase the CBE participation rate for subcontracted work from 35% to 74%.¹⁸¹ According to testimony from Mr. Sandoval, increasing the subcontracted work in such a manner was "unprecedented."¹⁸² Although the City Administrator testified that this work was not earmarked for Fort Myer, as the increase in subcontracts only included those trades for which there would be competition among multiple CBEs, Fort Myer had thoroughly prepared for this project and would be a strong contender for any contracting work.¹⁸³ Ultimately, Fort Myer did not enter into any subcontracts for the St. Elizabeths project;¹⁸⁴ however, the expansion of subcontracting opportunities was designed to benefit them.¹⁸⁵

Through these actions, the Office of the City Administrator attempted to dissuade Fort Myer from filing a protest. As will be explained in further detail later in this report, the City Administrator's justification for taking such action was to keep important projects on schedule, advantaging Fort Myer only because it was to the District's benefit to do so. Still, the actions were extraordinary. The Committee was not provided any other instances in which such steps were taken to avoid a protest in a contracting matter.¹⁸⁶ Despite these attempts, however, Fort Myer still protested the award.

On July 11, while the St. Elizabeths protest was pending, members of DMPED, OCP, DGS, the MOLC, and the City Administrator's Office met to determine what steps should be taken to address the protest. According to testimony provided by Mr. Alao, "EOM officials challenged the BAFO, suggesting the process was flawed and requesting that the award to Gilbane be rescinded and that a second BAFO be issued."¹⁸⁷ As noted above, Ms. Hapeman explained that the first BAFO's instructions had been flawed—and was not truly a BAFO—because DGS did not identify specific deficiencies in each offeror's proposals and provide the offerors a chance to correct those deficiencies.¹⁸⁸ Mr. Alao testified that he did not believe that the BAFO was flawed and objected to the issuance of a second BAFO.¹⁸⁹ The City Administrator testified that he did not request a second BAFO and that he had no knowledge of a

¹⁸¹ Trans., Vol. III at 97.

¹⁸² Sandoval Test. at 12.

¹⁸³ Trans., Vol. III at 84-85.

¹⁸⁴ Letter from Rashad M. Young, City Administrator, to Mary M. Cheh, Chairperson, Committee on Transportation and the Environment (Dec. 28, 2016).

¹⁸⁵ Trans., Vol. III at 84-85.

¹⁸⁶ The City Administrator offered a number of examples where the Executive has engaged in settlement negotiations in the ordinary course, and argued that these settlements were in that same vein. None of the comparison examples cited, however, illustrate that the Executive has previously used settlement funds in unrelated legal matters to dissuade a contractor from protesting a contract award. *See id.* at 69-76.

¹⁸⁷ Alao Test. at 12.

¹⁸⁸ Trans., Vol. II at 137-43.

¹⁸⁹ *Id.*

second BAFO being discussed;¹⁹⁰ however, in direct contradiction to that, Ms. Hapeman testified that the option of a second BAFO was discussed.¹⁹¹ Ultimately, there was no second BAFO.

Director Harvey testified that around this same time, Director Weaver called her to “commiserate” about “the state of contracting in the District.”¹⁹² She stated that Director Weaver told her that “he was being pressured by the City Administrator to award the contracts to Fort Myer because Fort Myer said they were ‘not getting enough contracts.’”¹⁹³

During the pendency of the protest, the City Administrator testified that there was “confusion on the part of the agency about how they could proceed on the protest.”¹⁹⁴ Ultimately, DGS sought to file a Determination and Findings (D&F) to override the stay instituted by the Contract Appeals Board (CAB), which, if successful, would allow Gilbane to continue to perform work on the St. Elizabeths site pending the outcome of the underlying protest. Given the strict deadlines associated with the St. Elizabeths project, it appeared essential that any and all steps be taken to allow work to continue.¹⁹⁵ The City Administrator, however, instructed DGS to delay filing the D&F because the City Administrator found Mr. Alao’s and Mr. Sandoval’s draft of the D&F deeply unpersuasive and likely to fail.¹⁹⁶ Even though this meant that with each passing day Gilbane would not be working on the project, risking that the District would miss construction deadlines, the City Administrator said he believed that getting the D&F right was more important than filing it quickly and being summarily denied.¹⁹⁷

It is unclear why the City Administrator did not move more swiftly to have DGS improve the D&F, and it was only on August 12th—fifty days after Fort Myer filed its protest with the CAB—that DGS filed the D&F with the Contract Appeals Board.¹⁹⁸ It is not clear if the D&F submitted was Mr. Alao’s original draft, or a

¹⁹⁰ Trans., Vol. III at 87.

¹⁹¹ Trans., Vol. II at 149-50. Ms. Hapeman testified that the City Administrator had been present for only part of the July 11 meeting; therefore, it is possible that the option of a second BAFO was discussed in his absence. *See id.* at 151.

¹⁹² Supplemental Testimony of Ana Harvey, *Committee on Transportation and the Environment Public Oversight Hearing Testimony*, at 5 (Dec. 28, 2016) (hereinafter “Harvey Supp. Test.”).

¹⁹³ *Id.*

¹⁹⁴ Trans., Vol. III at 91.

¹⁹⁵ The Kojo Nnamdi Show (Oct. 15, 2016).

¹⁹⁶ Trans., Vol. III at 93.

¹⁹⁷ Trans., Vol. II at 246-47.

¹⁹⁸ Yinka Alao, *Determination and Findings to Proceed with Contract Award While a Protest is Pending*, Department of General Services, DCAM-16-CS-0084, St. Elizabeths East Campus Stage 1 Phase 1 Infrastructure Improvements (Aug. 12, 2016). According to Director Weaver, the City Administrator permitted the D&F to be filed on August 12th only on the condition that he fire Mr. Alao and Mr. Sandoval. Trans., Vol. III at 125-26. This point is further discussed in subsection D below.

version amended by Executive staff; however, the D&F was signed by Mr. Alao.¹⁹⁹ On September 2nd, the Contract Appeals Board denied the D&F, ruling that the St. Elizabeths Contract could not proceed pending the protest.²⁰⁰ On September 20th, however, the CAB concluded that the Contracting Officer in the St. Elizabeths project had not abused his discretion by awarding the contract to Gilbane, even though Fort Myer was awarded more points in the evaluation of the bids.²⁰¹ The CAB dismissed the Fort Myer protest, and Gilbane was permitted to resume work on the St. Elizabeths project.²⁰²

D. Resignation of Director Weaver and Separation of the Two Employees

During the end of July and the beginning of August, the City Administrator met with Deputy Mayor Donahue to discuss staff concerns regarding Mr. Alao, Mr. Sandoval, and Director Weaver.²⁰³ Around this time, Mr. Kreiswirth spoke with Department of Human Resources (DCHR) General Counsel Margaret Radabaugh to seek advice regarding various alternative employment options for Mr. Alao and Mr. Sandoval, including potential reassignment, demotion, and disciplinary action, including removal.²⁰⁴

On August 8th, Director Weaver called the City Administrator to request permission for Mr. Alao to file the D&F to allow Gilbane to continue performing work on the St. Elizabeths contract while the award was under protest.²⁰⁵ Adm. Weaver testified that the City Administrator finally agreed to the filing of the D&F on one condition: that Director Weaver fire Mr. Alao and Mr. Sandoval.²⁰⁶ After Director Weaver said that he needed to give the direction some thought, the City Administrator allegedly responded, “What’s to think about? I told you to do it.”²⁰⁷ Director Weaver explained that Mr. Alao and Mr. Sandoval were exemplary employees and had done nothing wrong and that he needed more time to think it over.²⁰⁸

The next day, on August 9th, Director Weaver called the City Administrator and explained that he could not in good conscience comply with the direction to terminate the two employees, and that “in the world I come from and that I grew up

¹⁹⁹ *Id.*

²⁰⁰ Order Overruling Determination & Findings, *Protest of Fort Myer Construction Corporation*, CAB No. P-1012 (D.C. Contract Appeals Board, Sept. 2, 2016).

²⁰¹ Opinion, CAB No. P-1012 (Sept. 2016).

²⁰² *Id.*

²⁰³ Trans., Vol. III at 39-40.

²⁰⁴ Trans., Vol. II at 251.

²⁰⁵ Meeting Records (Nov. 2016).

²⁰⁶ Trans., Vol. III at 125-26.

²⁰⁷ *Id.* at 126.

²⁰⁸ *Id.*

in, this is something I cannot do, and if I cannot do it, then it is incumbent on me to step aside. And so I must do that.”²⁰⁹ It was then that Director Weaver tendered his resignation. The City Administrator allegedly replied to this news by saying, “I guess I should have thought that you might do that.”²¹⁰ Director Weaver offered to stay on at DGS through the end of September, but the City Administrator stated that, because Director Weaver had resigned, there was no purpose in keeping him on longer than the end of the week.²¹¹ On August 10th, Director Weaver emailed all DGS staff announcing that Friday, August 12th would be his last day as Director of DGS.²¹² Shortly thereafter, City Administrator Young announced to DGS staff that Greer Gillis would become the acting director of DGS.²¹³

On August 11th, the day after Director Weaver announced his resignation to DGS staff, Director Harvey was approached by Fort Myer representative Kerry Pearson at Boss Shepherd’s restaurant near the Wilson Building.²¹⁴ While she and members of her staff were eating lunch, Mr. Pearson allegedly told Director Harvey, “I saw you working against us at the Council. I already got rid of that fucker Weaver, so watch it.”²¹⁵ Apparently, Mr. Pearson was concerned about a piece of legislation at the Council, and he believed Director Harvey was playing a part in advocating for it.²¹⁶ This exchange between Mr. Pearson and Director Harvey indicated a belief on the part of Mr. Pearson that he had some role in Director Weaver’s resignation and that Mr. Pearson wielded influence over personnel decisions. The City Administrator testified that he was surprised to learn that Mr. Pearson had said such a thing and that he does not talk to contractors about personnel matters.²¹⁷

After Director Weaver announced his resignation, MOLC Director Mark Tuohey forwarded Director Weaver’s farewell email to the MOLC Deputy Director, Ron Ross, and wrote, “Takes care of a problem.”²¹⁸ Although this statement could be interpreted in a number of ways, Director Tuohey testified that this comment referenced the impasse caused by Director Weaver refusing to fire Mr. Alao and Mr. Sandoval, and to follow orders from his superior.²¹⁹ Director Tuohey claims that the

²⁰⁹ *Id.* at 127.

²¹⁰ *Id.* at 128.

²¹¹ *Id.* at 101.

²¹² Email, C. Weaver to All DGS Personnel (Aug. 10, 2016).

²¹³ Email from Rashad Young, City Administrator, to Mark Tuohey, Director, Mayor’s Office of Legal Counsel (Aug. 10, 2016, 17:25 EST).

²¹⁴ Letter from Ana Harvey, Director, Department of Small and Local Business Development, to Mary M. Cheh, Chair, Committee on Transportation and the Environment (Dec. 6, 2016); *see also* Trans., Vol. II at 177-80; Harvey Supp. Test. at 5-6.

²¹⁵ Trans., Vol. II at 177-80. *See also*, Harvey Supp. Test. at 5-6.

²¹⁶ Trans., Vol. II at 177-80. *See also*, Harvey Supp. Test. at 5-6.

²¹⁷ Trans., Vol. III at 105-06.

²¹⁸ Email from Mark Tuohey, Director, Mayor’s Office of Legal Counsel, to Ronald Ross, Deputy Director, Mayor’s Office of Legal Counsel, (Aug. 10, 2016, 18:22 EST). Mr. Ross, the recipient of the email, testified that he had no particular reaction to the email or what it meant. Trans., Vol. II at 277.

²¹⁹ Trans., Vol. III 251-52.

“problem” he referenced was what the Executive should do about Director Weaver, an agency head who was being insubordinate.²²⁰

Adm. Weaver testified that after he resigned, he received a phone call from Jonathan Kayne, who was at that time the Chief Operating Officer at DGS (and one-time interim director).²²¹ According to Adm. Weaver, Mr. Kayne told Director Weaver that he was offered the directorship at DGS and that there was the implication that the offer was contingent on firing Mr. Alao and Mr. Sandoval.²²² City Administrator Young denied that he ever offered such a position to Jonathan Kayne in exchange for his acquiescence in firing Mr. Alao and Mr. Sandoval.²²³

On August 15th, MOLC Director Tuohey and Deputy Director Ross served a separation notice to Mr. Sandoval at DGS.²²⁴ Mr. Ross informed Mr. Sandoval that his separation was based on a “general lack of confidence in his legal advice.”²²⁵ When Mr. Sandoval pressed and asked who, specifically, lacked confidence, Director Tuohey allegedly said the lack of confidence was related to the Buzzard Point and St. Elizabeths Contracts, as well as other projects.²²⁶ Mr. Ross and Director Tuohey allegedly declined to discuss the matter further and escorted Mr. Sandoval from the building.²²⁷ DCHR General Counsel Margaret Radabugh and DCHR staff Justin Zimmerman also separated Mr. Alao in person at DGS on this day.²²⁸

Neither Director Weaver²²⁹ nor Ms. Sabbakhan²³⁰ expressed any indication that they lacked confidence in Mr. Sandoval or Mr. Alao. Adm. Weaver testified that, “If there were deficiencies of this magnitude, they were never made known to me. If there were deficiencies that were so profound that they would cause the removal of two people who I thought were among the best I’ve ever seen at what they do, that was not communicated to me.”²³¹

²²⁰ *Id.* at 251-53.

²²¹ *Id.* at 129-30.

²²² *Id.*

²²³ *Id.* at 20.

²²⁴ Opinion, CAB No. P-1012 (Sept. 2016).

²²⁵ Trans., Vol. III at 251.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Alao Test. at 13-14.

²²⁹ Trans., Vol. III at 139.

²³⁰ Trans., Vol. I at 168-70.

²³¹ Trans., Vol. III at 139.

V. Findings & Recommendations

A. Findings

1. Fort Myer appears to be a favored contractor in the District.

The full scope of Fort Myer's favor with the Executive is difficult to evaluate. Fort Myer Construction plays a major role in the District as a campaign contributor. The company has been a major donor to numerous District officials, including Councilmembers and the last three Mayors. Of course, Campaign contributions from contractors are allowed under District law, and these donations are not themselves evidence or indicators that a particular contractor will receive favor from District officials; however, campaign contributions do not occur in a vacuum. These contributions may, at the very least, lead contractors to feel entitled to face time, information, and other support from officials to whom they have donated.

It appears that Fort Myer does, in fact, enjoy considerable success with government contracts and significant access. With a presence in the District for over 45 years, the company acknowledges that it "has [had] regular contact" with District government officials for decades.²³² In recent years, Fort Myer Construction performed dozens of service and construction contracts with the District government,²³³ contracts that brought the company millions of dollars in revenue,²³⁴ making Fort Myer one of the District's most prominent contractors.²³⁵ During the course of the inquiry into the two contracts on which Fort Myer bid but ultimately did not receive, extensive communication between members of the Executive and Fort Myer Construction was found.²³⁶

The perception that Fort Myer was cozy with the government exists among other contractors. In her testimony before the Committee, DGS Director Greer Gillis shared that, while a private consultant at the firm Parsons Brinckerhoff, she was told by colleagues that Fort Myer was the preferred contractor of the District government.²³⁷ Director Gillis also shared that she had been told by other consultants that contractors regularly abstained from bidding on contracts once learning that Fort Myer would be a competitor, as Fort Myer was the presumed winner before bids

²³² Shrensky Test. at 2.

²³³ In Fiscal Year 2016 alone, Fort Myer won seventeen DGS contracts. See DGS Fiscal Year 2016 Purchase Order Payments Report (Jan. 6, 2017) (available at https://dgs.dc.gov/sites/default/files/dc/sites/dgs/publication/attachments/FY16_PURCHASE_ORDER_PAYMENT_REPORT.pdf).

²³⁴ Suderman, Alan. "Paver Power." *Washington City Paper* (Sept. 14, 2011) (<http://www.washingtoncitypaper.com/news/loose-lips/blog/13132747/paver-power>).

²³⁵ Madden, Patrick. "Turmoil at D.C. Agency After Disputes With Prominent Contractor, Campaign Contributor." *WAMU 88.5* (Aug. 16, 2016) (http://wamu.org/story/16/08/26/turmoil_at_dc_agency_linked_to_contract_disputes_with_top_campaign_donors/).

²³⁶ Meeting Records (Nov. 2016).

²³⁷ Trans., Vol. III at 204-05.

were even received.²³⁸ Such a chilling effect on contractors' decisions to bid on District RFPs limits competition and thus harms the District's ability to secure the best proposal for a particular project.

Fort Myer believes that its clout and contacts can influence Executive opinion and actions. Ana Harvey, Director of the Department of Small Local Business Development, testified that she spoke with Fort Myer representative Kerry Pearson on August 11, 2016, about an issue before the Council that could affect contractors.²³⁹ During that exchange, Mr. Pearson allegedly told Director Harvey, "I saw you working against us at the Council. I already got rid of that fucker Weaver, so watch it," making clear reference to Director Weaver's resignation announcement the previous day.²⁴⁰ Mr. Pearson's comment indicates that he believed his influence had caused Director Weaver's departure, and that he could use that same influence to compel Executive leadership to get rid of Director Harvey, should she take action that did not serve Mr. Pearson or Fort Myer's interests.

Not only does it appear that Fort Myer believes that it holds sway with the Executive, but members of the Executive appear to share the same belief. As noted earlier, in July, Director Weaver told Director Harvey that "he was being pressured by the City Administrator to award the contracts to Fort Myer because Fort Myer said they were 'not getting enough contracts.'"²⁴¹ Whether that was, in fact, the City Administrator's motivation, it is remarkable that Director Weaver, a member of the Mayor's cabinet, believed that actions were being taken to advantage Fort Myer.

As an initial matter, both Mr. Sandoval and Mr. Alao allege that they were pressured to favor Fort Myer. First, Mr. Alao alleges that he received several emails from a DMPED employee involved with the Buzzard Point contract, who presumed Fort Myer would be awarded the contract, despite no award having been made at that time;²⁴² however, Mr. Alao did not make these emails available and did not appear for direct questioning, and the DMPED employee testified that he did not make any such contact with DGS staff prior to the award of the Buzzard Point contract. Second, Mr. Sandoval alleges that shortly after the Buzzard Point contract was awarded to W.M. Schlosser on April 22, 2016, Mr. Sandoval and Mr. Alao participated in a phone conversation with the DMPED employee.²⁴³ He alleges that on this call, the employee made comments critical of the decision to award the contract to Schlosser, and demanded to know why Fort Myer had not received the award.²⁴⁴ In Mr. Sandoval's words, "he [the employee] presumed that the contract was to be awarded to Fort Myer," and asked to know "who authorized the 'change' of contractor for Buzzard

²³⁸ *Id.*

²³⁹ Trans., Vol. II at 180.

²⁴⁰ *Id.*

²⁴¹ Harvey Supp. Test., at 5.

²⁴² Alao Test. at 9-10.

²⁴³ Sandoval Test. at 9.

²⁴⁴ Sandoval Test. at 9.

Point.”²⁴⁵ Admiral Weaver, in his testimony, corroborated this allegation, stating that, at the time, Alao and Sandoval reported to him “that an individual in the DMPED called them, and it was a very ugly conversation along the lines of challenging why was the award given to Schlosser and very, very bad language directed at my two people.”²⁴⁶ In testimony before the Committee, the employee denied discussing who changed the award.²⁴⁷

2. There is circumstantial evidence that, in a particular instance, someone in the District government acted to benefit Fort Myer in a manner that violated District law.

In one instance, it appears that someone in the District government did take illegal action to aid Fort Myer. Under District law, the particulars of a competitor’s pricing are confidential and may not be disclosed to other offerors,²⁴⁸ to the public, or even to government employees who are not required to have the information in the performance of their duties.²⁴⁹ There is no plausible explanation for how Fort Myer’s changes to the individual price components in its St. Elizabeths BAFO were not the result of being provided confidential information regarding Gilbane’s initial bid. In its original price bid on the St. Elizabeths contract, Fort Myer overbid Gilbane in all categories (ranging from 40.4% to 66.7% higher rates).²⁵⁰ DGS staff did not reach out to Fort Myer to identify specific concerns, issues, or areas of confusion regarding its initial pricing;²⁵¹ however, in response to the BAFO requested on May 24, 2016, Fort Myer shuffled its costs such that it beat Gilbane in several categories while only decreasing its overall price by 2.6%.²⁵² By lumping the bulk of their costs in the Design Build Fee category, Fort Myer was able to underbid Gilbane in three of five categories.²⁵³ Indeed, Fort Myer submitted a bid with price components that were much closer to Gilbane’s initial bids (which Gilbane did not change in response to the request for BAFOs).²⁵⁴ As a result of this cost shuffling, Fort Myer was able to win 26 more price points without significantly reducing its total price.²⁵⁵

²⁴⁵ *Id.*

²⁴⁶ Trans., Vol. III at 162-63.

²⁴⁷ Trans., Vol. I at 91-93.

²⁴⁸ 27 DCMR 1638.5.

²⁴⁹ 27 DCMR 1629.1.

²⁵⁰ Opinion, CAB No. P-1012 (Sept. 2016).

²⁵¹ Sandoval Test. at 7-8.

²⁵² Opinion, CAB No. P-1012 (Sept. 2016).

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

	Preconstruction Fee	Pts	Design Fee	Pts	Design Build Fee	Pts	Lump Sum price General Conditions	Pts	Above Grade Demo	Pts	Total Price	Total Pts
Gilbane - Original Price	\$97,380	2.0	\$1,423,520	10.0	\$2,250,000	12.0	\$3,771,762	14.0	\$510,000	10.0	\$6,630,003	48.0
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Percent Difference	-13.20%		0.00%		81.80%		-18.40%		52.30%		60.00%	

A contractor changing its price in response to a BAFO is certainly expected, and giving contractors the opportunity to make such changes is the purpose of issuing a BAFO.²⁵⁶ It is not the *fact* that Fort Myer changed its pricing that makes the behavior unusual, it is the *way* in which the price components changed that is.²⁵⁷ It is highly unlikely that Fort Myer could have so drastically changed its prices in its BAFO to narrowly undercut Gilbane's prices without knowledge of Gilbane's bid. As noted, all bids are known only to select DGS staff and are to be kept strictly confidential.²⁵⁸ Fort Myer could not have known Gilbane's bid without being given confidential pricing information. Indeed, both Director Weaver²⁵⁹ and Mr. Adams²⁶⁰ were concerned about this, and, as noted earlier, Director Weaver intended to launch an investigation into the matter but resigned before that could begin.²⁶¹ The changes to Fort Myer's bid for the St. Elizabeths contract in its BAFO appear to have been influenced by information about Gilbane's bid that Fort Myer was not entitled to possess, and that this information was shared by an unknown government staffer with access to bid information in violation of District law.

3. In the handling of the contracts, the Executive did act to benefit Fort Myer and its justifications for doing so are not fully supported by the record; but, there is no direct evidence of political influence.

In the summer of 2016, news outlets reported that Senior Executive Officials²⁶² involved themselves in the two contracts in a manner that was irregular and suggested political motivation to benefit Fort Myer. Those officials argue that they wanted to maintain a tight schedule on two important projects. When Fort Myer lost contracts on those projects and threatened to protest the awards, those Senior

²⁵⁶ Trans., Vol. II at 137-143.

²⁵⁷ The Committee does not have a statement on the record from Fort Myer on this point.

²⁵⁸ Trans., Vol. I at 142.

²⁵⁹ Trans., Vol. III at 173-74.

²⁶⁰ Trans., Vol. II at 206.

²⁶¹ Trans., Vol. III at 173-74.

²⁶² Such officials include the City Administrator, Deputy Mayors, Mayor's Office of Legal Counsel, and members of the Executive Office of the Mayor.

Executive Officials sought to dissuade the company from taking such action and admit, as described below, that they acted to benefit Fort Myer. The question is whether the Senior Executive Officials' motivation was solely to accelerate the contracts—whether the government would take those same actions had the losing bidder not been a favored contractor known to be politically well connected. Although there is not conclusive evidence that the actions taken by Senior Executive Officials were politically motivated, as detailed below, certain materials in the record contradict their assertion that they acted solely to accelerate these projects. It is thus possible, and it cannot be ruled out, that political motivations may have been at play.

The City Administrator undeniably took two actions to favor Fort Myer. First, after the St. Elizabeths contract was awarded to Gilbane, City Administrator Young agreed to Fort Myer representative Kerry Pearson's request that he "look into" accelerating settlement of claims brought by Fort Myer against the District.²⁶³ He ultimately took the action he promised, locating \$4 million and directing the Attorney General to use those funds for settlements specifically with Fort Myer.²⁶⁴ The Committee asked the City Administrator for examples of other contracts where settlement funds have been identified for a particular contractor as a means to avoid a protest, but he was unable to provide any.²⁶⁵ Second, the City Administrator took action to increase the amount of CBE subcontracted work on the St. Elizabeths project from 35% to 74%.²⁶⁶ This change is peculiar on three fronts: first, 74% was an "unprecedented rate"²⁶⁷ of work to be subcontracted out. Second, no explanation was provided for compelling Gilbane to subcontract out more of the project, including no evidence that Gilbane was no longer capable of completing the work required in the contract. And third, the decision to significantly increase the portion of subcontracted work on this project did nothing to move this time-sensitive project forward—in fact, seeking subcontractor bids for such a large chunk of the work would likely have caused delay.

The Executive asserts that these actions were taken to keep important projects on schedule, advantaging Fort Myer only because it was to the District's benefit to do so. As to the settlement money, both Mr. Tuohey²⁶⁸ and the City Administrator²⁶⁹ testified that the Executive sought to accelerate these settlements to avoid the risk that Fort Myer would protest the Buzzard Point contract award. And as to the change in subcontracting work, the City Administrator admitted that it was done in an attempt "to prevent [Fort Myer] from filing the protest."²⁷⁰

²⁶³ *Id.* at 84.

²⁶⁴ *Id.* at 72-73.

²⁶⁵ *See* Fn. 180.

²⁶⁶ *Id.* at 97.

²⁶⁷ Sandoval Test. at 12.

²⁶⁸ Trans., Vol. III at 241-43.

²⁶⁹ *Id.* at 72.

²⁷⁰ Trans., Vol. III at 86.

These are important projects justifying action to accelerate their completion. As previously noted, the agreement between the District and DC Stadium LLC for the Buzzard Point contract included a strict construction deadline of September 30th for completion of the project's horizontal infrastructure.²⁷¹ Failure to meet this deadline would have immediate, harmful results for the District, including the possibility that the D.C. United soccer franchise could pull out of the stadium deal, or even relocate outside of the District.²⁷² And, although the City Administrator conceded that the St. Elizabeths contract did not have the same hard deadlines as seen in Buzzard Point, he emphasized that any delay in moving forward with that project would nevertheless have had other significant negative consequences for the District.²⁷³ Indeed, in his testimony, the City Administrator claimed that the particular attention he paid to these contracts—and the unusual amount of direction coming from Senior Executive Officials—was justified by the fact that failure to meet these deadlines could have a substantial, negative impact on the projects, and the District as a whole.²⁷⁴ Despite the stated importance of moving forward on these projects, however, there were several instances in which the Executive took action resulting in delays to the award of these contracts and commencement of work pursuant to them.

First, Senior Executive Officials failed to move quickly to determine whether the point-scale change could be a basis for a successful contract protest. The Mayor's Chief of Staff John Falcicchio learned of the change to the 200-point scale on April 11, 2016.²⁷⁵ DSLBD's response to the change, which included extensive MOLC review, did not issue until June 10, 2016, a full two months later.²⁷⁶

Second, Senior Executive Officials delayed approval of DGS's initial decision to award the St. Elizabeths contract to Gilbane, resulting in a Best and Final Offer process that delayed the project by weeks. On May 15, in an email to the City Administrator and Deputy Mayor Kenner, Director Weaver stated that DGS would be prepared to make an award to a bidder in the St. Elizabeth's project on or before May 19th, but that he would brief both the City Administrator and Deputy Mayor Kenner before making the award.²⁷⁷ According to testimony from the City Administrator, when Director Weaver briefed him, Director Weaver was unable to explain why Fort Myer bid approximately \$10 million higher than Gilbane.²⁷⁸ The City Administrator stated that he found Fort Myer's drastically higher price odd,

²⁷¹ *Id.* at 27.

²⁷² The Kojo Nnamdi Show (Oct. 15, 2016).

²⁷³ Trans., Vol. III at 58-59.

²⁷⁴ *Id.*

²⁷⁵ Falcicchio Test. at 3.

²⁷⁶ Trans., Vol. II at 171.

²⁷⁷ Email from Admiral Christopher Weaver, Director, Department of General Services, to Brian Kenner, Deputy Mayor for Planning and Economic Development, and Rashad Young, City Administrator (May 15, 2016, 17:23 EST).

²⁷⁸ Trans., Vol. III at 78-79.

particularly given Fort Myer’s history as a bidder on a previous RFP for the project while it was housed at DDOT.²⁷⁹ Therefore, the City Administrator, who “already ha[d] concerns about DGS’s ability to administer procurements,” asked Ms. Hapeman about the price difference.²⁸⁰ Ms. Hapeman agreed that the price difference was odd.²⁸¹ Shortly thereafter, Director Weaver asked Mr. Alao what could be done “to help the administration get what it wants in an ethical and legal way.”²⁸² Mr. Alao suggested that DGS could issue a request for Best and Final Offers.²⁸³ Both Mr. Alao²⁸⁴ and Adm. Weaver²⁸⁵ testified that issuing the request for BAFOs was unnecessary in this case, but did so to appease the City Administrator. The City Administrator disputes this characterization, testifying that Director Weaver was “fine with doing a BAFO...he said the BAFO was a good idea” and that the City Administrator “didn’t force a BAFO upon anybody.”²⁸⁶ Nevertheless, on May 24th, DGS issued the request for BAFOs²⁸⁷ and informed the bidders of the award to Gilbane on June 7th.²⁸⁸ This BAFO process, which did not change the result, delayed the award of the contract by at least two weeks.²⁸⁹

And third, Senior Executive Officials delayed allowing DGS to file a Determination & Findings with the CAB, which, if granted, would have permitted Gilbane to start work on the St. Elizabeths project while Fort Myer’s protest was ongoing. The draft D&F was prepared and ready to file in late June 2016, yet Senior Executive Officials refused to allow DGS to file the D&F with the CAB at that time.²⁹⁰ Mr. Ross explained that this delay was due to the need for those officials to rewrite what they believed to be an unsatisfactory and unpersuasive first draft;²⁹¹ however, this answer does not explain why the Executive took approximately fifty days to turn

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.* at 169.

²⁸³ *Id.*

²⁸⁴ Alao Test. at 11.

²⁸⁵ Trans., Vol. III at 170-71.

²⁸⁶ *Id.* at 79-80.

²⁸⁷ *Request for Best and Final Offers*, Government of the District of Columbia, Department of General Services, Design Build Services for St. Elizabeths East Campus Stage 1 Phase 1 Infrastructure Improvements, Solicitation no. DCAM-16-CS-0084 (May 24, 2016).

²⁸⁸ Opinion, CAB No. P-1012 (Sept. 2016), at 9.

²⁸⁹ The Executive considered every avenue to accommodate Fort Myer, even potentially requesting a second BAFO. When Fort Myer ultimately protested the award of the St. Elizabeths contract, Senior Executive Officials continued to be deeply involved in the response to that protest. Mr. Alao contends that Senior Executive Officials advocated in a July 11, 2016 meeting for a second BAFO, arguing that the first BAFO had been improperly administered and the offer to Gilbane should be rescinded. Alao Test. At 12-13. While the City Administrator contends that no second BAFO was ever discussed, Trans., Vol. II at 87, Ms. Hapeman testified that brainstorming at the July 11th meeting likely did include discussion of a new BAFO. *Id.* at 147-48.

²⁹⁰ *Id.* at 247.

²⁹¹ *Id.*

around a revised draft, which was not filed with the CAB until August 12th.²⁹² Mr. Ross’ explanation for this extensive, seven week delay—that “no matter how urgent a project is, you got to get it right . . . you can't make this matter worse in your haste to get back to the schedule”²⁹³—is unconvincing. The D&F ultimately filed with the CAB was only seven pages long,²⁹⁴ despite it taking the MOLC taking fifty days to revise, and the CAB ultimately denied the request to proceed on the D&F,²⁹⁵ meaning the Senior Executive Official’s redrafting caused a fifty day delay for no benefit.

Although none of these actions (or their resulting delays) considered in isolation may seem significant, taken as a whole, they raise the possibility of an ulterior motive beyond simply moving along major projects. Ultimately, that possibility cannot be ruled in or ruled out.

4. Given the at-will nature of the employees’ positions, the employees’ separations were not illegal.

The Executive initially explained the separations of Mr. Alao and Mr. Sandoval primarily on the basis that they adopted a 200-point scale that diluted CBE points in contravention of District policy. During an October 15, 2016 appearance on the Kojo Nnamdi show, the City Administrator stated, “We know at least two instances where contracts were awarded, but for this change in all likelihood [they] would have went [sic] to CBEs, and so [the point scale change] had a real consequence.”²⁹⁶ And, it is true that, by changing from a 100-point evaluation scale with 12 CBE points to a 188- or 200-point evaluation scale with 12 CBE points, DGS did in fact dilute the impact of those preference points in a CBE’s total score,²⁹⁷ as the CBE points now carried half their former weight.

²⁹² Order, CAB No. P-1012 (Sept. 2016).

²⁹³ Trans., Vol. II at 247.

²⁹⁴ Memorandum from Yinka T. Alao to Contract Appeals Board, *Determination and Findings to Proceed with Contract Award While a Protest is Pending*, DCAM-16-CS-0084, St. Elizabeths East Campus Stage 1 Phase 1 Infrastructure Improvements (Aug. 12, 2016).

²⁹⁵ Order, CAB No. P-1012 (Sept. 2016).

²⁹⁶ The Kojo Nnamdi Show (Oct. 15, 2016).

²⁹⁷ The arguments provided by Mr. Alao, Mr. Sandoval, and Mr. Weaver, in defense of the adoption of the 200-point scale, show that they were well-intentioned; however, they insufficiently explain how CBE preference points would not be diluted by an overall increase in points without a proportional increase of CBE preference points. Mr. Sandoval argued that District law did not require CBE points to be proportional and that, under both the new and old scales, a bidders’ base score—composed of technical and price components—was wholly separate from the bonus preference points. Mr. Sandoval’s argument suggests that CBE points could not be diluted, because they were calculated in a later and wholly separate stage than the calculation of a bidder’s raw score. These arguments seem unpersuasive. Ultimately, DGS arrives at a composite score for each bidder by adding the technical score to the price score and adding the CBE preference points; there is no meaningful division between these steps.

There is, however, no evidence to conclude that the dilution of these preference points resulted in harm to CBEs or caused CBEs to lose contracts they would have otherwise been awarded. During the four-month period that the 200-point scale was used by DGS, only sixteen contracts were evaluated using that scale.²⁹⁸ Of those sixteen, thirteen did, in fact, go to CBEs.²⁹⁹ Two of the three remaining contracts that were not awarded to CBEs were the Buzzard Point and the St. Elizabeths contracts. Given that Fort Myer, the CBE bidder, actually earned more points than any other bidders, the dilution of CBE preference points did not affect the award of these contracts. The two contracts were lost on bases other than the point scale. The third and final contract evaluated under the 200-point scale was not awarded to a CBE contractor; however, the materials provided to the Committee were insufficient to ascertain whether the dilution of CBE points was the reason that the CBE bidders did not win this contract.³⁰⁰

The notion that the 200-point scale justified separating Mr. Alao and Mr. Sandoval is most peculiar, though, because it was no longer being used at the time of the employees' separation and, in any event, it had been approved by superiors. On the date of Mr. Alao and Mr. Sandoval's separation, the 200-point scale was no longer being used to evaluate any ongoing RFP bids. The final RFP employing the 200-point scale was issued on July 19, 2016,³⁰¹ and on or before August 2, 2016, all outstanding RFPs employing the 200-point scale back to March were amended to use the 112-point scale.³⁰² No RFP employed the revised 200-point scale on August 15, 2016, when Mr. Alao and Mr. Sandoval received notice of their separation from DGS.³⁰³ And, the changes made to the scale were approved within DGS by the Director and General Counsel.

Beyond the 200-point change, during his testimony before the Committee, City Administrator Young stated that he lost confidence in the judgments and ability of Mr. Alao and Mr. Sandoval, justifying their separation. The Committee was presented with conflicting narratives as to their abilities and therefore the merits of the City Administrator's loss of confidence cannot be evaluated.

On the one hand, there are those outside of DGS who shared the City Administrator's view. Barry Kreiswirth, Senior Advisor to the City Administrator,

²⁹⁸ Sabbakhan Supp. Test., at Attachment 1.

²⁹⁹ *Id.*

³⁰⁰ The third and final contract evaluated under the 200 point scale that DGS did not award to a CBE contractor was Contract DCAM-16-NC-0045, "Facility Security Assessment Services." DGS awarded this contract to MBL Technologies, a contractor that is not registered as a CBE in the District; losing bidders Tricore Systems LLC and Veritas Consulting Group LLC are registered CBEs. The evaluation scores for each of these bidders was not available to the Committee, and it is unclear what, if any, impact the dilution of the CBE points had on MBL Technologies being awarded this contract.

³⁰¹ Sabbakhan Supp. Test., at Attachment 1.

³⁰² *Id.*

³⁰³ Trans., Vol. III at 174-75.

described Mr. Alao as “in a position he [was] not fully qualified for”³⁰⁴ and stated that Mr. Sandoval took actions “that I did not think met what were appropriate standards.”³⁰⁵ EOM’s Director of Policy and Legislative Affairs Maia Estes stated that she questioned “how effectively and how thoroughly . . . [Alao] was specifically executing his job.”³⁰⁶ Nancy Hapeman, General Counsel for OCP, stated that though she thought Alao was diligent, conscientious, and analytical³⁰⁷ at OCP, once he was at DGS where he was working on matters of contract formation, “he was not exhibiting formation skills to the extent consistent with the position that he was in, in leading the procurement office”³⁰⁸. She similarly viewed Mr. Sandoval as “not familiar with [contract] formation issues” and harbored “a bias against Fort Myer.” City Administrator Young stated, “Carlos should have absolutely known better and steered us down a very dangerous path.”³⁰⁹

Others—namely those individuals who worked with the employees at DGS, including the immediate supervisors for both Mr. Alao and Mr. Sandoval—found their work to be satisfactory. Mr. Alao’s was described as “thorough,”³¹⁰ “knowledgeable,”³¹¹ and “strategic.”³¹² Director Weaver stated, “[I]n all my time . . . as basically the Navy’s public administrator . . . I never saw anybody operate—I never saw anybody make as much change in the right direction in such a short amount of time as Mr. Alao.”³¹³ Mr. Sandoval received similar praise from his colleagues,³¹⁴ as well as superiors Camille Sabbakhan³¹⁵ and Director Weaver. He was described as, “passionate,” and “proactive,” and Adm. Weaver stated, “I cannot think of a time when I wasn’t confident in what I was reading.”³¹⁶

³⁰⁴ Trans., Vol. I at 23.

³⁰⁵ *Id.* at 30.

³⁰⁶ Trans., Vol. II at 15.

³⁰⁷ Trans., Vol. II at 108-09.

³⁰⁸ Trans., Vol. II at 110-11.

³⁰⁹ Trans., Vol. III at 17-18.

³¹⁰ Trans., Vol. I at 127.

³¹¹ *Id.* at 128-29.

³¹² *Id.* at 168.

³¹³ Trans., Vol. III at 118.

³¹⁴ Corliss Adams stated, “He seemed like he knew what he was talking about. . . He seemed very competent in what he said . . . : I think he was very proactive, or should I say assertive in his interactions with the procurement process.” Trans., Vol. II at 191.

³¹⁵ Camille Sabbakhan stated, “I think he was a passionate employee with respect to his subject area. He was a litigator, and he demonstrated those qualities, as you would expect, as a very aggressive litigator.” She clarified, “I would not describe his performance as subpar.” Trans., Vol. I at 168-69.

³¹⁶ Jeff Bonvechio, Mr. Sandoval’s colleague at DGS, was more equivocal, stating that Sandoval “was definitely . . . knowledgeable of District rules and regulations” but also “that he had a chip on his shoulder.” The Committee, though, has some concerns about Mr. Bonvechio’s testimony. At the end of Mr. Bonvechio’s testimony, Mr. Tuohey requested to speak privately with him. Mr. Bonvechio then amended his testimony about Mr. Sandoval’s performance to note, “[I]t was what was related to me in terms of, you know, it was an unfairness in his contracts and his methods that people were concerned about. . . I just I felt there was a general, you know, just bad advice was given to the contracting officer and to the director on that change in award from what the Technical Evaluation Panel felt on Buzzard Point versus where the award went to.” *Id.* at 160-62.

These conflicting accounts of the performance of these employees are likely illustrative of a culture clash between the new leadership team at DGS and Senior Executive Officials. It seems likely that the City Administrator, met with what he perceived to be errors in two contracts of significant import, felt required to intercede on multiple occasions with those contracts, and ultimately concluded that it was easiest to simply remove what he perceived to be the sources of those difficulties. Whether those perceptions were accurate, it does appear that, if those were his concerns, the City Administrator and others Senior Executive Officials should have conveyed their concerns to the employees' supervisors and worked with agency management to address the areas in which they found the employees deficient before deciding to separate them.

Nevertheless, Mr. Alao, as a member of the Management Supervisory Service, is an at-will employee.³¹⁷ Similarly, Mr. Sandoval, as a member of the Legal Service, may be separated "for any reason that is not arbitrary or capricious."³¹⁸ In both cases, no justification is required for their separation and thus the City Administrator's decision to separate these employees because he had "lost confidence in them" is legally sufficient.

5. The employees' separation was procedurally irregular and sent a demoralizing message to DGS staff.

It is highly unusual that the City Administrator himself became involved in personnel decisions related to employees at a subordinate agency. That irregularity is compounded by the fact that he neither told DGS leadership of his concerns about the competency of Mr. Alao and Mr. Sandoval nor consulted with either the Director or the employees' supervisor regarding their potential separation before deciding to separate them.³¹⁹ Adm. Weaver noted that the faults attributed to Mr. Alao and Mr. Sandoval were never conveyed to him prior to the City Administrator's direction to separate them.³²⁰ In her testimony, Ms. Sabbakhan, Sandoval's supervisor, shared that she was not consulted regarding his separation, and contended, "I think it's logical to expect that a supervisor will participate in the decision to terminate an employee."³²¹ Moreover, with respect to Mr. Sandoval, he was separated by the Mayor's Office of Legal Counsel;³²² however, District law³²³ requires that attorneys in the executive agencies be disciplined by the agency director, who, at the time of separation, was Greer Gillis.³²⁴

³¹⁷ DC Code § 1-609.54.

³¹⁸ DC Code § 1-608.56.

³¹⁹ Trans., Vol. III at 136-38.

³²⁰ *Id.* at 182-83.

³²¹ Trans., Vol. II at 188-89.

³²² Compl., *Sandoval* at 3-4.

³²³ DC Code § 1-608.56.

³²⁴ Email, R. Young to M. Tuohey (Aug. 10, 2016).

It was also irregular that Mr. Alao and Mr. Sandoval were faulted and ultimately penalized for actions that were done at their agency Director's direction or subject to his approval.³²⁵ When hired by Mayor Bowser, Director Weaver was tasked with reforming DGS's Contracting and Procurement Division. He directed two employees whom he trusted and believed were competent to perform that work, approving their decisions along the way. It is unusual for employees acting at the direction of their superior to be penalized for decisions that were approved by and ultimately rested with their superior.

Ultimately, the separations and subsequent resignation of Director Weaver sent a demoralizing message to DGS staff. Director Gillis testified that, upon commencing her role as Director of DGS after Director Weaver's resignation, she inherited a workforce shaken by the swift firing and resignation of top agency officials.³²⁶ Director Gillis stated,

When [the departure of Alao, Sandoval, and Weaver] did happen, you could tell this was, I would say something new that the agency had experienced. So there was a shock that reverberated throughout the agency, particularly in my Legal Division and then my Contracts and Procurement Division. . . . [W]e had several meetings, hands on meetings, and meetings with the division [to understand that] this has happened, "[b]ut we're going to move forward. There are going to be no more changes like this, so let's just get back to business. I'm here if you need me." And I think that helped kind of quell some of the fears and some of the concerns, and then we just continued to move on.³²⁷

In her testimony, DGS General Counsel Camille Sabbakhan agreed that there was a rather significant morale problem at DGS after the departure of these three employees.³²⁸ Indeed, Ms. Sabbakhan feared that she, too, might lose her job.³²⁹ Latrena Owens, then-DGS Chief of Staff, concurred, stating that "[i]t appears that morale is lower."³³⁰ And since the separations, several high-level DGS staff have left the agency, including Ms. Owens, Chief Operating Officer Jonathan Kayne, Human Capital Administrator Vikki Garay, Public Information Officer Kenny Diggs, and Management Analyst Melissa Millar.³³¹ The actions taken to remove Mr. Alao and Mr. Sandoval, and Director Weaver's resignation were so unprecedented at DGS as

³²⁵ Trans., Vol. III at 136-38.

³²⁶ *Id.* at 210.

³²⁷ *Id.*

³²⁸ Trans., Vol. I at 170.

³²⁹ *Id.*

³³⁰ Owens Test. at 5.

³³¹ Email from Khalil Thompson, Special Assistant, Department of General Services, to Michael Porcello, Legislative Counsel, Committee on Transportation and the Environment (March 9, 2017, 13:02 EST).

to shock a number of the agency's staff, and had a markedly negative effect on morale. It is a matter of great concern that these separations send a chilling message to District employees who seek to make reforms within their agencies, even if those reforms are made with the approval of an agency Director.

6. The District's definition of lobbying is too narrow because it does not cover advocacy or outreach related to contracts.

Records from the District of Columbia Board of Ethics and Government Accountability e-Filing System do not include filings from 2016 for Fort Myer lobbyists.³³² For example, no filing record is available for Kerry Pearson with respect to Fort Myer, despite the Committee receiving testimony from several witnesses that Mr. Pearson had contacted them in 2016 regarding government contracts.³³³ Indeed, Lewis Shrensky, Fort Myer Vice President, described Mr. Pearson as being responsible for "the provision of information . . . concerning the status of potential legislation . . . , pending contract awards, potential new bidding opportunities, status of funding of projects, and other information that might be of interest to Fort Myer."³³⁴

Nevertheless, the failure of Fort Myer representatives to report these lobbying activities may be proper under District law. Although "lobbying" is defined in D.C. Code §1-1161.01(32)(A) to include outreach to both legislative and executive staff, the Code limits the term's application to outreach seeking to influence "any legislative action or an administrative decision." The Code defines "administrative decision" to mean:

any activity directly related to action by an executive agency to issue a Mayor's order, to cause to be undertaken a rulemaking proceeding (which does not include a formal public hearing) under Chapter 5 of Title 2, or to propose legislation or make nominations to the Council, the President, or Congress.³³⁵

Under these definitions, "lobbying" does not include efforts taken to influence the approval of government contracts or other financial arrangements.³³⁶ As such, Mr. Pearson and other Fort Myer representatives who did not disclose efforts to influence the award of the St. Elizabeths or Buzzard Point contracts were not engaged in "lobbying" as defined in District law. This activity, however, is clearly "lobbying" as the term is commonly understood.

³³² See Board of Ethics and Government Accountability E-Filing System, *Search Lobbyist Registration* (available at <https://efiling.bega-dc.gov/efs/LobbyistRegistrationSearch.aspx>).

³³³ See Trans., Vol. II at 177-78; Harvey Supp. Test.

³³⁴ Shrensky Test. at 2.

³³⁵ D.C. Code §1-1161.01(32)(A).

³³⁶ *Id.*

B. Recommendations

I offer the following recommendations. The order of the recommendations should not be construed as a ranking of importance.

- 1. The Executive should take steps to more accurately document interactions with lobbyists and take particular care in its dealings with Fort Myer to combat the perception that it is a favored contractor.**

Senior Executive officials should demonstrate greater diligence to avoid the appearance that Fort Myer is a favored contractor. The impression of insufficient attention to such an appearance is supported by the casual approach taken by a number of District staff in regard to maintaining complete and accurate records of the timing and content of meetings with lobbyists. It was difficult to fully evaluate communications between and among members of the Executive and outside sources given how vague meeting records were. Executive officials should maintain accurate and complete records of meetings and other instances in which they were actively lobbied by individuals or entities seeking to influence District law, regulations, policy, contracts, or financial arrangements.

Employees should also be directed to take action to minimize the appearance of impropriety, which itself can cause lasting harm. For example, Director Gillis testified that some private contractors told her that they elected not to bid on particular contracts when learning the contractors were also sought by Fort Myer because they believed that Fort Myer was favored and certain to win.³³⁷ There, the mere impression of favoritism by government officials caused harm to the District in the form of diminished competition for those contracts. Executive officials should take particular care to combat the widespread perception that Fort Myer is a favored contractor.

- 2. The Council should consider amending campaign finance laws to regulate campaign contributions by contractors.**

As illustrated by DGS Director Greer Gillis' testimony to the Committee,³³⁸ even the mere impression of favoritism for particular contractors or vendors by government staff can chill competition for government contracts. DSLBD Director Ana Harvey's testimony about her meeting with Fort Myer representative Kerry Pearson clarified that these impressions are not always just sour grapes, and some "favored" contractors also believe that they hold particular sway with government officials.³³⁹ Where impressions of favoritism cause contractors to refrain from bidding

³³⁷ Trans., Vol. III at 204-25.

³³⁸ *Id.*

³³⁹ Trans., Vol. II at 177-78; Harvey Supp. Test.

on particular contracts, that lack of competition means that the District loses out—on price, work quality, and engagement of local workers or businesses.

Although the District Personnel Manual prohibits government employees from using their position to provide benefits to favored entities,³⁴⁰ this prohibition has been ineffective in curtailing both these impressions and the effect they have on government contracting. Policing favoritism shown to particular contractors, vendors, or other entities is difficult, and requires diligent and honest self-reporting. As such, in addition to recommending that government officials engage in such self-reporting, the Council consider amending District campaign finance law to limit contributions from entities seeking or receiving contracts from the District government. These steps would help diminish both the appearance of and any actual favoritism shown to particular contractors, making the contracting process more transparent and fairer to all involved.

3. The OIG should investigate the likely leak of confidential information related to the St. Elizabeths contract award.

As detailed above, Fort Myer drastically and precisely changed its BAFO prices in its bid for the St. Elizabeths contract. To do so without knowledge of Gilbane's bid is highly unlikely, and providing such information is a violation of District law. Given that the Committee's inquiry was limited to the questions of political influence in the award of the two contracts and the separations of DGS employees, the District of Columbia Office of the Inspector General should now conduct its own investigation into actions both by Fort Myer and relevant DGS personnel with respect to the St. Elizabeths contract.

4. The Executive should update and standardize the solicitation and bid review process across District government agencies.

The Committee's inquiry uncovered a number of inconsistencies in the processes governing how DGS and the Office of Contracting and Procurement issue RFPs, review contractor bids, and award contracts. Although some of these inconsistencies stemmed from differing policies of the two departments, many were the result of standards and processes not being explicitly laid out in District law, regulations, or agency policy documents. The Executive should work to identify best practices for government contracting, and to update District contracting law and policies to follow these standards. Specifically, actions should be taken to address the following:

³⁴⁰ D.C. Personnel Manual § 1800.3. The relevant section reads, "The following general principles apply to every employee and form the basis for the standards contained in this chapter. Where a situation is not specifically covered by another provision of law or policy, employees shall apply the following principles set forth in this section in determining whether their conduct is proper: . . . (h) Employees shall act impartially and not give preferential treatment to any private organization or individual."

- a. Standardize the kind and quality of disclosures required from bidders in the RFP evaluation process;
- b. Determine the utility, if any, of having RFP solicitations require bidders to provide information on their litigation history and history of requesting change orders after being awarded a contract;
- c. Clarify standards for findings of responsibility and non-responsibility ensuring that they are sufficiently clear, precise, and consistent across agencies, leaving due deference to the contracting officer;
- d. Update rules governing requests for Best and Final Offers to clarify what a BAFO must include, and the processes to be followed with bidders to explain the reasons why a BAFO is being issued; and
- e. Clarify which agencies have authority to determine legal sufficiency, and the appropriate next steps for the requesting agency when the authorized entity finds a contract legally insufficient.

5. The Council should clarify District law on how CBE preference points are awarded and conduct a review of the system as a whole.

The District's current statutory framework for how executive agencies are to award CBE preference points does not clearly specify the scale an agency must use to evaluate contractor bids.³⁴¹ The law as written only requires that agencies assign a certain number of points for each available category (e.g., five points for a resident-owned business) and that a CBE shall not receive more than twelve preference points.³⁴² But "points" and "percentages" are not interchangeable, and the governing statute is vague when using those terms and never specifies what scale to use. Thus, as noted in the report, an agency could award five preference points on a 100-point scale that would ultimately carry more weight than five points on a 200-point scale.

But, the problems associated with the CBE system run much deeper and significant questions need to be answered. For example, a discount in price-only contracts makes sense when favoring, as the CBE system does for example, products made locally by a small business that is veteran-owned; but, does that same discount make sense when evaluating complex contracts that account for more than just price? And if it does, should the discount operate in the same way in all situations? If large locally owned businesses can effectively box small businesses out by undercutting their prices, should the program revise the definition of CBE to account for that? Should the District use a graduation system, as Director Dormsjo noted is used both in Maryland and in Federal Highway contracts,³⁴³ so that certain businesses are aided in entering a market but are graduated out of those advantages once they reach a certain size? Has the ability to enter into joint ventures and the exclusion of non-

³⁴¹ See D.C. Code § 2-218.43. Bid and proposal preferences.

³⁴² *Id.*

³⁴³ Trans., Vol. III at 224.

profits distorted our well-intentioned program to the benefit of those who know how to play the game and to the detriment of those who are the intended beneficiaries?

The Council should undertake a review of the CBE program. The review should reevaluate how the 50-year-old program fits in the modern business and economic landscape. It needs to clearly answer the questions that continue to arise and, once those questions are answered, the Council should ensure that the statutory language accurately reflects those answers. And, at the very least, the law must be clarified with respect to percentages and point scales.

6. Consistent with other states, the Council should update District lobbying laws to mandate disclosure of lobbying related to contracts.

The District Code does not currently require lobbyists or other representatives to disclose lobbying of legislative or executive staff where that advocacy is related to contracts or other financial arrangements.³⁴⁴ District contracts are funded by taxes and govern the spending of billions of tax dollars each year. Without lobbying disclosure rules that cover lobbying related to contracts, District ethics officials, journalists, and residents are limited in their ability to identify and track who or what entities are seeking to influence contract awards and their administration. This omission removes essential transparency in government operations and increases the risk that improper lobbying and other behaviors go unchecked.

The Council should amend D.C. Code §1-1161.01 to update the definition of “administrative decision” to include contracts and other financial arrangements entered into by the District government. This amendment should clarify that lobbying in relation to contracts requires disclosure. The District Board of Ethics and Government Accountability has endorsed such a change, noting in a letter to the Committee that these updates would not only increase transparency in government operations, but also bring the District in line with other, similar jurisdictions.³⁴⁵

VI. Conclusion

The inquiry into the handling of the 2016 Buzzard Point and Saint Elizabeths contracts and the separation of two DGS employees who worked on those contracts did not reveal any direct evidence of political influence or motivation. The evidence did disclose, however, that Fort Myer does appear to be a favored District contractor, and Senior Executive Officials did take action in relation to the two contracts with the intent of benefiting Fort Myer. They offered a non-political motivation for these actions—namely, that they were trying to prevent delay in the completion of two important and time-sensitive projects. However, other actions taken by Senior

³⁴⁴ See D.C. Code §1-1161.01.

³⁴⁵ Letter from Robert J. Spagnoletti, Chairman, Board of Ethics and Government Accountability, to Mary M. Cheh, Chairperson, Committee on Transportation and the Environment (Feb. 2, 2017).

Executive Officials in relation to the contracts seems to contradict the assertion that preventing delay was their sole purpose. Similarly, although the separation of the two employees was not illegal, separation seemed an unnecessarily harsh penalty based on offered explanations, the separations were procedurally irregular, and they sent a demoralizing message to DGS staff.

In the course of this inquiry, there was evidence that an unknown District employee likely leaked information about a competitor's bid on the Saint Elizabeth's contract to Fort Myer, allowing Fort Myer to submit a more competitive offer. This is a breach of law and ethics, and the Office of the Inspector General should investigate it. Additionally, the Executive should increase transparency with regard to meetings with lobbyists and contractors and standardize the District's solicitation and bid-review process. Hopefully, such measures can combat public perceptions of favoritism for Fort Myer and prevent future circumstances like those that led to the separation of Mr. Alao and Mr. Sandoval. With this same goal, the Council should act to clarify CBE laws and require disclosure of lobbying related to contracts. Few things undermine the public's confidence in its government more than the appearance of favoritism, whether or not it is true. Hopefully, the recommendations included here will be useful in assisting the Executive to avoid such allegations and appearances in the future.

When hired by Mayor Bowser, DGS Director Weaver was tasked with reforming the agency's contracting and procurement division. Mr. Alao and Mr. Sandoval were the drivers of that reform, and acted with Director Weaver's trust and under his direction. It is vitally important that government employees who, in good faith, undertake internal reform with the blessing of their agency Directors should not be penalized. Regardless of the motivations that were actually at play in the handling of the Buzzard Point and Saint Elizabeths contracts and the separations of Mr. Alao and Mr. Sandoval, when the City Administrator stepped outside of established protocol to separate these two employees, he sent a chilling message to all would-be reformers in our Executive agencies. Just as it was impossible to ultimately resolve the conflicting narratives at play in this inquiry, it is also impossible to estimate what harm was done to the District, now or in the future, by making persons with ideas for reform feel less safe in proposing their ideas.

Mary M. Cheh

Appendices

Appendix A—List of Acronyms used in the Report

Appendix B—Transcript, *Committee on Transportation and the Environment Public Oversight Hearing*, Volume I

Appendix C— Transcript, *Committee on Transportation and the Environment Public Oversight Hearing*, Volume II

Appendix D— Transcript, *Committee on Transportation and the Environment Public Oversight Hearing*, Volume III

Appendix E—Submitted Testimony, *Committee on Transportation and the Environment Public Oversight Hearing*

Appendix F—Supplemental Submitted Testimony, *Committee on Transportation and the Environment Public Oversight Hearing*

Appendix G— Documents Related to DCAM-16-CS-0074, *Construction Management At-Risk Services for Infrastructure Work in Connection with the DC United Soccer Stadium* (Buzzard Point)

Appendix H— Emails

APPENDIX A

LIST OF ACRONYMS USED IN THE REPORT

BAFO	Best and Final Offer
CBE	Certified Business Enterprise
D&F	Determinations and Findings
DCHR	District of Columbia Department of Human Resources
DDOT	District Department of Transportation
DGS	Department of General Services
DMPED	Deputy Mayor for Planning and Economic Development
DSLBD	Department of Small and Local Business Development
EOM	Executive Office of the Mayor
MOLC	Mayor's Office of Legal Counsel
OAG	Office of Attorney General
OCP	Office of Contracting and Procurement
OIG	Office of Inspector General
RFP	Request for Proposal
TEP	Technical Evaluation Panel

APPENDIX B

**TRANSCRIPT, COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT
PUBLIC OVERSIGHT HEARING, VOLUME I**

APPENDIX C

TRANSCRIPT, *COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT*
PUBLIC OVERSIGHT HEARING, VOLUME II

APPENDIX D

TRANSCRIPT, *COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT*
PUBLIC OVERSIGHT HEARING, VOLUME III

APPENDIX E

SUBMITTED TESTIMONY, *COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT PUBLIC OVERSIGHT HEARING*

APPENDIX F

**SUPPLEMENTAL SUBMITTED TESTIMONY, *COMMITTEE ON TRANSPORTATION
AND THE ENVIRONMENT PUBLIC OVERSIGHT HEARING***

APPENDIX G

DOCUMENTS RELATED TO DCAM-16-CS-0074, *CONSTRUCTION
MANAGEMENT AT-RISK SERVICES FOR INFRASTRUCTURE WORK IN
CONNECTION WITH THE DC UNITED SOCCER STADIUM (BUZZARD POINT)*

APPENDIX H

EMAILS