

GAO

Report to the Ranking Minority
Member, Committee on Oversight and
Government Reform, House of
Representatives

January 2007

**DISTRICT OF
COLUMBIA**

**Procurement System
Needs Major Reform**





Highlights of [GAO-07-159](#), a report to the Ranking Minority Member, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

To improve acquisition outcomes, in 1997 the District established the Office of Contracting and Procurement under the direction of a newly created chief procurement officer (CPO). Since then, the District's inspector general and auditor have identified improper contracting practices.

This report examines whether the District's procurement system is based on procurement law and management and oversight practices that incorporate generally accepted key principles to protect against fraud, waste, and abuse.

GAO's work is based on a review of generally accepted key principles identified by federal, state, and local procurement laws, regulations, and guidance. GAO also reviewed District audit reports and discussed issues with current and former District officials as well as select state and local officials.

What GAO Recommends

GAO recommends that the District's Mayor submit a procurement reform plan to Congress. The former Mayor chose not to comment, but the new administration indicated concurrence with most of GAO's recommendations and intends to provide a plan within 60 days of the public release of this report. Comments from the Chief Financial Officer were limited to the section on direct vouchers. They indicated current review of their policy and GAO encourages implementation of this report's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-159.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Ann Calvaresi-Barr, (202) 512-4841 or calvaresibarra@gao.gov.

DISTRICT OF COLUMBIA

Procurement System Needs Major Reform

What GAO Found

The District's procurement law generally does not apply to all District entities nor does it provide authority to the CPO to effectively carry out and oversee the full scope of procurement responsibilities across all agencies. A lack of uniformity in its procurement law and the CPO's limited authority not only undermines transparency, accountability, and competition but also increases the risk of preferential treatment for certain vendors and ultimately drives up costs. The current law exempts certain entities and procurements from following the law's competition and other requirements, and according to current and former District procurement officials, there is a push to expand independent procurement authority—a move that would reverse action taken by the District a decade ago. Other provisions of current law further erode competition. Notably, the law provides broad authority for sole source contracting and establishes high-dollar thresholds for small purchases, which are generally not subject to full and open competition. Also, in implementing the law, sufficient management oversight is lacking to ensure employees do not make unauthorized commitments.

The District has been challenged to effectively manage and oversee its procurement function, due in large part to the low-level position of the procurement office in the governmental structure, the rapid turnover of CPOs, and multiple players having authority to award contracts and affect contract decisions. At the same time, the District does not have the basic tools that contracting and agency staff and financial managers need to effectively manage and oversee procurements—including a procurement manual, a professional development program, and an integrated procurement data system.

In summary, the District's procurement system does not incorporate a number of generally accepted key principles and practices for protecting taxpayer resources from fraud, waste, and abuse. Specifically, the District lacks a comprehensive procurement law that applies to all District entities over which the CPO has sole procurement authority and promotes competition; an organizational alignment that empowers its procurement leadership; an adequately trained acquisition and contracting workforce; and the technology and tools to help managers and staff make well-informed acquisition decisions.

To better ensure every dollar of its more than \$1.8 billion procurement investment is well spent, it is critical that the District have a procurement system grounded in a law that promotes transparency, accountability, and competition, and helps to ensure effective management and oversight and sustained leadership. High-level attention and commitment from multiple stakeholders—including Congress—are needed if the District's procurement law is to provide the right structure and authority and if procurement reforms are to succeed.

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Abbreviations

ABA	American Bar Association
CFO	Chief Financial Officer
CPO	Chief Procurement Officer
DCSS	District of Columbia Supply Schedule
FAR	Federal Acquisition Regulation
GSA	General Services Administration
LSDBE	Local, Small, and/or Disadvantaged Business Enterprise
MAS	multiple award schedule
NASPO	National Association of State Procurement Officials
OCTO	Office of the Chief Technology Officer
PASS	Procurement Automated Support System

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United States Government Accountability Office
Washington, DC 20548

January 19, 2007

The Honorable Tom Davis
Ranking Minority Member
Committee on Oversight and Government Reform
House of Representatives

Information from the District of Columbia's lead contracting office and other sources indicate that in fiscal year 2005, more than \$1.8 billion—almost 22 percent of the city's \$8.2 billion budget—was spent on procurement. To maintain public trust and fulfill public policy objectives, an effective procurement system should provide timely acquisition of the right goods and services while efficiently addressing agency needs and obtaining the best value for taxpayer dollars. The success of any public procurement system is rooted in law and policies with appropriate internal controls, which if adhered to through effective management and oversight, promote transparency, accountability, competition, and ultimately protect resources from fraud, waste, and abuse.

The District's history of procurement problems—which include poor planning, excessive use of sole source contracts, and unauthorized personnel committing government resources—is well documented. Contracts have suffered from poorly defined requirements, noncompliance with procurement rules, and avoidance of competition. Almost 10 years ago in an effort to improve its procurement outcomes and promote oversight and accountability, the District amended its procurement law—the Procurement Practices Act of 1985.¹ A key component of the amendment was the establishment of the Office of Contracting and Procurement to centralize the District's acquisition function under the direction of a newly created chief procurement officer (CPO). Since then, the District's inspector general's and auditor's offices as well as numerous press reports continue to identify improper contracting practices across various District entities.²

¹ The Procurement Practices Act of 1985, codified as amended in D.C. Official Code § 2-301.01 *et seq.*, is the District's primary procurement law and is implemented through Title 27 of the District of Columbia Municipal Regulation.

² For purposes of this report, the term "entities" refers to the various District departments, agencies, boards, and commissions.

Given these circumstances, you asked us to assess the District's procurement system. Specifically, we examined the extent to which the District's (1) procurement law incorporates generally accepted key principles that promote transparency, accountability, and competition and (2) procurement system reflects sound management and oversight practices. Our assessment also addresses recent actions the District has taken to address persistent procurement challenges.

To conduct our work, we reviewed the relevant District procurement laws and regulations, and compared them with generally accepted key public procurement principles and best practices from a variety of sources, including the National Association of State Procurement Officials (NASPO), the American Bar Association (ABA) model procurement code, the Federal Acquisition Regulation (FAR) as well as our prior work on effective procurement practices. To obtain perspectives from others on the District's past and current procurement management challenges, we reviewed various studies with recommendations that led up to the 1997 reorganization to establish the Office of Contracting and Procurement headed by a CPO as well as selected District inspector general and auditor reports since 2004. We interviewed current and former procurement, executive, financial management, and auditing officials in the District to discuss organizational, management, and policy challenges; procurement reform; and related issues. We also spoke with state government procurement leaders of NASPO about sound public procurement principles and practices regarding public procurement and their views on issues we raised about the District's system. In addition, we visited Atlanta, Baltimore, and New York City to interview city procurement officials about their views on issues we raised concerning the District's system and to learn about related challenges they have faced and their responses to these challenges. Appendix I presents our scope and methodology in more detail. We conducted our work between February and October 2006 in accordance with generally accepted government auditing standards.

Results in Brief

The District's procurement law as currently in effect generally does not incorporate accepted key principles of sound procurement as established by NASPO, the ABA model procurement code, and the FAR. As a result, the law fails to adequately promote transparency, accountability, and competition to reduce the risk of fraud, waste, and abuse. Although it recognizes the role of a CPO—a key component of a comprehensive procurement law—the law falls short in a number of other key areas. First, despite calling for uniform procurement procedures District

governmentwide, the law does not apply to several District entities, including some that spend tens of millions of dollars a year to contract for goods and services. According to many officials we spoke with, this lack of uniformity severely hampers transparency and accountability and increases the risk of preferential treatment of vendors, discourages competition, and ultimately drives up costs. Second, the law fails to provide authority to the CPO to effectively carry out and oversee the full scope of procurement responsibilities across all entities. Third, the law has frequently been amended to grant exemptions to its provisions and the CPO's authority for certain entities and special procurements. Current and former CPOs, as well as NASPO and other city procurement officials, noted that these exemptions distort the District's law, undermine efforts to establish a central authority, and circumvent the competitive process. Finally, the law allows the use of noncompetitive contracting methods, such as sole-source contracting, under broad exceptions. It further allows higher dollar thresholds for small purchases than are allowed in other city and federal regulations, including the FAR; mandates the use of a District supply schedule with a limited list of local vendors for purchases of a specified threshold; and allows agencies under certain circumstances to bypass the District's contracting rules to directly pay vendors without valid contracts—payments that accounted for as much as \$217 million in fiscal year 2004. Ultimately, these provisions in the law create barriers to competition—the basic tenet of an effective public procurement system.

In addition to generally lacking a law that reflects accepted key principles of sound procurement, the District has been challenged to effectively manage and oversee its procurement system. The low-level position of the procurement office within the District's governmental structure, combined with rapid turnover of five CPOs in the past 10 years, has resulted in fragmented and inconsistent procurement management and oversight with multiple players having authority to award contracts and affect procurement decisions. According to former District CPOs, the low organizational placement weakened their ability to direct, coordinate, and oversee procurement activities across the District's entities. Each of the appointed CPOs cited their lack of influence and control over the acquisition function as a major reason for resigning their position before the end of their tenure. At the same time, contracting and agency staff and financial managers do not have the basic tools needed for effective procurement management and oversight. Specifically, the District lacks a procurement manual, a professional development program for contracting staff, and an integrated procurement data system—key tools for guiding District procurements and helping contracting and agency staff carry out their responsibilities. Officials from the other cities we reviewed have

overcome similar challenges by reorganizing and elevating the acquisition function within their city's governmental structure and implementing a variety of tools to strengthen the procurement system's management and oversight.

We are making a comprehensive set of recommendations to the Mayor of the District of Columbia to seek reform of the District's procurement law and system in order to help promote transparency, accountability, competition, and minimize fraud, waste, and abuse. Our recommendations focus on establishing a procurement system that incorporates key procurement principles and practices identified by NASPO, the ABA model procurement code, and the FAR. To help ensure the District takes action and sustains improvements to its procurement system and to facilitate congressional oversight, we are also recommending that the Mayor develop and submit to Congress a comprehensive plan and schedule for carrying out major procurement system reform in line with our recommendations.

After reviewing a draft of this report, the office of the outgoing Mayor declined to comment.³ However, in oral comments, the new administration indicated concurrence with most of our findings and recommendations and intends to provide an action plan within 60 days of the public release of this report. Although most of our recommendations are directed to the Mayor's office, we also made recommendations to the Chief Financial Officer (CFO). In written comments, the CFO disagreed with our findings related to the use of direct vouchers for procurement-related transactions. They are reviewing their policy on direct vouchers and we encourage them to implement our recommendations as well as work with the Mayor's office to coordinate procurement reform actions as applicable. The CFO's comments are included in appendix III along with our comments.

Background

For fiscal year 2005, the District's Office of Contracting and Procurement—its lead contracting office—reported conducting over 20,000 transactions valued at \$1.2 billion on behalf of 55 District entities, five of which accounted for \$596 million (see table 1 for the departments, agencies, and other entities reporting procurements through this office). Over two-thirds of the District's procurement dollars managed through the

³ On January 2, 2007, Anthony Williams ended his term and Adrian Fenty began his term as Mayor of the District of Columbia.

lead contracting office was spent on professional and public safety services, human care, and road and highway construction. In addition, some District entities, including the Board of Education for District of Columbia Public Schools and the Department of Mental Health, procure independently of the lead contracting office.⁴ According to information available from District sources, these entities spent over \$600 million in fiscal year 2005.

⁴ According to the Office of Contracting and Procurement, the following District entities procure independently of this office: Board of Education (for the public schools); Office of the Chief Financial Officer; Child and Family Services Agency; Washington Convention Center; District of Columbia (D.C.) Council; D.C. Court System; D.C. Housing Authority; D.C. Housing Finance Agency; D.C. Public Service Commission; D.C. Retirement Board; Department of Mental Health; Pretrial Services Agency; Public Defender Service; Sports Commission; and the Water and Sewer Authority. The Board of Education is exempted from the Office of Contracting and Procurement in soliciting, awarding, and executing contracts for the public schools, except for security contracts that began on or after June 30, 2005 (D.C. Official Code § 2-301.04(d)).

Table 1: District Entities Procuring through the Office of Contracting and Procurement as of October 2006

Office of Administrative Hearings	Office of Employee Appeals	Office of Planning
Office on Aging	Department of Employee Services	Office of Police Complaints
Alcoholic Beverage Regulation Administration	Energy Office	Office of Property Management
Commission on Arts and Humanities	Fire and Emergency Medical Services	Public Employee Relations Board
Office of the Attorney General	Department of Health ^a	Public Library
Office of Boards and Commissions	Department of Human Services ^a	Department of Public Works
Office of Cable TV and Telecommunications	Department of Housing and Community Development	Board of Real Property Assessments and Appeals
Office of Campaign Finance	Office of Human Rights	Office of Risk Management
Office of Chief Medical Examiner	Department of Insurance, Securities, and Banking	Serve DC
Office of the Chief Technology Officer ^a	Commission on Judicial Disabilities and Tenure	Department of Small and Local Business Development
Office of the City Administrator	Justice Grants Administration	Office of State Education
Department of the Consumer and Regulatory Affairs	Office of Labor Relations and Collective Bargaining	Taxicab Commission
Office of Contracting and Procurement	Office of Latino Affairs	Department of Transportation ^a
Department of Corrections	Metropolitan Police Department ^a	Office of Tuition Assistance Grant Program
Contract Appeals Board	Office of Motion Pictures and Television Development	University of the District of Columbia
Office of the Deputy Mayor for Children, Youth, Families and Elders	Department of Motor Vehicles	Department of Youth Rehabilitation Services
Office of the Deputy Mayor for Operations	Executive Office of the Mayor	Office on Zoning
Office of the Deputy Mayor for Planning & Economic Development	Office of the Neighborhood Action	Office of Personnel
Office of the Deputy Mayor for Public Safety and Justice	Department of Parks and Recreation	Personal Property Division
Board of Elections & Ethics	Office of Partnerships and Grants Development	
Emergency Management Agency		

Source: Office of Contracting and Procurement.

Note: GAO did not independently verify all the entities. We relied on information provided by the Office of Contracting and Procurement and did some limited reliability assessment through the course of our work and found the information to be sufficiently reliable for our purposes. Of the entities served by the Office of Contracting and Procurement, 55 provided fiscal year 2005 procurement data.

^aOne of the top five spending agencies in fiscal year 2005 in terms of millions of dollars spent on procurement. Specific reported amounts in procurement spending were \$180 million (Department of Transportation); \$123 million (Office of the Chief Technology Officer); \$123 million (Department of Health); \$110 million (Department of Human Services); and \$59 million (Metropolitan Police Department).

The District also has special requirements related to being the seat of the federal government. The fiscal relationship between the federal government and the District as well as city governance have been perennial questions for Congress, and the District's local autonomy has

evolved significantly in the last 30 years.⁵ In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act or Home Rule Act,⁶ which established the structural framework of the current District government. The Home Rule Act allowed for an elected Mayor and a council with certain delegated legislative powers. However, Congress explicitly reserved legislative authority over the District.⁷ The Home Rule Act generally provides a framework and processes for Congress to enact, amend, or repeal any act with respect to the District. Congress used this authority in the 1990s to enact laws intended to restore the city to financial solvency and improve its management in response to a serious financial and management crisis.⁸ Since the 1870s, the federal government has made financial contributions to the District's operations. In fiscal year 2006, federal government appropriations included \$603 million in special federal payments to the District with \$75 million for elementary, secondary, and post-secondary education initiatives.⁹

⁵ Appendix II provides more details on District governance and related procurement laws.

⁶ Pub. L. No. 93-198, (1973).

⁷ U.S. Constitution, Art. I, Section 8, Clause 17 provides authority for Congress with respect to governance of the District.

⁸ For example, the District of Columbia Financial Responsibility and Management Assistance Act of 1995 created a temporary federal control board, which supplanted most of the elected Mayor's powers and established the authority to review and approve all legislation passed by the Council; it also created a Chief Financial Officer (CFO) and added powers to the District's inspector general. In September 2001, the control board suspended its authority. In 2006, the 2005 District of Columbia Omnibus Authorization Act includes provisions to permanently establish the CFO office and require the CFO to prepare annual budget submissions. Pub. L. No. 109-356, § 201, amending § 424 of the Home Rule Act.

⁹ Transportation, Treasury, and Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115 (2005). For more information on the District's fiscal relationship with the federal government, see GAO, *District of Columbia: Structural Imbalance and Management Issues*, [GAO-03-666](#) (Washington, D.C.: May 22, 2003).

Amendment to the District's Procurement Law Aimed at Addressing Reported Challenges

In 1997, the council, with the Mayor's approval, amended the District's procurement law to centralize procurement under one contracting office, which would be the exclusive contracting authority for all procurements covered under the act.¹⁰ The amendment also authorized the Office of Contracting and Procurement to be headed by a CPO who would be appointed by the Mayor for a 5-year term, with the advice and consent of the council, and could only be removed from office for cause. The CPO was required to have no less than 7 years of procurement experience in federal, state, or local procurement. The CPO, by delegation of the Mayor, was given the exclusive contracting authority for all procurements covered under the law.

The amendment was enacted around the same time that various procurement studies were published, with one describing procurement in the District as "in crisis"—as evidenced by over 600 contracts expiring in 90 days and a rushed response to ensure that vital services were not interrupted. The studies reported that procurement processing was inconsistent and responsibilities were widely distributed across the District; training for procurement personnel was insufficient and few were professionally certified; agencies maintained separate databases; and there was no acquisition planning process to define needs.¹¹ Centralization under the CPO's office was expected to improve the quality of the District's procurement operations by promoting accountability, decreasing procurement costs, eliminating duplication of effort, and increasing financial control and performance. In particular, it was reported that centralization of the acquisition function could allow the District to spend money more effectively by promoting more competition and through bulk purchases of goods and services used by multiple agencies.

Despite the expected benefits, the District's inspector general's and auditor's offices continued to identify deficiencies across the District's procurement system that frequently produce negative impacts on the

¹⁰ D.C. Law 11-259, effective April 15, 1997. The law expanded the procurement law's application to include independent agencies—which were previously excluded—and applied it to all departments, agencies, instrumentalities, and employees of the District government.

¹¹ These studies also found that the District's contracts suffered from insufficient funding; deficient specifications; vague and conflicting delivery requirements; inadequate proposal evaluations and cost analysis; long processing times after bid opening; lack of documentation supporting technical scores; and no justification for sole-source contract awards and technical evaluation plans.

integrity and operations of the District. Moreover, for the past 5 years, the inspector general's annual reports have cited procurement as a significant area of concern due to lapses in contracting operations resulting in costly inefficiencies, fraud, waste, and abuse. Some of the persistent problems reported by District auditors and inspectors include the following—many of which are similar to those that prompted the 1997 law:

- Outdated procurement law and regulations that fail to effectively address long-standing procurement deficiencies, policies, and procedures for all aspects of the process specifically in the areas of solicitation, awarding, and monitoring of contracts.
- Lack of continuity in procurement law, policies, and procedures as applied to some agencies.
- Noncompliance with procurement law and regulations, and lax accountability over individuals for not complying with the District's guidelines.
- Ineffective competition and overuse and misuse of sole-source contract awards.
- Unauthorized commitments and purchases by District personnel from vendors without valid written contracts.
- Failure to conduct advanced planning for known projects and procurement requirements that lead to costly sole-source acquisitions often based on faulty justifications.
- Insufficient independent oversight of agencies that expend significant resources for information technology, construction, and communication projects.
- Managers not ensuring a sufficient number of experienced procurement personnel, proper training, and certification of procurement workforce.

Characteristics of an Effective Public Procurement System

The objective of a public procurement system is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy goals. The federal government achieves this through guiding principles established in the FAR. NASPO and the ABA model procurement code have also established key guiding principles and practices that are generally accepted and should be

incorporated into an effective procurement system. In addition, our work has identified best practices and other accepted elements that are essential for an efficient and accountable acquisition function. Key characteristics of a successful procurement system include:

Transparency—Comprehensive procurement law with clear and written policies and procedures that are understood by all sources.

Accountability—Clear lines of procurement responsibility, authority, and oversight. State and local governments recommend the CPO have full-time, sole, and direct responsibility for the procurement program.

Integrity—Public confidence earned by avoiding any conflict of interest, maintaining impartiality, avoiding preferential treatment for any group or individual, and dealing fairly and in good faith with all parties.

Competition—Specifications that do not favor a single source and solicitations widely publicized to benefit from the efficiencies of the commercial marketplace.

Organizational Alignment and Leadership—Appropriate placement of the acquisition function in the organization to cut across traditional organizational boundaries with stakeholders having clearly defined roles and responsibilities. For state and local governments to operate effectively, recommended practice is central leadership in the executive branch.

Human capital management—Competent workforce responsive to mission requirements, with continued review and training to improve individual and system performance.

Knowledge and information management—Technologies and tools that help managers and staff make well-informed acquisitions decisions.

The District's Procurement Law Does Not Promote Transparency, Accountability, and Competition

The District lacks a uniform procurement law that applies to all District entities and that provides the CPO with adequate authority and responsibility for the entire acquisition function—an essential component to promoting transparency, accountability, and competition. In addition, the law has been amended to exempt certain District entities and procurements from following the law's competition and other requirements. According to current and former District procurement officials, District entities are seeking to expand independent procurement authority—a move that would undermine attempts to establish a central authority. Finally, the law limits competition by broadening the exceptions under which sole-source contracts can be awarded; authorizing dollar thresholds for small purchases that are higher than those provided for in other city and federal government procurement regulations, including the FAR; requiring the use of a local supply schedule with limited vendors for a variety of goods and services; and encourages agencies under certain circumstances to bypass contracting rules to directly pay vendors without valid written contracts. In contrast, other cities' procurement laws emphasize the competitive process and having a strong centralized authority for their CPOs in order to safeguard the integrity of their procurement systems.

District Lacks a Procurement Law That Applies to All Entities and Provides Clear Authority to the CPO

Contrary to sound procurement principles and practices as identified by a variety of sources, the District lacks a uniform procurement law that uniformly applies to all District entities and provides clear authority to the CPO. To promote transparency, accountability, and maintain integrity of public procurement, NASPO and the ABA model procurement code for state and local governments describe concepts for creating a uniform procurement law that provides for central management of the entire procurement system and broad discretion and authority to a CPO to implement policies. Similarly, in the federal procurement system, the FAR establishes uniform policies and procedures for acquisition by most executive agencies under the President. Without such a foundation, the District's procurement system is vulnerable to poor acquisition outcomes and less capable of maintaining public trust.

Twelve District entities, including the Water and Sewer Authority and Housing Authority, are not under the authority of both the District's procurement law and Office of Contracting and Procurement, and are

allowed to follow their own procurement rules and regulations.¹² In many cases, the procurement law specifically exempts these entities from following the law, which is contrary to the central statutory purpose of the District's procurement law to (1) eliminate overlapping or duplication of procurement activities; (2) improve the understanding of procurement laws and policies by organizations and individuals doing business with the District government; and (3) promote the development of uniform procurement procedures governmentwide. As a result, the District's law has created a procurement environment where some entities follow different rules and practices, undermining the District's ability to capture an overall view of its procurements as well as placing an added burden on vendors to understand how to do business with the District.

According to NASPO, it is essential to have one uniform law that applies to all agencies and their procurements and exclude blanket exemptions for any executive agency or department. If exclusions are necessary, the law should define them narrowly by types of goods and services procured. NASPO state procurement leaders we spoke with said that they would be unable to effectively run their own procurement systems without one governing law. Without it, vendors are discouraged from competing since they do not know what rules apply, which increases the risk that taxpayers pay more for goods and services. According to several former and current CPOs in the District, not having a uniform procurement law that governs all entities has been problematic in ensuring transparency, accountability, and oversight. Officials from other cities we reviewed agreed that having a common procurement framework is critical for ensuring transparency and integrity in the procurement system. Atlanta, for example, has one procurement law that governs all agencies, which allows agencies, vendors, and contracting employees to have a clear and consistent view of how procurements should take place.

The law also fails to provide a service agency that would be the exclusive contracting agency for all District procurements under the Mayor's direction. NASPO calls for a centralized procurement official with the authority and responsibility to, at a minimum, develop standardized policy and procedure, delegate procurement authority to executive agencies, provide expert assistance and guidance on procurement issues, and

¹² The D.C. Housing Authority is exempt from the authority of the Office of Contracting and Procurement and the District's procurement law, except for the provisions regarding the jurisdiction of the Contract Appeals Board for contract protests, appeals, and claims arising from procurements of the Housing Authority. D.C. Official Code § 2-303.20 (m).

oversee the acquisition process. While the statutory purpose of the 1996 amendment to the procurement law was to centralize procurement in the Office of Contracting and Procurement headed by a CPO, the law does not give the CPO sole authority over the full spectrum of procurement activities in the District. For example, although the law allows the CPO to delegate procurement authority to employees of District entities covered under the law and to the CPO's own staff in the Office of Contracting and Procurement, the council, with the Mayor's approval, has used its authority to pass emergency laws exempting entities and procurement actions from the CPO's authority.¹³

The council's use of its emergency act authority has been problematic in certain cases where it exempted District entities from conducting their procurements through the CPO's office. For example, in October 2006, the council amended the procurement law to provide the District's Board of Library Trustees procurement authority independent of the Office of Contracting and Procurement and the District's procurement law—contingent upon the board issuing its own procurement regulations—except for provisions pertaining to contract protests, appeals, and claims.¹⁴ A senior official in the Office of Contracting and Procurement said that circumventing the CPO's authority in this case was not a solution largely because the library board trustees do not have the contracting experience or staff to exercise the new authority.¹⁵ NASPO recognizes that to ensure the appropriate level of transparency and accountability and to preserve the integrity of the procurement system, it is critical that the CPO have sole responsibility for delegating procurement authority.

¹³ A permanent act requires approval of both houses of Congress while an emergency act, which is only effective for 90 days or less, does not. Appendix II provides more information on the District's laws and procedures.

¹⁴ Other amendments to the law between 2000 and 2005 exempted the District of Columbia Public Schools, Department of Mental Health, and Child and Family Services Agency from the CPO's office in order to give them independent procurement authority. D.C. Official Code § 2-301.04, D.C. Official Code § 2-303.20.

¹⁵ According to a District official involved, the board asked the Mayor for independent procurement authority because, in its view, the CPO's office could not support the libraries' contracting needs. However, this advocate also acknowledged that the board lacked the expertise needed and indicated that the board intends to outsource the entire procurement function.

According to the District's current and former CPOs, agencies and the council are pushing to expand independent procurement authority through exemptions. These efforts, if successful, could further undermine efforts to establish a central authority—a key objective of the procurement law amendment more than a decade ago. NASPO state procurement leaders as well as current and former CPOs in the District told us that this is a move in the wrong direction and that amendments to the procurement law should only be made to introduce more effective procurement methods or when current laws no longer make sense.

In addition to authorizing agencies to award their contracts independently of the CPO, the council has eliminated the CPO's sole authority to debar or suspend contractors from future contracts for various reasons, such as conviction of certain offenses.¹⁶ In 2003, the council eliminated this authority after the then-CPO debarred one vendor who pleaded guilty in federal court to conspiracy in giving cash bribes to District public works officials in return for falsified orders for asphalt-delivery.¹⁷ Prior to this time, the procurement law gave the CPO sole authority for suspensions and debarments. According to both a former CPO and a current senior procurement official who were involved in this case, the procurement law was amended to establish an interagency suspension and debarment panel that reconsidered the CPO's decision in this case as well as made final decisions in all future cases.¹⁸ After the panel's reconsideration, the vendor was allowed to resume doing business with the District. To ensure a strong, central procurement system, NASPO recommends that CPOs have sole authority to implement a range of remedies for poor vendor performance, including suspension and debarment.

¹⁶ A suspension is a temporary exclusion of a contractor from consideration for award of contracts or subcontracts based on certain convictions, judicial determinations of certain contract violations, or charges of certain offenses. D.C. Official Code § 2-308.04. A debarment may be a 3-year exclusion from consideration based on these circumstances. Under the FAR, agency heads or designees (debarring or suspending officials) rather than contracting officers make debarment and suspension decisions. FAR 9.403. The FAR provides discretion to officials in developing a suspension and debarment decisions. FAR 9.406-1(a).

¹⁷ The Debarment Procedures Emergency Amendment Act of 2004, D.C. Law 15-327 (codified at D.C. Official Code § 2-308.04).

¹⁸ The interagency suspension and debarment panel was established in 2003 and includes the CPO as well as representatives from the offices of the CFO and labor relations and collective bargaining; deputy Mayors for planning and economic development and operations; and agencies deemed affected by the proposed action against a vendor.

Other Exemptions in the Law Further Undermine Transparency and CPO Authority

The council, with approval from the Mayor, has further amended the law to exempt temporarily or permanently certain agencies from following the procurement law's requirements for competition or conducting their contracts through the CPO. For example, in June 2006, the council exempted the Director of the Department of Health from following the competition and other requirements of the procurement law and allowed the Director to select and contract with a vendor for an air quality study of the Lamond-Riggs park within 30 days.¹⁹ In another case, in June 2006, the council, with the Mayor's approval, exempted the Office of Contracting and Procurement from following its procurement law for awarding a construction contract on behalf of the Department of Youth Rehabilitation Services for a youth center at Oak Hill.²⁰ A senior District procurement official told us that despite this exemption, the office intends to award competitively.

According to senior procurement officials in the CPO's office, entities seek exemptions believing that working through the CPO or the competitive process required by the law takes too much time.²¹ Current and former District officials noted that in giving some entities their own temporary procurement authority through exemptions in the law, the council and Mayor have, in effect, created a culture of resistance to centralized management and oversight of the acquisition function. One senior District procurement official told us that such exemptions also create inequities among agencies; explicitly discourage competition—contrary to the statutory purpose of the law;²² and occasionally show preferences for certain agencies and vendors. A former District executive and former CPO told us that such exemptions have over time distorted the procurement law and made it difficult for any vendor interested in doing business with the District to understand how and to whom the procurement law applies. Further, it is questionable why the council would use emergency act authority to make noncompetitive awards given that the procurement law

¹⁹ Lamond-Riggs Air Quality Study Temporary Act of 2006. D.C. Law 16-113.

²⁰ The Oak Hill Construction Streamlining Temporary Amendment Act of 2006. D.C. Law 16-136.

²¹ In addition, District procurement officials told us of the inability of these agencies to effectively carry out their temporary delegations of procurement authority as demonstrated by the agency heads seeking informal assistance from the CPO's office. These officials told us that the CPO's office helps the agencies prepare the contracts for award, but does not sign the awards because they would not be authorized to do so.

²² D.C. Official Code § 2-301.01(a)(2).

and implementing regulation already establish procedures for these types of procurements.²³

NASPO state procurement officials we spoke with voiced concerns over exemptions that would give certain agencies the authority to operate under their own rules or no rules at all and jeopardize the integrity of their public procurement system. Moreover, they said that such exemptions further undermine the CPO's authority over the District's procurement system and ability to develop consistent procurement policy. Other cities we reviewed have faced similar challenges with what they called "political influence" in the procurement process. New York's CPO told us the city council plays no role in making procurement policy and under no circumstances would the council be allowed to pass exemptions to the city's procurement law similar to those passed in the District.

Other Provisions in the District's Procurement Law Create Barriers to Competition

Long-standing procurement principles, policies, and procedures implemented in the FAR²⁴ and recommended by NASPO and the ABA model procurement code recognize that maximizing the use of competition ensures governments receive the best value in terms of price and quality. According to a procurement law expert who participated in a GAO forum on federal acquisition challenges and opportunities,²⁵ contractor motivation to excel is greatest when private companies, driven by a profit motive, compete head to head in seeking to obtain work.²⁶ Consistent with this fundamental principle, the District's procurement law

²³ The D.C. Council can introduce emergency legislation when there is a situation that adversely affects the health, safety, welfare, or economic well-being of a person for which legislative relief is deemed appropriate and necessary by the council, and for which adherence to the ordinary legislative process would result in delay that would adversely affect the person whom the legislation is intended to protect. Similarly, the procurement law and implementing regulations allow the contracting officer to make an emergency procurement when there is an imminent threat to the public health, welfare, property, or safety under emergency conditions. D.C. Official Code § 2-303.12(a)(1) and 2-303.05(a)(4) and as implemented by 27 DC ADC 1710-10.2.

²⁴ The Competition in Contracting Act of 1984, Pub. L. No. 98-369 requires all acquisitions, with some exceptions, to be made using full and open competition. FAR part 6 provides seven exceptions to full and open competition.

²⁵ GAO, *Highlights of a GAO Forum: Federal Acquisition Challenges and Opportunities in the 21st Century*, GAO-07-45SP (Washington, D.C.: Oct 6, 2006).

²⁶ Professor Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, Public Law and Legal Theory Working Paper No. 37, George Washington University Law School (Washington, D.C.: 2002).

Broad Authority for Sole-Source Contracting

mandates that full and open competition is the preferred acquisition method. However, certain provisions in the District's procurement law have resulted in a public procurement system that emphasizes flexibility and speed over competition. Specifically, the law (1) authorizes sole-source contracting under broad provisions, (2) establishes higher dollar thresholds for limited competition small purchases than are allowed in other cities or the FAR, and (3) mandates the use of a local supply schedule with a limited number of vendors—each of which permits use of streamlined acquisition methods for high dollar procurements that result in limited or no competition.

Both NASPO and the FAR recognize that circumstances sometimes make it difficult or impossible to conduct formal competitive procurements and that in such cases, the use of sole-source procurements is warranted. However, NASPO and the FAR also recognize that such procurements should only be permitted under narrowly defined conditions²⁷ and should always be properly justified.²⁸ They state that to ensure transparency in these types of procurements, the law should also require legal notice of intent to initiate a sole-source procurement over a determined dollar value. While recognizing there are situations in which competition must and should be limited, NASPO states that artificially restricting competition when competition is possible defeats a central tenet of public procurement.

Rather than restrict the conditions under which sole-source procurements can occur, the District's procurement law has been amended—as recently as 2002—to expand exceptions to full and open competition.²⁹ Although complete data District-wide on sole-source contracting are unavailable, over 14 percent—or \$173 million—of the fiscal year 2005 reported

²⁷ Such conditions include when there is only one vendor of a necessary good or service or during a declared emergency.

²⁸ To prevent the misuse of sole source provisions, the FAR and District procurement regulations describe explicit limitations on each exception. For example, both procurement regulations state that sole-source contracts shall demonstrate the authority under which they are awarded and shall not be awarded on the basis of a lack of advance planning or the pending expiration of program funds. The District's regulation also requires that contracting officers avoid using sole-source procurement except when it is both necessary and in the best interests of the District.

²⁹ The Procurement Practices Negotiated Pricing Amendment Act of 2001, effective March 19, 2002, amended section 2-305.05 (a) of the procurement law to establish the (3A) provision. (D.C. Law 14-083; D.C. Official Code § 2-305.05 (a)(3A) *et seq.*).

procurement spending through the Office of Contracting and Procurement was on a sole-source basis. Of the District's various sole-source provisions, three account for the majority of sole-source contracts and spending (see table 2). Of the three provisions, one is similar to an equivalent provision in the FAR, while the remaining two provisions have no equivalent. Senior procurement officials and former CPOs pointed out that these provisions in the procurement law establish a wide range of circumstances to bypass competition.

Table 2: District Procurement Law Provisions Permitting Sole-Source Contracting and Awards in Fiscal Year 2005 under These Provisions

Dollars in millions

Procurement law provision	Criteria or circumstance justifying sole-source contracting	Number of sole-source contracts awarded	Dollar value of sole-source contracts awarded
§ 2-303.05 (a) (1)	Only one supplier (single available source) can provide the good or service requested	296	\$79.4
§ 2-303.05 (a) (3)	The contract is with a vendor who maintains a price agreement or schedule with any federal agency	283	88.9
§ 2-303.05 (a) (3A)	The contract is with a vendor who agrees to adopt the pricing of a vendor who maintains a price agreement or schedule with any federal agency	119	3.6
§ 2-303.05 (a) (4)	Procurements that would ordinarily be purchased on a competitive basis, but an emergency has been declared	2	1.3
Total		700	\$173.2

Source: GAO analysis of information from the Office of Contracting and Procurement on sole-source contract awards.

Note: Complete data are not available on sole-source contract awards in 2005 for all of the District's organizations, such as the public schools or Department of Mental Health.

Over 40 percent of the District's fiscal year 2005 sole-source contracts were awarded under provision (a)(1), which similar to an equivalent FAR provision, requires agencies to justify that there is only one available

source for a good or service.³⁰ Of the 296 contract awards under this provision, 45 percent were made by the Office of the Chief Technology Officer (OCTO) for a variety of information technology and telecommunication services. According to NASPO officials we spoke with, typically more than one vendor in the commercial marketplace provides these services and the services would normally be competed. In 2005, the District's inspector general reported on questionable single available source justifications involving information technology services.³¹ According to the inspector general, there were numerous competing firms that could have satisfied the District's needs for eight selected single available sole-source contracts they reviewed. For three sole-source contracts for general purpose commercial information technology equipment, software, and service, the inspector general found that there were 700 vendors eligible to compete through the District's supplier database and another 113 vendors located in the District eligible to compete through the federal supply schedules. Overall, the inspector general concluded that the District could have potentially saved at least \$589,000—over 24 percent—of the \$2.5 million for the sole-source contracts awarded.

More than half of the fiscal year 2005 sole-source contracts were awarded through the (a) (3) and (a) (3A) provisions, which permit agencies to award sole-source contracts to any vendor who agrees to charge according to a schedule of prices for federal agencies. Unlike the District's single available source provision, these provisions have no equivalent in the FAR or NASPO and ABA procurement guidance for state and local governments. According to a senior District procurement official, these two procurement law provisions were intended to save time in the District's procurement process by piggybacking off the prices previously

³⁰ FAR 6.302-1 states that an executive agency need not provide for full and open competition when the supplies or services required are available from only one responsible source and no other type of supplies or services will meet the agency requirement. The FAR provision defines a very limited number of circumstances under which a supply or service may be considered to be available from only one responsible source and provides detailed written justification and certification requirements. As implemented in the District's procurement regulations, the law's single available source provision states that a contracting officer may award a contract by using noncompetitive negotiation upon making a determination and findings that there is only one available source for a supply, service, or construction and that the District's minimum needs can only be met by this source.

³¹ Office of the Inspector General, Government of the District of Columbia, *Audit of Contracting Actions for the District's Administrative Services Modernization Program*, OIG No. 04-1-12MA (Washington, D.C.: May 3, 2005).

set as a result of the prior competition—primarily contracts awarded to District and other vendors under the General Services Administration’s (GSA) multiple award schedule (MAS) program. The use of sole-source provisions as a time-saving measure appears to conflict with the District’s own procurement regulations, which calls for contracting officers to avoid sole-source procurements except where necessary.

GAO’s work has also found that while MAS has provided the federal government with a more flexible way to buy commercial items and services, contract negotiators do not always use the full range of tools to ensure the government effectively negotiated prices.³² As a result, the federal government has missed opportunities to save millions of dollars in procuring goods and services. By eliminating competition altogether and awarding sole-source contracts to vendors based on MAS pricing, the District may be similarly missing significant cost-saving opportunities. Moreover, the District may be at greater risk because its sole-source use of the federal supply schedule is not subject to the FAR,³³ and the District’s implementing procurement regulation does not provide specific guidance on the use of the (a)(3) and (a)(3A) provisions.³⁴ A senior procurement official we spoke with noted that the CPO’s office recently started requiring District contract officers to additionally justify their use of these methods after growing concerned about the large number of sole source contracts being awarded.

To ensure they get the best value for the taxpayer dollar, other cities we reviewed have taken steps to emphasize competition over sole source. These officials recommended that a procurement law—similar to statutes

³² GAO, *Contract Management: Opportunities to Improve Pricing of GSA Multiple Award Schedules Contracts*, GAO-05-229 (Washington, D.C.: Feb. 11, 2005) and *Contract Management: Opportunities Continue for GSA to Improve Pricing of Multiple Award Schedules Contracts*, GAO-05-911T (Washington, D.C. July 26, 2005).

³³ FAR 8.4 sets forth substantial procedures for federal agencies’ use of the multiple award schedules contracts to procure goods and services. For instance, in procurements exceeding the micro-purchase threshold—\$3,000 with certain exceptions—the FAR requires ordering activities to place orders with the schedule contractor that represents the best value; requires ordering activities to seek price reductions; and sets forth minimum documentation requirements. In procurements for services that require a statement of work, the FAR requires the ordering activity to create a request for quotation; provide it to schedule contractors; and evaluate each response received before making the order.

³⁴ Though the District’s procurement regulation does not provide specific guidance for the use of the (a)(3) and (a)(3A) provisions, it does require a general determination and findings to justify use of sole-source authorities.

High Dollar Thresholds for Limited Competition Small Purchases

implemented in the FAR—narrowly define sole-source contracting and require that such actions be properly justified and documented. For example, in Atlanta, sole-source contracts may only be awarded when the CPO determines after conducting a good-faith, due diligence review of available sources that there is only one available source for the required good or service. Even for emergencies, Atlanta’s procurement law requires the CPO to use competition to the maximum extent practicable, and sole source may only be considered in the case of a threat to public health, welfare, or safety. According to Atlanta’s CPO, in fiscal year 2005, only five sole-source contracts were awarded. Similarly, New York’s procurement rules specify only one condition or circumstance in which sole-source contracting is permitted for purchases above \$5,000; there is only a single available source and competition is not possible.

For purchases under a certain dollar threshold, the administrative costs to formally compete may outweigh the benefits of competition. In such cases, procurement systems may permit streamlined acquisition procedures with limited competition for purchases not exceeding a specified dollar threshold.³⁵ In the District, small purchase procedures streamline the process by limiting competition to oral or written price quotes from only a few vendors, or eliminating competition altogether (see table 3).

Table 3: Limited Competition Procedures for Small Purchases in the District of Columbia

Small purchase threshold	Small purchase procurement procedure
Less than or equal to \$10,000	Contracting officer may make non-competitive procurement
Above \$10,000 and less than or equal to \$25,000	Contracting officer must obtain three oral price quotes
Above \$25,000 and less than or equal to \$100,000	Contracting officers must obtain three written quotes

Source: Office of Contracting and Procurement.

Note: For OCTO and the Metropolitan Police Department purchases, the small purchase threshold for no-bid procurement is less than or equal to \$25,000. For purchases over \$25,000, the contracting officer must get three written quotes.

For the District, a series of legislative changes since 1985—when the small dollar threshold for small purchases was \$10,000—have increasingly

³⁵ Section 13.003 of the FAR provides guidance on federal small purchase thresholds.

raised the threshold for some entities, expanding the opportunities to limit competition. Currently, the District's small purchase threshold is \$500,000 for OCTO and the Metropolitan Police Department and \$100,000 for all other entities.³⁶ The District's small purchase authority allows for somewhat larger limited competitive purchases than that authorized in the FAR. Under the FAR's micro-purchase authority, competition is not required for purchases up to \$3,000 when the contracting officer determines that the price is reasonable. For small purchases between \$3,001 and \$100,000, the FAR's simplified acquisition procedures require that the contracting officer promote competition to the maximum extent practicable. Generally, the contracting officer should consider obtaining at least three price quotes or offers from sources within the local area and evaluating those to determine the most advantageous to the government. Under the District's small purchase authority, competition is not required for purchases up to \$10,000 when the contracting officer determines that the purchase is in the best interest of the District. Moreover, contracting officers in the District are allowed to waive the competitive small purchase procedures under broad circumstances—such as time constraints and lack of available sources—when it is impractical to obtain the required number of quotes.

In fiscal year 2005, over 75 percent of the District's procurements through the Office of Contracting Procurement were for small purchases totaling \$163 million. However, small purchase procurements could increase in the future. According to one senior District procurement official, there is a move to increase the small purchase threshold from \$100,000 to \$500,000 for all agencies—a limit five times as high as that prescribed in the FAR. State and city procurement officials voiced concern that the District would consider this change in an effort to expedite procurements by allowing limited competition methods.³⁷ NASPO state procurement officials we interviewed were surprised at how high the District's small purchase

³⁶ The Procurement Practices Act of 1985 established the small purchase threshold at \$10,000 for all District agencies. In 2002, the District amended the procurement law to include a small purchase threshold of \$500,000 for the Metropolitan Police Department and OCTO and \$100,000 for all other departments, agencies, and instrumentalities. D.C. Official Code § 2-303.21.

³⁷ According to NASPO, the dollar thresholds for triggering the formal competition process for non-small purchases have increased over the years; yet, most states require some competitive quotations for small dollar procurements. NASPO's small purchasing procedures call for soliciting a minimum of three oral or written quotations to afford the best practice and to ensure price comparisons.

thresholds were set, and viewed this as one of the procurement law's major barriers to competition. Each of these officials said that they consider such amounts to be large purchases, particularly at the \$500,000 level. As one senior procurement official in the District put it, "just about anything can be considered a small purchase in the District."

Other cities we reviewed see the economic and quality benefits of competition when larger procurements are involved, such as those the District considers small purchases. In Atlanta, for example, the small purchase threshold is \$20,000 and New York, which spends over \$11 billion per year on procurement, only recently increased its small purchase threshold to \$100,000. According to the Atlanta CPO, raising small purchase limits across the board ultimately compromises the integrity of the procurement system by reducing transparency over procurement decisions and source selection. One District official remarked that, if these types of changes continue in their current direction, the District will no longer have a recognizable procurement system.

Reliance on Local Supply Schedule

The District of Columbia Supply Schedule (DCSS) program also limits competition by restricting the pool of vendors for a variety of goods and services to local companies; requiring entities to use the schedule as a first source for all procurements \$100,000 and below; and allowing limited competition for purchases over \$100,000—to a ceiling as high as \$10 million for certain services. At the same time, there is no mechanism in place to ensure that the incumbent vendor does not receive all DCSS contracts for a particular schedule. NASPO has recognized that balancing the need to promote socioeconomic goals with the need to ensure maximum competition is an ongoing challenge. However, NASPO recommends caution in the use of supply schedule programs, such as the DCSS, because while there is the presumption of best value, competition among vendors is often limited with no incentive to offer best price.

The DCSS program was established in 2002 to help achieve the District's local and small and disadvantaged requirement established in its procurement law and expand the District's tax base. According to a former District executive, the DCSS program was also intended to expedite agencies' small purchases of common and routine items for which competition would not be practical, such as office and janitorial supplies. The current program is the primary vehicle for supporting the District's

small, local, and disadvantaged business enterprises (LSDBE) and requires that District entities use DCSS small business entities to make purchases of \$100,000 and below.³⁸ This mandatory use of the DCSS ultimately limits the pool of vendors for a number of goods and services, which for some of the schedules is fewer than three vendors. Though it may appear similar to GSA's MAS program of federal supply schedule contracts, the DCSS serves a different purpose. Under the FAR, the purpose of the GSA supply schedules program is to provide federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. The FAR provides extensive guidance on the use of the schedules to achieve that purpose. In contrast, the DCSS is designed to promote LSDBEs and lacks the type of comprehensive guidance provided to the federal supply schedules by the FAR.

According to NASPO, unlimited use of supply schedules limits competition and can increase costs because vendors have no incentive to meet the best price of their competitors. Further, open-ended contracts for the same goods or services are awarded to many more vendors than needs appear to demand, removing any consideration of need and price from the purchasing decision. In fiscal year 2006, reported contract awards off of the DCSS—which contains 19 categories of goods and services with nearly 200 local vendors—totaled almost \$22 million (see table 4).

³⁸ To be eligible for the DCSS program, a vendor must first be certified as a LSDBE by the Department of Small and Local Business Development. To be eligible for an award on the DCSS, a contractor must adopt a federal contract schedule for services or products consistent with the scope of the DCSS application. This can be the vendor's own GSA MAS contract or another vendor's federal MAS contract. As discussed earlier, our previous work found that GSA does not always effectively negotiate MAS contract pricing and the federal government is missing opportunities to save millions of procurement dollars. By linking DCSS contract pricing to MAS pricing, the District may be similarly missing significant cost-saving opportunities.

Table 4: DCSS Program Schedule Categories and Number of LSDBE Vendors (as of October 27, 2006)

Dollars in thousands

Schedule category	Number of LSDBE vendors	Contract ceilings	Total fiscal year 2006 purchase
Information Technology Services	40	\$10,000	\$5,332
Mission Oriented Business Integrated Services	40	10,000	1,502
Temporary Support Services	22	5,000	5,696
Information Technology Products	2	5,000	52
Furniture and Furniture Management Services	7	2,000	1,563
Office Supplies, General	10	2,000	3,078
Industrial Services	6	900	1,575
Industrial Supplies and Apparel	7	900	489
Security Equipment and Services	9	850	513
Audit and Financial Management Services	7	500	171
Marketing and Media Services	14	500	506
Medical Equipment and Supplies	5	500	568
Moving and Logistics Services	5	500	356
Training Services	8	500	50
Advertising Services and Novelty Supplies	3	400	203
Engineering and Logistics Services	6	250	6
Food Services and Equipment	1	250	39
Printing and Document Management Services	2	250	53
Laboratory and Analysis Services	0	250	0
Total	194		\$21,752^a

Source: Office of Contracting and Procurement.

^aAccording to senior procurement officials, the discrepancy between the almost \$21.8 million in reported purchases (i.e., expenditures) with DCSS vendors and the almost \$30.9 million in orders awarded to DCSS vendors in fiscal year 2006 is due to separate contracting and procurement data systems being used to track these different types of transactions.

Some DCSS contracts are valued much higher than \$100,000, including some fiscal year 2006 awards to DCSS vendors valued at \$1 million and one award for \$5 million. Moreover, in 2006, the CPO's office raised the contract ceilings for individual DCSS vendors on several of these schedules including the information technology services schedule, which is now set at \$10 million. As a result, one DCSS information technology vendor could in 1 year potentially receive a single limited competition order worth up to \$10 million. NASPO officials we spoke with voiced concern about the ease with which the District makes what they would

consider large limited competition purchases off a supply schedule originally intended to limit competition only for small purchases.

In addition, District procurement officials told us that the DCSS program has limited guidance and no procedure in place to ensure that each vendor is provided a fair opportunity to be considered for orders. Under DCSS terms and conditions, contracting officers must follow small purchase procedures as described in table 3 when buying a good or service off DCSS. However, these officials said that it is up to the contracting officer to arbitrarily select three vendors from each schedule to obtain price quotes; according to District procurement officials, this typically includes the incumbent. For the 14 schedules that have more than three vendors, this discretion could prove unfair to certain vendors. The FAR, in contrast, advises contracting officers to request quotations or offers from two sources not included in the previous solicitation. According to District procurement officials, there is currently no requirement to monitor the use of the schedule to determine whether it is promoting small businesses overall or if a pattern of sole-source contracts to the same businesses is occurring. They told us this type of information would be beneficial to evaluating the effectiveness of the program and that an overall assessment of the current program may be needed to determine if it is meeting its original intent.

The District's Law Allows Payments for Unauthorized Commitments to Vendors

To safeguard the obligation of taxpayer dollars and protect the integrity of a public procurement system, a government's procurement law should grant exclusive authority to contracting officers for establishing contracts and restrict employees from making unauthorized commitments for goods and services. It should also grant the CPO the authority to ratify contracts and authorize payments for goods and services received without a valid written contract if certain conditions are met. Until recently, the District's procurement law appeared to emphasize these standards. Under September 1996 CFO guidance, direct voucher payments without having been first obligated in the District's financial management system could only be made in 21 specific non-procurement related circumstances—all of which were reasonable and included situations where the payees could not be determined in advance, such as court ordered fines, workers' compensation, jury duty fees, and medical payments for assault crime victims. However, in 2006, the council, with the Mayor's approval,

amended the procurement law that increased the circumstances under which such payments may be made.³⁹

Changing the policy may have had the unintended consequence of focusing agency personnel attention on the process of paying for unauthorized commitments rather than focusing on how to get management attention on preventing employees from entering into authorized commitments. According to financial management officials, in 2005, the District's CFO office reviewed over 21,000 direct voucher payments totaling \$556 million made in fiscal year 2004.⁴⁰ They stated that the purpose of the review was in part to determine to what extent these direct voucher payments resulted from unauthorized commitments by District agencies for goods and services. The analysis confirmed that of the vouchers reviewed, over 11,000 totaling \$217 million were not in compliance with 21 allowed uses under the 1996 CFO policy. Rather than take steps to hold agencies accountable for these violations, the CFO's policy was changed without consulting the CPO's office on the merits of the change. CFO officials told us their office determined it was necessary to accommodate agency circumstances for bypassing the procurement process to more promptly obtain goods and services needed for critical operations.

Under Financial Management and Control Order No. 05-002, issued July 22, 2005, and revised October 17, 2005, the CFO added 7 new circumstances for direct voucher payments to the 21 already included in the 1996 financial guidance. Five of the seven added circumstances were for new non-procurement related transactions, such as temporary welfare payments to families and certain lawsuit settlement payments. The remaining two are for procurement-related transactions, however, and are problematic. The first circumstance—which allows direct voucher payments for goods and services needed for an unanticipated and nonrecurring extraordinary emergency—duplicates provisions in the District's procurement law that establish procedures for handling such circumstances under emergency contracting procedures. A senior District procurement official said that direct voucher payments should not be

³⁹ The Procurement Practices Timely Competition Assurance and Direct Voucher Prohibition Amendment Act of 2006. D.C. Law 16-122.

⁴⁰ CFO staff told us the internal review was in response to a *Washington Post* report alleging that District agencies made \$446 million in direct voucher payments in 2004 to vendors for such unacceptable uses as computers and furniture.

made for emergency procurements. The second circumstance allows agencies to make direct voucher payments for liabilities incurred through unauthorized commitments to vendors for goods and services without valid contracts after payment has been ratified—a practice that could further encourage employees to bypass established contracting procedures.⁴¹

The District's inspector general has voiced a similar concern with this change and in December 2005 testimony called for a reexamination of the CFO's 2005 policy for allowing direct voucher payments for unauthorized vendor commitments that bypass contracting rules. More recently, the inspector general reported that in fiscal year 2005, District agencies greatly increased payment ratification requests for unauthorized vendor commitments and the procurement office ratified \$34 million in payments.⁴²

In the federal procurement system under FAR Part 1.6, the policy provides procedures for ratification actions to approve unauthorized commitments, but also states that these procedures may not be used in a manner that encourages such commitments be made by government personnel. Moreover, the FAR provides a ratification procedure that not only discourages unauthorized commitments, but allows for their approval if certain conditions are met. Specifically, under the FAR, the chief of a contracting office may ratify an unauthorized commitment only when the goods or services have been accepted; the ratifying official has the

⁴¹ Under District law, in order to pay vendors that have provided goods or services without a valid contract, agency directors must seek approval for unauthorized commitments by submitting a payment ratification request to the Office of Contracting and Procurement. In August 2006, this office established written procedures under Directive 1800.04 for the ratification of unauthorized commitments.

⁴² Office of the Inspector General, Government of the District of Columbia, *Office of Contracting and Procurement Part One: Report of Inspection*, OIG No. 06-0017-PO (Washington, D.C.: Aug. 23, 2006). Of this amount, \$33 million was to ratify payments for OCTO's unauthorized vendor commitments. Further, the inspector general stated that District employees are not consistently held accountable for unauthorized commitments. In another report, a senior official at the Department of Health, who did not have contracting authority, bypassed the normal procurement process by preparing and signing a letter authorizing a vendor to provide transportation services to medical appointments for Medicaid recipients. The contractor billed the department \$936,000 for these services and, after ratification was complete, received a direct voucher payment. (Office of the Inspector General, Government of the District of Columbia, *Audit of Contractual Arrangement for Non-Emergency Transportation of Medicaid Recipients*, OIG No. 05-2-18HC(a)(Washington, D.C.: May 5, 2006).

authority; the contract would have been proper if done by approved personnel; the price is reasonable; the contracting officer recommends payment; the funds were and are available; and the ratification complies with any additional agency regulations. In addition, the FAR states that cases of nonratifiable commitments may be subject to further referral and resolution under government claim procedures.

Allowing government agency personnel to circumvent the normal procurement process and enter into unauthorized commitments with vendors to perform services or deliver goods eliminates the opportunity for competition. After reviewing a draft of this report, CFO officials acknowledged the need to work with the Office of Contracting and Procurement to strengthen the District's ratification policy. They indicated that unauthorized commitments that cannot be ratified should be referred for possible Anti-Deficiency Act violations.⁴³ Accordingly, we revised our recommendations to the mayor and the CFO concerning the use of direct vouchers and the ratification process.

Other cities we reviewed have taken steps to curb the use of unauthorized commitments. For example, New York's CPO described the city's stringent controls and regular monitoring to detect and publicize agencies' unauthorized commitments with vendors as well as its discipline of employees for bypassing contracting rules—steps that have greatly decreased the number of unauthorized commitments in that city's procurement system.⁴⁴

⁴³ Under the Anti-Deficiency Act, District government officers as well as federal officials are prohibited from making obligations or expenditures in excess of amounts available in an appropriation or fund unless they are otherwise authorized to do so by law.

⁴⁴ In Atlanta, direct vouchers or "confirmation purchase orders" are only used when there is a dire need such as a threat to safety, welfare, or the financial security of the city and the procurement process would not apply. According to the CPO, they are reviewed very closely and often not approved. Similarly, the Baltimore CPO said that city has taken steps to curb the use of these type payments for goods and services valued at over \$1,000.

The District's Procurement System Does Not Reflect Sound Management and Oversight Practices

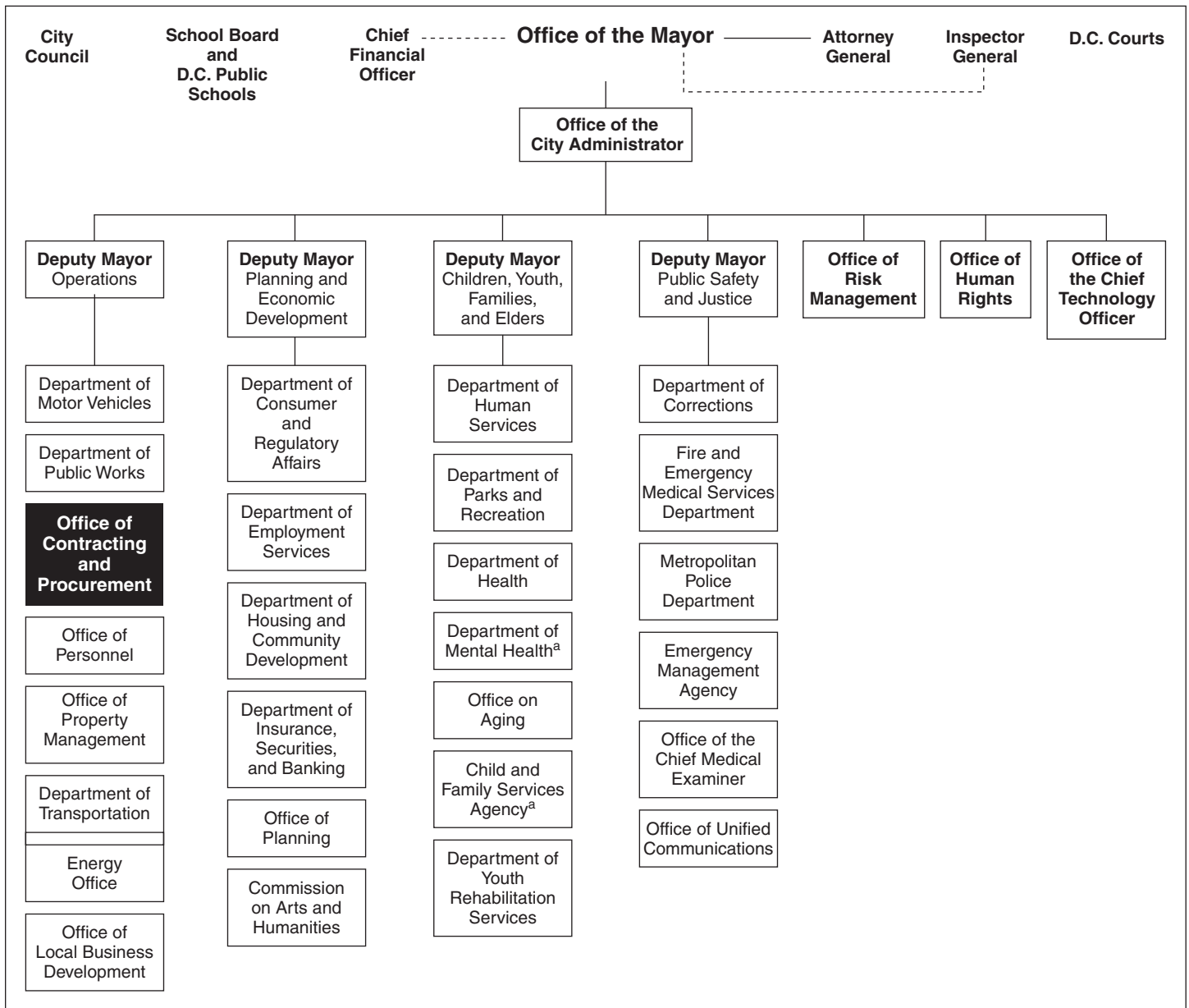
In addition to generally lacking a uniform procurement law that applies to all entities, promotes competition, and provides the CPO the authority to ensure sound procurement outcomes, the District's management and oversight of its procurements have lacked the rigor needed to protect against fraud, waste, and abuse. Specifically, the Office of Contracting and Procurement is positioned too low within the District's executive governmental structure to enforce agency compliance with policies and procedures, effectively coordinate procurement activities and acquisition planning, and sustain leadership. At the same time, the District's contracting managers and staff, agency heads and program personnel, and other key procurement stakeholders do not have the basic tools for ensuring sound acquisition outcomes, including written guidance on the District's procurement policies and procedures, a professional development program and certification requirements for contracting staff, and an integrated procurement data system. Although the District and Congress have taken actions to address management and oversight challenges, many remain largely unaddressed.

Low-Level Position of the Office of Contracting and Procurement Undermines Management and Oversight

The low-level placement of the Office of Contracting and Procurement undermines the office's ability to effectively manage and oversee the District's procurements across dozens of agencies and departments. NASPO and GAO have stated that the central procurement office's effectiveness is clearly linked to its location in the government structure and that placing the office at a high level is critical to ensuring effective direction, coordination, and control over a government's procurement spending. Procurement is viewed as a strategic, service function within the executive branch with the central procurement authority being a key policy and management resource for the chief executive. The low-level placement of the District's procurement office has led to high CPO turnover and a lack of sustained leadership, significantly impeding progress expected from the 1996 law.

Within the District's government structure, the Office of Contracting and Procurement is placed under the Deputy Mayor for Operations—essentially relegating procurement to an administrative and operations support function—as further evidenced by its position in relation to those agencies that procure through this office (see fig. 1).

Figure 1: The Office of Contracting and Procurement Placement in the District of Columbia's Government Structure



Source: District of Columbia fiscal year 2006 budget (data); GAO (analysis and presentation).

^aEntities that procure their goods and services independently of the Office of Contracting and Procurement.

According to former CPOs and current procurement officials, the low-level position denies the CPO direct access to the city administrator, agency

heads, and deputy Mayors other than the Deputy Mayor of Operations. As a result, this limits the CPO's ability to affect budget, program, and financial management decisions. A former District official told us that to improve management and oversight of the procurement system, the CPO needs to be at all executive meetings to raise procurement issues that cut across agency lines. This official told us that it would be helpful to elevate the CPO's office to a high level similar to other centralized cross-government functions, such as the Office of the Chief Technology Officer, which is responsible for all meeting all of the District's information technology needs.

The low-level position of the CPO's office in the District's governmental structure has also undercut the CPO's ability to influence day-to-day procurements across the District. According to several senior District procurement officials, agencies often bypass the procurement office and do not consult the CPO's designated contracting officer when initiating procurements—a practice that has led to unfavorable acquisition outcomes. For example, the District's auditor reported in 2005 that the offices of the Mayor and city administrator failed to involve the CPO's office and violated contracting rules by entering into unauthorized commitments with a vendor for international trade mission services without a valid written contract, making the commitment invalid.⁴⁵ Ultimately, the CPO's office was left to ratify a transaction that did not conform to the procurement law or regulations.

One impact of CPO's low-level placement is manifested in the inability of the CPO to ensure effective acquisition planning—a critical process for anticipating future needs, devising contracting programs to meet these needs, and arranging for the acquisition to promote competition and use of

⁴⁵ District of Columbia Auditor, *Letter Report: Sole Source Agreements Issued by the Executive Office of the Mayor and Office of the City Administrator Failed to Comply with Procurement Law and Regulations* (Washington, D.C.: June 3, 2005).

necessary resources.⁴⁶ CPOs from the other cities we reviewed consider acquisition planning as critical to managing the procurement system and maximizing competition, and have put in place mechanisms and tools to regularly address planning. In Atlanta, for example, the CPO requires his contracting staff to meet bi-weekly with agency officials to plan for expiring contracts and new requirements. Agencies are also required to submit a quarterly report to the CPO detailing their procurement needs. In New York, agencies awarding contracts must submit a draft plan detailing anticipated procurement actions. They are also required to hold public hearings on their plan within 20 days of its issuance and provide notice of the hearings 10 days in advance.

While the District has a process in place to facilitate acquisition planning across agencies, the CPO lacks the ability to hold agencies accountable for submitting accurate and timely plans. According to former CPOs and current senior procurement officials, District entities in general do not understand the importance of acquisition planning or involving the CPO's office in planning efforts. Consequently, agencies largely view the required annual plans as a paper drill. In recent years, the CPO's office has tried to improve acquisition planning across the procurement system without much success. For example, in 2000 the then-CPO implemented a new acquisition planning tool that was aimed at guaranteeing short turnaround for small and simple buys and sharing workload with partner agencies on larger, more complex buys. Though this was the original intent, CPO contracting officers we spoke with do not use the plans to schedule procurement support activities for their agencies. Our analysis of selected contracts conducted by the CPO's office in 2005 for three agencies against procurements listed in their 2005 acquisition plans found none of the contracts were recorded in the planning tool.

⁴⁶ Requirements for federal acquisition planning are addressed in detail in the FAR. For example, in justifying contracting without providing for full and open competition in the federal procurement system, FAR Part 6.301 policy states that "a lack of advance planning by the requiring activity" shall not be used. Similarly, in order to promote competition, FAR policy requires acquisition planning for all acquisitions and the efforts of all responsible personnel for the purpose of ensuring that the government meets its needs in the most effective, economical, and timely manner. NASPO's state and local government purchasing principles similarly emphasize acquisition planning and scheduling and discuss the role of the central procurement office—both in terms of broad, longer-term management and in terms of day-to-day decision making on the timing of procurements and methods of contracting at the operations level.

The District's inspector general and auditor offices have repeatedly found that the District's lack of effective acquisition plans results in excessive use of sole-source contracts and missed opportunities for competition, thereby contributing to unnecessary spending from higher cost procurements. In December 2005 testimony before the Council, the District's auditor stated that as "a government striving for self-government, [the District] desperately needs to improve accountability and ethics in the way the procurement and contracting process is carried out and to restore the faith of residents that tax dollars are being spent judiciously, economically, and competitively. The failure to conduct advanced planning for known projects, services, and procurement requirements ultimately manifests in costly internally generated emergency contracts and purchases." A senior District procurement official agreed and stated that the lack of planning does not constitute an emergency, but all too often the lack of planning occurs and forces emergency-type procurement actions.

Finally, sustaining procurement leadership has been difficult due to the low-level position of the CPO's office. Former CPOs agreed that in a complex and large-scale procurement system such as the District's, it is essential to have sustained leadership and a CPO with executive-level procurement experience and qualifications. However, over the past 10 years, the District has had five CPOs—three appointed for 5-year terms and two interim—and none served more than 3 years. According to each of the three CPOs appointed to 5-year terms, the inability to effectively coordinate acquisition activities across all agencies and manage and oversee the District's procurement function undermined their efforts at reform and ultimately discouraged them from completing their tenures. The lack of sustained leadership is underscored by the 2-year vacancy in the District's CPO position since September 2004, at which time the Deputy Mayor for Operations became the interim CPO.⁴⁷ With no procurement experience—contrary to the District's law requiring at least 7 years of procurement experience—this official acknowledged that it has been challenging to assume the extra responsibilities of the CPO position.

The cities we reviewed have recognized the importance of elevating the central procurement office in the governmental structure as necessary for sound procurement management and oversight. For example, in 2003, Atlanta recognized that the centralized acquisition function headed by a

⁴⁷ In October 2006, we were told that this interim CPO left his deputy Mayor position in the District government. This latest vacancy in the District's CPO position is now being filled on an acting basis by the commodity manager for human care supplies and services contracting.

senior procurement director was buried in the structure and took steps to elevate this office with a newly appointed CPO to report through its chief operating officer to the Mayor. According to Atlanta's CPO, the office now has a seat at the table with the necessary authority to control and direct procurement across all agencies, and to have the Mayor reinforce the CPO's role in managing the city's council and agencies.

The District Lacks Other Tools for Effective Procurement Management and Oversight

The District lacks other basic tools to effectively manage and oversee its procurement system. Specifically, the city lacks (1) a procurement manual with clear standardized policies and procedures to guide procurement and agency staff; (2) certification requirements for procurement staff and training for agency staff so that both workforces have the necessary skills and knowledge to fulfill their responsibilities; and (3) an integrated procurement data system that can provide complete, accurate, and timely information to inform acquisition decisions and management. Other cities we reviewed recognize the benefit of having these tools as a way to effectively manage and oversee their procurement systems.

The District Lacks a Procurement Manual to Guide Staff

Despite repeated recommendations since 1997 to develop a procurement policy and procedures manual, the District has yet to do so. Procurement is a complex process guided by numerous policies, documentation requirements, and procedures. A comprehensive manual—one that lays out in one place these policies and rules and standardized procedures and practices—is critical to ensuring procurement and agency staff have a clear and consistent understanding of contracting rules and processes. An internal study by the CPO's office in 2004 found that in the absence of such guidance, there was a lack of consistency in how the District's procurement work is done. This inconsistency creates frustration within and outside the government as well as an impression that the District's procurement actions are unfair.

Each of the other cities we reviewed have developed and implemented a basic procurement manual for strengthening management, accountability, and transparency in their procurement systems. In Atlanta, for example, when the new CPO was appointed in 2003, he found a comprehensive procurement manual was key and immediately took steps to update the manual, which had not been done in 7 years.

The District Lacks Professional Certifications for Procurement Staff

According to former CPOs and current senior procurement officials, the District has not committed to developing a professional acquisition workforce. For example, the CPO's office has not fully developed professional certification requirements. Although the CPO is not required

to develop such requirements, this would ensure staff have the qualifications and skills to carry out the responsibilities commensurate with their delegated contracting authorities. A former District executive told us that the CPO's office should deliver regular training to agency managers and staff on procurement rules and procedures as well as develop metrics to ensure that agency staff participate in the training and obtain the necessary knowledge for fulfilling their responsibilities in the procurement process.

One former CPO referred to his staff as an "accidental" procurement workforce because some had previously been administrative staff and few had any contracting background. In 2005, the CPO's office conducted a skills and training assessment and determined that the current procurement and contracting staff required training on fundamental processes, such as source selection, contract negotiation, and contract administration. The CPO's fiscal year 2006 budget added \$668,400 earmarked for procurement training, and the interim CPO developed a program to train the District procurement staff on basic contracting concepts. While the 2006 training program appears to have addressed some of the immediate contracting skill gaps identified in the 2005 assessment, this one-time effort, in our view, does not address the CPO office's need for longer-term investments in training. Unlike in the federal government, this program is not linked to a certification process or continuing education necessary for maintaining individual employee's contracting authorities.⁴⁸ In the absence of a comprehensive training and certification program, the CPO delegates contracting authority to procurement staff based on his perceptions of individual skill and experience.

NASPO emphasizes the importance of professional development and not only recommends that executive branch officials and the central procurement office encourage professional competence by providing funding for training, but endorse professional certification of staff. Several

⁴⁸ The Federal Acquisition Institute and Defense Acquisition University have partnered to provide a governmentwide course curriculum and other resources for the federal acquisition workforce. Specifically, the Federal Acquisition Institute has developed a certification program for contracting professionals in civilian agencies that reflects common standards. This program closely mirrors that the requirements that the Department of Defense has established for its contracting workforce. The goal of the program is to standardize the education, training, and experience requirements for contracting professionals, which is intended to improve workforce competencies and increase career opportunities.

The District's Integrated Procurement Data System Has Yet to Be Fully Implemented

public procurement organizations, including the National Institute for Government Purchasing, have developed certification programs to ensure procurement staff has attained a prescribed level of qualification. Procurement officials in other cities we reviewed also view training and certification of the procurement staff as critical to the success of their procurement system. For example, New York's CPO office established a Procurement Training Institute in 2000 and requirements for staff training, including certifications and continuing education minimums.

The District also lacks an integrated procurement data system to centrally manage and oversee agency and headquarters procurement activities, despite the procurement law requiring such a system over 20 years ago⁴⁹ and investment in the Procurement Automated Support System (PASS), which was intended to provide these capabilities. Although the CPO's office recognizes that capturing and reporting complete, accurate, and timely procurement data would increase transparency and support development of meaningful performance measures to promote competition and discourage excessive use of sole-source contracts and unauthorized vendor commitments without valid contracts, officials have lacked the high-level support from District leaders and OCTO needed to follow through on their plans for improvement.

To make strategic, mission-focused acquisition decisions, organizations need knowledge and information management processes and systems that produce credible, reliable, and timely data about the goods and services acquired and the methods used to acquire them. Our prior work has shown that leading companies use procurement and financial management systems to gather and analyze data to identify opportunities to reduce

⁴⁹The District's Procurement Practices Act, as enacted, in 1986 required within 12 months of the effective date, the establishment of a comprehensive computer-based material management information system for collecting, organizing, disseminating, maintaining, and reporting procurement data that takes into account the needs of all branches of the District government. Further, the act required the system to permit measuring and assessing the impact of procurement activities on the economy of the District government and the extent to which LSDBEs were sharing in the District's contracts. Moreover, the act required the system to (1) serve for policy and management control purposes, such as forecasting material requirements and purchasing; (2) reflect the state of the art in information systems technology; and (3) have the ability to accommodate future technical enhancements.

costs, improve service levels, measure compliance and performance, and manage service providers.⁵⁰

After numerous discussions with procurement, financial management, and auditing officials, we found there is no visibility over total procurement actions and spending in the District. We found it difficult to get even the data on such basics as the number and dollar value of hundreds of millions of dollars in procurements for agencies not supported by the CPO's office, such as the public schools and the Department of Mental Health. Data for the \$1.2 billion in fiscal year 2005 procurement spending reported by the District's CPO office are captured by several standalone systems. As a result, the CPO's office cannot readily generate regular reports from these systems to track information on what agencies are buying, how they are buying, and from whom they are buying. When we initiated this review, we requested procurement data on such basics as the number of sole-source contracts awarded in a specified time frame, from the CPO's office for fiscal years 2005 and 2006. The information was provided to us piecemeal. According to a District procurement official, to obtain this data, the CPO's office must ask its contracting officers and specialists to manually compile, sometimes from memory, the information—a workaround that is not only time-consuming but at significant risk of error. Because of this, we were unable to obtain reliable fiscal year 2006 data on sole-source awards.

In an effort to obtain complete, accurate, and timely procurement data and to automate and streamline the procurement process, the District has invested almost \$13 million in PASS. Yet, almost 4 years since its inception in 2003, the system is only partially in operation.⁵¹ According to District procurement officials, PASS does not provide full information on completed or ongoing procurements across all agencies, nor does it provide CPO and District agency and financial managers reports and other information they need to manage and oversee the procurement system. In

⁵⁰ GAO, *Best Practices: Using Spend Analysis to Help Agencies Take a More Strategic Approach to Procurement*, [GAO-04-870](#) (Washington, D.C.: Sept. 16, 2004).

⁵¹ According to the CPO's office, PASS is a commercial procurement software application that includes different modules. PASS supports the District's on-line procurement process and is intended to help contracting personnel more efficiently purchase, report, and manage procurements. PASS is being incrementally deployed with the District having so far implemented two of the four modules, including (1) the automated, Web-based buying module and (2) the module that facilitates Web-based obligation and approval for vendor payments.

August 2006, the inspector general reported concerns over the delays in fully implementing PASS, noting that a conflict between the CPO's office and OCTO has hindered the installation and full implementation of PASS.⁵² According to senior procurement officials, the CPO's office has not consented to the extra \$2 million that OCTO is requesting to fully implement PASS because all upgrades and installation were included in their purchase of PASS in 2003. The inspector general has recommended the CPO's office seek assistance from the Mayor's office in expediting the installation and implementation of PASS's contracting and sourcing modules.

CPOs in the other cities we reviewed told us that a procurement data system is critical to managing and overseeing the procurement system, but some are facing challenges similar to the District's to develop an integrated tool. New York's CPO, for example, told us that the city clearly recognizes the importance of an integrated procurement data system and as a result, is engaged in a major undertaking to fully implement a data system sometime in 2007. In the interim, she relies on information contained in the city's financial management system in compiling various procurement performance indicators.

The District's Recent Actions to Address Its Procurement Management and Oversight Challenges Have Had Little Effect

Since 2004, the District has taken several actions to improve the management and oversight of its procurement system. These efforts include an internal study for innovation and reform in the CPO's office and procurement system; changes in staff assignments and review processes in the CPO's office; and establishment of an expert task force to review CPO, procurement workforce, and competition matters and submit recommendations to the Mayor and council. However, information we obtained from former CPOs and current senior procurement and other officials involved with these efforts indicates that most recommended actions remain under study or are partially implemented at best. Most of these officials voiced skepticism or concern about the merits and benefits of these efforts as well as the absence of high-level and sustained attention from District leaders to address systemic problems that hamper management and oversight of the procurement system and undermine transparency, accountability, and competition.

⁵² Office of the Inspector General, District of Columbia, *Office of Contracting and Procurement Part One: Report of Inspection*, OIG No. 06-0017-PO (Washington, D.C.: Aug. 23, 2006).

Following the early resignation of the District's last full-time CPO in September 2004, the Mayor and city administrator directed the District's Center for Innovation and Reform to work with the interim CPO's staff to lead a 6-week internal initiative to create a credible, transparent procurement process that incorporate best practices and innovation. This internal group's final report made several recommendations to the CPO's office aimed at streamlining the process, providing tools such as a procurement manual, and leveraging technology.⁵³ However, 2 years after these recommendations were made, many remained open. Further, none are aimed at the type of legal and organizational changes necessary for effective reform.

More recently, the interim CPO took steps to provide better customer support from the Office of Contracting and Procurement to the District's agencies and vendors. Specifically, the interim CPO announced in April 2006 the establishment of sole-source contract reviews and implementation of a central tracking data system to ensure that contract ceilings are not exceeded, and to capture vendor performance data for consideration in future source selections affecting those vendors. The CPO also announced a new staffing alignment to assign a lead contracting officer for groups of agencies and several commodity buying groups for certain services that are centrally managed, such as construction and information technology equipment and services. According to senior procurement officials and the interim CPO, they expect that assigning contracting officers will improve communication and efficiency across the District as agencies will have a single point of contact for managing and troubleshooting contracting issues. While these are positive steps aimed at improving internal procurement operations, they are not far reaching enough to address the more fundamental problems impeding overall effectiveness in the District's procurement system.

The third effort to improve District procurement has been ongoing since December 2005 when the Mayor and council passed legislation to establish a task force of local experts in contracting and procurement.⁵⁴ The task force is comprised of 10 members appointed by the Mayor and council and

⁵³ Center for Innovation and Reform, Executive Office of the Mayor, *Contracting and Procurement Continuous Improvement Initiative: Recommendations for Reform* (Washington, D.C.: Sept. 30, 2004).

⁵⁴ Contracting and Procurement Reform Task Force Establishment Emergency Act of 2005 and the Contracting Reform Task Force Establishment Temporary Act of 2006.

represents a range of professional, legal, and business expertise in District and public procurement operations and policy. Since March 2006, the task force has met to obtain testimony and review other information from District procurement, financial management, auditors, and agency officials. At the time of our review, the task force chairman expected to report final recommendations to the Mayor and council before the end of 2006.

In addition to these actions the District has taken to address procurement system challenges, in December 2005, the Mayor, interim CPO, and CFO separately provided information to the Chairman of the House Government Reform Committee, who requested the information in light of press allegations about possible violations of the city's procurement laws and procedures, and unauthorized payments to vendors. The Chairman noted that it was essential for the Committee to conduct an assessment of the District's procurement system and the possible shortcomings in the laws, policies, enforcement and practices. In their separate responses, the Mayor, interim CPO, and CFO provided copies of the law, policies, and procedures in place in the District for procurement and contracting, including sole source and small purchase actions, exemptions for various agencies such as the public schools and Department of Mental Health, approval of voucher payments to vendors, and procurement and contracting oversight mechanisms through the District's inspector general and auditor's offices. In addition, the interim CPO provided information on recent actions taken by the Office of Contracting and Procurement to improve customer service and streamline the procurement process. However, information provided did not address the range of concerns and shortfalls in the procurement law and management and oversight that we subsequently identified during the course of our review.

NASPO state government and city procurement officials we spoke with said they have confronted similar management and oversight challenges. They recognized that overcoming these challenges and achieving meaningful procurement reform can take several years and requires sustained executive support from elected leaders and legislatures.

Conclusion

To better ensure every dollar of the District's more than \$1.8 billion procurement investment is well spent, it is critical that the District have an effective procurement system that follows generally accepted key principles and is grounded in a law that promotes transparency, accountability, and competition, and helps to ensure effective management and oversight and sustained leadership. Currently, the

District's procurement system is mired in a culture that thrives on streamlined acquisition processes, broad authority for sole-source contracts, and unauthorized payments to vendors that are eventually papered over through ratifications. Given this culture, it is not surprising that public confidence in the District's ability to judiciously spend taxpayer dollars is guarded at best. To effectively address the District's long-standing procurement deficiencies, it is clear that high-level attention and commitment from multiple stakeholders—including Congress—are needed. Until the law provides for the right structure and authority, the District's procurement reforms will likely continue to fail.

Recommendations for Executive Action

To address needed structural and fundamental revision in the District's procurement law and to strengthen management and oversight practices as well as facilitate congressional oversight, we recommend that the Mayor of the District of Columbia submit a comprehensive plan and time frame to Congress detailing proposed changes in line with our recommendations. This comprehensive plan, to be submitted to Congress, should include the following recommendations for revising the procurement law:

- Apply, at a minimum, to all District entities funded through the District's appropriated budget and specify that if exclusions from its authority are necessary, they be defined narrowly by types of goods and services procured.
- Provide the CPO sole authority and responsibility as head of the District's Office of Contracting and Procurement to manage and oversee the entire acquisition function for all entities, and if exclusions from the CPO's authority are necessary, they be defined narrowly by types of goods and services procured.
- Consider reestablishing the CPO as the sole authority for suspension and debarment decisions.
- Eliminate sections 2-303.05(a)(3) and (a)(3A) of the District Official Code that allow noncompetitive procurements with a vendor who (a) maintains a price agreement or schedule with any federal agency; and (b) agrees to adopt the same pricing schedule as that of another vendor who maintains a price agreement or schedule with any federal agency.
- Reconsider appropriateness of high dollar thresholds for small purchases to maximize competition.

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- Revise the DCSS program to (a) cap purchase ceilings at an appropriate threshold; (b) eliminate any schedule that contains fewer than three vendors or combine it with another schedule; (c) establish procedures to ensure all eligible vendors are provided an opportunity to be considered for orders; and (d) require the CPO to monitor and report on patterns of contracting with a limited number of the same vendors.
 - Require that specific guidance on the use of the DCSS program be incorporated into the District's regulations.
 - Eliminate the procurement-related circumstance that allows direct voucher payments for emergency procurements.

To further discourage the use of unauthorized commitments to vendors, we recommend that the Mayor of the District of Columbia, in coordination with the CFO and other stakeholders take the following actions:

- Revise Directive 1800.04 to be consistent with FAR part 1.6 and clearly state, consistent with the policy of FAR section 1.602-3(b), that these ratification procedures are not to be used in a manner that encourage unauthorized commitments by government personnel.
- Refer unauthorized commitments that are not ratified for further resolution under government claim procedures, to include in appropriate cases, possible referrals for Anti-Deficiency Act violations.
- Upon revision of the ratification directive, track and evaluate the use of direct voucher payments and ratifications to improve management attention and oversight of agencies' unauthorized commitments with vendors.

To strengthen management and oversight practices in the District's procurement system, we recommend that the Mayor take the following actions:

- Recruit and appoint a CPO with the requisite skills and procurement experience as required in the law.
- Elevate the CPO's position and office so that it is either in line with other critical cross-government functions, such as OCTO, or higher and would allow participation in cross-cutting executive management, budgeting, planning, and review processes.

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- Direct the CPO to develop a process and tools for frequent and regular interactions with agency heads and program managers to support acquisition planning.
 - Direct the CPO to develop a procurement manual concurrent with revision in the procurement law.
 - Direct the CPO to establish a plan and schedule for professional development and certification programs for contracting staff and to track personnel trained.
 - Direct OCTO to work with the CPO to expeditiously complete installation of an integrated procurement data system.

To help ensure the District makes adequate progress in revising its procurement law and improving procurement management and oversight, we recommend that the Mayor submit periodic reports to congressional oversight and appropriations committees on such elements by agency as (a) competitive actions by agency; (b) number, value, and type of sole source procurements; (c) numbers of procurement personnel trained and the type of training received; and other indicators as appropriate.

In addition, to further discourage the use of unauthorized commitments to vendors, we recommend that the Chief Financial Officer (CFO) of the District of Columbia take the following actions:

- Revise Financial Management and Control Order No. 05-002 to eliminate the use of direct vouchers payments for emergency procurements.
- Work with the CPO and other stakeholders to do the following:
 - (a) Revise Directive 1800.04 to be consistent with FAR part 1.6 and clearly state, consistent with the policy of FAR section 1.602-3(b), that these ratification procedures are not to be used in a manner that encourage unauthorized commitments by government personnel.
 - (b) Refer unauthorized commitments that are not ratified for further resolution under government claim procedures, to include in appropriate cases, possible referrals for Anti-Deficiency Act violations.
 - (c) Upon revision of the ratification directive, track and evaluate the use of direct voucher payments and ratifications to improve

management attention and oversight of agencies' unauthorized commitments with vendors.

Agency Comments and Our Evaluation

We provided a draft of our report to the former Mayor's office and the office of the CFO. The primary focus of our report deals with procurement reform needed in the District that falls under the responsibility of the Mayor. Therefore, most of our recommendations are made to the Mayor's office. Given that the comment period coincided with the final month of the administration, the outgoing Mayor chose not to comment. However, the new administration contacted our office and indicated concurrence with most of the findings and recommendations and, as the principal office responsible for ensuring action is taken, plans to provide formal comments and an action plan within 60 days of the report's public release.

Though most of our recommendations are made to the Mayor's office, there is a role for the CFO to play in helping curb unauthorized commitments. Therefore, we also made recommendations to the CFO. In that context, the CFO provided written comments, which were limited to our discussion on the use of direct vouchers. Our response focuses only on those comments.


In general, the CFO questions our understanding of the direct voucher process and the CFO's authority. We recognize the limitations in the CFO's authority for holding personnel accountable for unauthorized commitments and the CFO's obligation to pay for accepted goods and services. However, focusing on limited authority and payment obligation does not address the larger issue. Specifically, our report raises a concern about the effect of the lack of management attention on prohibiting unauthorized commitments that may be ratified and ultimately paid through direct vouchers—a process CFO staff acknowledge is broken and in need of more stringent controls. Accordingly, we revised our recommendations to the Mayor and the CFO concerning the use of direct vouchers and the ratification process. Strengthening this process is a small part of a larger procurement reform effort that must be headed by the Mayor and implemented by the CPO, CFO, and other stakeholders in the District. The CFO's comments state that the office intends to review and clarify Financial Management and Control Order No. 05-002. We encourage them to implement our recommendations as well as work with the Mayor's office and other stakeholders in coordinating procurement reform actions as applicable.

The CFO's comments are included in appendix III along with our comments on specific points he raised.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this report. We will then send copies to other interested congressional committees and the Mayor and Chief Financial Officer of the District of Columbia. We will make copies available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or calvaresibarra@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. See appendix IV for a list of key contributors to this report.

Sincerely yours,

A handwritten signature in black ink that reads "Ann Calvaresi Barr". The signature is written in a cursive style with a large, stylized initial "A" and "C".

Ann Calvaresi Barr
Director, Acquisition and Sourcing Management

Appendix I: Scope and Methodology

We conducted our work at the District of Columbia’s Office of Contracting and Procurement, Office of the CFO, Office of the Inspector General, Auditor’s Office, and Center for Innovation and Reform. We did not conduct detailed audit work at the various agencies that procure independently of the Office of Contracting and Procurement since this is the central office that was established under 1996 reform legislation and it procures for 61 District organizations—a majority in the District. We also visited representatives of the National Association of State Procurement Officials (NASPO) in Springfield, Illinois, and city procurement officials in Atlanta, Baltimore, and New York. In selecting cities to visit, we considered those that have faced similar challenges to the District as well as took various approaches to structuring their public procurement systems and implementing reform. We did not assess the effectiveness of their approaches or reform efforts and our report is not intended to suggest that we evaluated or endorse any particular approach from these cities, but only to draw comparisons to the District where applicable.

In developing our criteria for generally accepted key principles for an effective public procurement system, we relied on a variety of sources. NASPO is a nationally recognized non-profit association comprised of directors of central purchasing offices in each of the 50 states and other member jurisdictions. NASPO has published a series of volumes related to state and local government purchasing with the most recent edition describing principles and suggested practices.¹ We also spoke with state procurement officials representing NASPO to obtain their perspectives on our analysis as well as their own states’ guiding principles and practices for an effective public procurement system. In addition to NASPO, the American Bar Association’s (ABA) model procurement code for state and local governments outlines principles for public procurement and provides a variety of options and strategies applicable to all public bodies.² The Federal Acquisition Regulation (FAR) also describes guiding principles of public procurement and though these are aimed at the federal government, many are not unique to the federal acquisition system and are equally applicable to state and local governments. Finally, we leveraged our own

¹ NASPO, *State & Local Government Purchasing: Principles & Practices, Fifth Edition* (Lexington, Ky.: 2003).

² ABA, *Model Procurement Code for State and Local Governments*, adopted in 1979 and updated in 2000.

work since 2001 on effective procurement and acquisition management practices.³

To assess whether the District's primary procurement law reflects fundamental principles that promote transparency, accountability, integrity, and competition, we did a detailed legal review and analysis of the Procurement Practices Act of 1985, as amended. We did not do a similar review or analysis of laws, policies, or regulations governing the various independent agencies or procurement authorities. In comparing the District's primary procurement law to generally accepted key principles and assessing the impact of any shortfalls, we focused on several key elements that are recognized by a variety of sources for promoting transparency, accountability, integrity, and competition: (1) uniform application of the law across all District organizations; (2) adequacy of authority granted to the CPO for the full spectrum of acquisition functions; (3) exemptions in the law through various temporary, emergency, or permanent legislative amendments; and (4) provisions in the law that limit or restrict competition, such as authority for sole-source contracting, simplified acquisition procedures, and use of supply schedule. Our review also examined recent legislation that was passed in response to various procurement challenges that had been identified to include changes in law and policy resulting from the CFO's review of direct voucher payments for unauthorized commitments with vendors for goods and services without valid contracts.

To further understand the rationale and impact of these various provisions and related procurement issues, we interviewed current and former procurement, executive, financial management, and auditing officials in the District. We also spoke to a D.C. Council committee representative regarding legislative actions to address reported procurement problems and related issues. In addition, we interviewed state government

³ GAO, *District of Columbia: D.C. Public Schools Inappropriately Used Gas Utility Contract for Renovations*, [GAO-01-963](#) (Washington, D.C.: Sept. 28, 2001); *Best Practices: Taking a Strategic Approach Could Improve DOD's Acquisition of Services*, [GAO-02-230](#) (Washington, D.C.: Jan. 18, 2002); *Metropolitan Washington Airports Authority: Contracting Practices Do Not Always Comply with Airport Lease Requirements*, [GAO-02-36](#) (Washington, D.C.: Mar. 1, 2002); *Transportation Security Administration: High-Level Attention Needed to Strengthen Acquisition Function*, [GAO-04-544](#) (Washington, D.C.: May 28, 2004); *Homeland Security: Successes and Challenges in DHS's Efforts to Create an Effective Acquisition Organization*, [GAO-05-179](#) (Washington, D.C.: Mar. 29, 2005); and *United Nations: Procurement Internal Controls Are Weak*, [GAO-06-577](#) (Washington, D.C.: Apr. 25, 2006).

procurement leaders of NASPO about sound principles and practices regarding public procurement statutory coverage and their views on issues we raised about the District's procurement law. We also interviewed city procurement officials in Atlanta, Baltimore, and New York to obtain their views on issues we raised concerning the District's procurement law and to learn about related challenges they have faced and their responses to these challenges.

To assess the extent to which the District's management and oversight of the procurement process reflect generally accepted practices, we examined several key elements. First, we examined the organizational alignment and leadership for managing the acquisition function across all District organizations. Second, we assessed management's commitment to competence including elements required for a professional procurement workforce. Third, we reviewed the District's development of procurement management and oversight tools, including a procurement manual and automated data systems for recording procurement information. To gain insights on the challenges of procurement management and oversight in the District, we interviewed current and former city procurement and District executive officials to obtain their perspectives. To obtain an historical perspective on the management and oversight challenges in the District that drove legislation reform in 1996, we reviewed various studies done at that time and their recommendations. To understand how the District has addressed those challenges, we reviewed selected District inspector general and auditor reports since 2004, and the resulting recommendations as well as those from the internal study of the Center for Innovation and Reform. We interviewed responsible city procurement officials on the status of addressing those recommendations. We also interviewed the chairman of the Contracting and Procurement Reform Task Force, which was established in 2006 to review the District's procurement system and attended several public meetings to observe their discussions.

In the course of our review, we relied on various management and other procurement data reports provided by the Office of Contracting and Procurement. Specifically, information on procurement spending in dollars and contracting and competition methods was generated from various procurement data systems or compiled from manual inputs. Though we did not conduct detailed tests of procurement transactions, data reliability was suspect for these various reports based on very limited testing and independent auditors have also raised questions about the data. To fully test data reliability for all the various reports we received would have required resources outside the scope of this review. Moreover,

an independent public accounting firm audits the District's financial statements annually and reports on internal control and compliance over financial reporting. Compliance with procurement regulations was part of the fiscal year 2005 audit in which the District received an unqualified, clean opinion. Despite the limitations, we found the data to be reasonable and sufficiently reliable for our purposes. Further, we have attributed, where applicable and appropriate, this information to the Office of Contracting and Procurement and responsible officials.

This work was done between February 2006 and October 2006 in accordance with generally accepted government auditing standards.

Appendix II: District Governance and Related Procurement Authorities

Home Rule Act

In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act or Home Rule Act,¹ which set forth the structural framework of the current District government in the District Charter. The District Charter established the Office of the Mayor and vested the Mayor with the executive power. It also established the D.C. Council and delegated certain legislative powers to it.² Despite the powers delegated to the Council, Congress retained the ultimate legislative authority over the District under the Constitution.³ Generally, the Constitution authorizes Congress to enact legislation on any topic for the District and to amend or repeal any District act.

With regard to the powers delegated to the Council, the Home Rule Act authorized it to pass permanent and emergency acts. A permanent act starts as a bill, which usually gets introduced by a Council member and then gets assigned to and considered by the proper committee. The committee then reports the bill to the Committee of the Whole (the entire Council), which reviews it before it is put on agenda for regular session. Hearings are required for permanent legislation before it is adopted.⁴ The Council votes on a bill two times, during first and second readings. However, 15 days before the Council adopts a bill, it must be published in the D.C. Register.⁵ The Mayor then can either (1) sign the bill or take no action and it becomes an act or (2) veto the bill and Council can override the veto by two-thirds majority. The act must then be published in the D.C. Register. The Council chair transmits the act to both houses of Congress, which have 30 calendar days (or 60 calendar days for criminal acts) to review the act and if they take no action, the act becomes law.⁶

¹ Pub. L. No. 93-198 (1973). The federal Act was supplemented by D.C. Council Rules, which provide rules of organization and procedure for the Council. It should be noted that a Council enactment is cited as an “act” but a congressional enactment is cited as an “Act.”

² The D.C. Council has 13 members who are elected for 4-year terms.

³ U.S. Const., art. I, § 8, cl. 17.

⁴ Council Rule, Art. IV, § 305. Hearings require public notice and may be given by publication in the D.C. Register, in newspapers, mailing notices to a mailing list maintained by the Secretary, and by other means. Council Rule, Article IV, § 425.

⁵ Council Rule, Art. IV, § 422.

⁶ The 30-day period excludes Saturdays, Sundays, and holidays, and any day on which either House of Congress is not in session. Thus, if one or both of the Houses are out of session, a day cannot be counted within that time. Home Rule Act, section 602 (c)(1). Also, Congress usually adjourns in October. As a result, any act passed by the Council after July usually will not become law until the following year.

Congress may disapprove the act by adopting a joint resolution of disapproval, which must be signed by the President. Unless the President vetoes the act, it becomes law within 30 days.

Emergency acts are quicker to pass than permanent acts, since they are not required to go through (1) committee, (2) a second reading, (3) a public hearing, (3) congressional approval, and (4) publication in the D.C. Register before becoming effective, but must be published after that.⁷ For an emergency act, the Council must decide by two-thirds of the members that emergency circumstances make it necessary that an act be passed.⁸ Emergency acts are effective for 90 days.

With regard to the executive power, the Home Rule Act vested in the Mayor, who is the chief executive officer of the District government, the power to properly execute all laws relating to the District. The Mayor may delegate any function to (1) any officer, employee, or agency of the executive office of the Mayor or (2) any director of an executive department who may, with the Mayor's approval, further delegate all or part of the functions to subordinates under the Mayor's jurisdiction.⁹

In addition to establishing these branches of government in the District, the Home Rule Act also established five independent agencies existing outside the control of the executive or legislative branches of the District government. The independent agencies were the (1) Board of Education;

⁷ The legislative history of the Home Rule Act does not provide insight about what Congress intended regarding the frequency or circumstances in which the Council should use the emergency act provision. If the Council finds the existence of an emergency and approves an emergency bill, the Council may, at the same legislative session, consider a temporary bill on first reading without committee referral; the temporary bill must be "substantially similar" to the emergency bill and may remain effective for not more than 225 days. Temporary legislation is passed with an emergency legislation to ensure that some legislation is in effect while permanent legislation is before Congress and to fill the gap between the expiration of an emergency act and the effective date of a permanent act.

⁸ Current Council rules clarify that an "emergency" means a situation that adversely affects the health, safety, welfare, or economic well-being of a person for which legislative relief is deemed appropriate and necessary by the Council, and for which adherence to the ordinary legislative process would result in delay that would adversely affect the person whom the legislation is intended to protect. It also clarifies that legislation must take effect, according to its terms, either immediately or at a specific time. Council Rule, Art. IV, § 412(b)(c).

⁹ The Mayor cannot, however, delegate the authority of approving or disapproving acts passed by the Council. Home Rule Act, § 422(6).

(2) Armory Board; (3) Public Service Commission; (4) Zoning Commission; and (5) Board of Elections.

Procurement Practices Act of 1985

In 1986, the Council enacted the D.C. Procurement Practices Act of 1985,¹⁰ pursuant to the Council's authority to pass acts under the Home Rule Act.¹¹ One of the primary underlying statutory policies of the act was to provide for a uniform procurement law and procedures for the District of Columbia government. To achieve this policy, the Procurement Practices Act applied to all agencies and employees of District government which were subordinate to the Mayor.¹² The Procurement Practices Act excluded from its application a separate branch of government or an independent agency (as defined in D.C. Administrative Procedures Act) that had authority to enter into contracts or to issue rules and regulations for awarding contracts pursuant to existing law.¹³ The Procurement Practices Act applied to every contract, interagency agreement, or intergovernmental agreement for procurement or disposal of goods and services by covered agencies and employees.

The Procurement Practices Act also created in the executive branch of the District government the Contract Appeals Board. The appeals board was the exclusive hearing tribunal for and had jurisdiction to review and determine de novo throughout the District government the following: (1) protests of a solicitation or contract award and (2) appeals from a final decision of the Director of Administrative Services. It allowed disappointed contractors to appeal board decisions to the D.C. Court of

¹⁰ D.C. Law 6-85 (1986), codified at the D.C. Official Code, § 2-301 *et seq.*

¹¹ Home Rule Act, § 412(a). The Procurement Practices Act provided that nothing in the act or in its implementing regulations abrogates the powers and duties of the Mayor pursuant to the Home Rule Act or any other law not specifically repealed by the Procurement Practices Act. D.C. Law 6-85, § 201(b) (1).

¹² Although the Procurement Practices Act did not define the term "subordinate agency," it defined the term "agency" as used in the act to exclude an independent agency from its application, so we know that a subordinate agency is not an independent agency. D.C. Law 6-85, § 107(2).

¹³ The D.C. Administrative Procedures Act provides that "independent agency" means any agency of the government of the District with respect to which the Mayor and the Council that is not authorized by law, other than by this title, to establish administrative procedures, but does not include the courts of the District and the District of Columbia Tax Court. The District of Columbia Administrative Procedures Act of 1968, Pub. L. No. 90-614, § 102(5). The Act did not enumerate specific agencies that were independent.

Appeals. It also established bid protest procedures for protests of the solicitation or award of a contract.

Procurement Reform Amendment Act of 1996

The Procurement Practices Act was amended by the Procurement Reform Amendment Act of 1996 (reform act) with the primary statutory purpose to centralize procurement in the Office of Contracting and Procurement.¹⁴ The law required this office to be headed by a Chief Procurement Officer (CPO). By delegation of the Mayor, the CPO has the exclusive contracting authority for all procurements covered by the Procurement Practices Act.¹⁵ The reform act further centralized procurement in the CPO by requiring the CPO rather than the Mayor to delegate contracting authority to employees of District entities subject to the act and to employees of Office of Contracting and Procurement who are contracting officers and specialists in procurement. All delegations must be subject to limitations specified in writing.

The reform act also changed some of the requirements for sole-source emergency procurements, which the Procurement Practices Act authorized the executive branch to use. Specifically, the reform act allowed contracting officers to make and justify sole source emergency procurements when there was an imminent threat to the public health, welfare, property, or safety under emergency conditions.¹⁶ The requirement is implemented in the District's regulations, which defines an "emergency condition" as a situation, such as a flood, epidemic, riot, or equipment failure that created the imminent threat.¹⁷

The reform act expanded the Procurement Practices Act's application to include independent agencies, which were previously excluded from its application. Specifically, the act applied to all departments, agencies, instrumentalities, and employees of the District government, including agencies which are subordinates to the Mayor, independent agencies, boards, and commissions. It applies to any contract for the procurement of goods and services, including construction and legal services.

¹⁴ D.C. Law 11-259 (1997).

¹⁵ Id. at § 105 (a) (b).

¹⁶ Id. at § 105 (p) (codified at D.C. Official Code § § 2-303.05(a) (4) and 2-303.12 (a)(1).

¹⁷ 27 DC ADC 1710.2.

Despite the reform act's primary statutory purpose of centralizing the District's procurement authority in the Office of Contracting and Procurement, it excluded many entities from the authority of both the Office of Contracting and Procurement and the Procurement Practices Act.¹⁸ Specifically, it excluded:

- the D.C. Council;
- the D.C. courts;
- the D.C. Financial Responsibility and Management Assistance Authority (Control Board), as Congress previously statutorily excluded the Procurement Practices Act's application to the Control Board and vested the Board's contracting authority in its Executive Director;¹⁹
- the Office of the Chief Financial Officer (CFO), and required the Chief Financial Office, during a control year,²⁰ to adopt the Control Board's procurement rules and regulations, except that during years other than control years, Office of the CFO must be bound by provisions in this act.²¹

¹⁸ D.C. Law 11-259, § 104 (a)(c) (codified at D.C. Official Code § 2-301.04).

¹⁹ Under the District of Columbia Financial Responsibility and Management Assistance Act (FRMAA) of 1995, Pub. L. No. 104-8 (1995), Congress established the Control Board upon finding that the District government was in a fiscal emergency, was plagued by pervasive mismanagement, and failed to deliver effective or efficient services to residents. FRMAA, at § 305(4). The Control Board was provided wide-ranging statutory powers to improve the District government's operations, including authority to award contracts and review and approve certain contracts. FRMAA, at §§ 102(c)(2), 103(g), and 203(b).

²⁰ A control year, as defined in the FRMAA, means any fiscal year for which a financial plan and budget approved by the Control Board is in effect, and includes fiscal year 1996. FRMAA, § 305(4). The District government was under the Control Board's authority from April 1995 until September 2001.

²¹ D.C. Law 11-259, § 104(c). Despite the provision that the Office of the CFO must be bound by provisions in the Procurement Practices Act during years other than control years, Congress has extended the authority provided to the CFO to exercise the procurement authority granted to it during a control year in several appropriations acts relating to the District. The most recent appropriation act relating to the District exempts the CFO's acquisitions from all provisions of the Procurement Practices Act. Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115, § 132 (2005).

Further, the reform act added a new section in the Procurement Practices Act,²² exempting the following entities from the authority of the Procurement Practices Act and Office of Contracting and Procurement:

- Redevelopment Land Agency with regard to real property or interests therein;
- Administrator of Homestead Program Administration under Homestead Housing Preservation Act of 1986 with regard to disposal or transfer of real property;
- Mayor to sell real property in D.C. for nonpayment of taxes or assessments of any kind;
- Mayor and D.C. Council pursuant to D.C. Public Space Rental Act;
- Convention Center Board of Directors pursuant to the Washington Convention Center Management Act of 1979;
- Sports Commission pursuant to the Omnibus Sports Consolidation Act of 1994;
- D.C. Housing Finance Agency;
- D.C. Retirement Board pursuant to the D.C. Retirement Reform Act; and
- Metropolitan Police Department's authority to make procurements of \$500,000 or less, as provided in the D.C. Appropriations Act, approved April 6, 1996. (Pub. L. No. 104-134).

Since enactment of the 1996 reform act, the Council has amended the Procurement Practices Act many times to exempt additional entities from falling under the authority of the Office of Contracting and Procurement or Procurement Practices Act or both, despite the Procurement Practices Act's statutory purposes of creating uniform procurement laws in the District and centralizing the District's procurement authority in the Office of Contracting and Procurement. To date, in addition to those entities mentioned above, the council excluded the following entities from the authority of both Office of Contracting and Procurement and Procurement Practices Act:

- D.C. Water and Sewer Authority;
- D.C. Public Service Commission;
- D.C. Housing Authority, except for the provisions regarding contract protests, appeals, and claims arising from procurements of the Housing Authority; and
- D.C. Advisory Neighborhood Commissions.

²² D.C. Law 11-29, § 320 (codified at D.C. Official Code § 2-303.20).

Further, the Council amended to Procurement Practices Act to exclude the following entities from the authority of Office of Contracting and Procurement, but they are subject to the Procurement Practices Act:

- Director of the Child and Family Services Agency;
- Criminal Justice Coordinating Council;
- Director of the Department of Mental Health; and
- Board of Education to solicit, award, and execute contracts, except for security for the District's public schools for security contracts to begin on or after June 30, 2005.

Also, the Council exempted delivery of electrical power and ancillary services for the District from certain requirements of the Procurement Practices Act, subject to Council approval.

In addition to these exemptions, the Council continues to use its emergency act authority under the Home Rule Act to exempt the application of all or certain provisions of the Procurement Practices Act or the authority of the Office of Contracting and Procurement for certain District entities or projects. These exemptions can last no more than 90 days or can become permanent if the emergency bill is accompanied by a temporary bill bridging the gap between expiration of the 90-day emergency bill and congressionally-approved permanent legislation on the same matter.

Appendix III: Comments from the Chief Financial Officer for the District of Columbia

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER



Natwar M. Gandhi
Chief Financial Officer

January 5, 2007

Ms. Ann Calvaresi Barr
Director, Acquisition and Sourcing Management
Governmental Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Calvaresi Barr:

In your draft report on *District of Columbia Procurement System Needs Major Reform* (GAO-07-159), the Governmental Accountability Office (GAO), in particular the section, "The District's Law Allows Payments for Unauthorized Commitments to Vendors," the District's Office of the Chief Financial Officer takes very strong exception to the tone, language and details of that section, and believes that the GAO does not understand the OCFO's position.

The District is required by Generally Accepted Accounting Principles (GAAP) to book a liability whenever the District has "received" and "accepted" goods and/or services from a vendor, regardless of whether that vendor had a valid contract or purchase order. The improper receipt and acceptance of goods and/or services is a procurement responsibility which will have to be resolved by procurement officials, and not by the OCFO.

The OCFO has no authority over the actions of procurement staff, nor does the OCFO have authority to discipline procurement staff for entering into improper procurements. But, once such improperly procured good and/or services have been actually received and accepted, the District has a responsibility under GAAP to record the liability; the legal responsibility to make payment is determined separately through the ratification process. The original policy, Resource Management Guidance No. 96-02, was promulgated not for procurement purposes but for budget control purposes, to direct financial staff to record all obligations. Financial Management and Control Order No. 05-002, issued July 22, 2005, and revised October 17, 2005, neither encourages, authorizes, nor condones improper procurements; it merely sets up the mechanism for the legally required payment to be made.

The remainder of this response will discuss certain findings, or statements, made by the GAO in the draft report, concerning OCFO, and the OCFO's response to each of those statements.

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GAO Statement: “The analysis confirmed that of the vouchers reviewed, over 11,000 totaling \$217 million were not in compliance with 21 allowed uses under the 1996 CFO policy.” (Page 26)

See comment 1.

The CFO Response: Only \$4 million in payments for 461 transactions actually fell outside of the Financial Management and Control Order No. 05-002 - Revised October 17, 2005, not \$217 million, pursuant to the analysis that the OCFO conducted in late-2005 on the District’s use of direct vouchers. These improper transactions averaged less than \$9,000 each, and while troublesome, are not evidence of any material breaches of internal control, or damage to the District’s financial stability.

The CFO Order provides requirements for the authorization of miscellaneous vouchers, which state that: “The Deputy CFO for the Office of Financial Operations and Systems (OFOS) may authorize the use of miscellaneous vouchers for other purposes upon making a determination that:

1. The transaction is not subject to the District’s procurement rules and regulations, and that;
2. an alternative means of processing the transaction is not available and that;
3. such voucher processing is not in violation of applicable law.

The OCFO believes that the District’s use of its policy on direct vouchers is used appropriately in over 99% of the transactions in which it is being used, and also for over 99% of the dollars that are being spent through the use of direct vouchers.

GAO Statement: “Rather than take steps to hold agencies accountable for these violations, the CFO’s policy was changed without consulting the CPO’s office on the merits of the change. CFO officials told us their office determined it was necessary to accommodate agency circumstances for bypassing the procurement process to more promptly obtain goods and services needed for critical operations.” (Page 26)

See comment 2.

The CFO Response: This statement is inaccurate and reflects a misunderstanding of the respective CFO and CPO roles. The CPO has no role in financial management policies including the liquidation of liabilities. The policy was not changed to accommodate agency circumstances or bypass the procurement process to more promptly obtain goods and services. As stated earlier, the District is required by Generally Accepted Accounting Principles (GAAP) to book a liability whenever the District has “received” and “accepted” goods and/or services from a vendor, regardless of whether that vendor had a valid contract or purchase order. The improper receipt and acceptance of goods and/or services is a procurement responsibility, which will have to be resolved by procurement officials, and not by the OCFO.

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GAO Statement: “Under Financial Management and Control Order No. 05-002, issued July 22, 2005, and revised October 17, 2005, the CFO added seven new circumstances for direct voucher payments to the 21 already included in the 1996 financial guidance. Five of the seven added circumstances were for new non-procurement related transaction, such as temporary welfare payments to families and certain lawsuit settlement payments. The remaining two are for procurement-related transactions, however, and are problematic.

The first circumstance – which allows direct voucher payments for goods and services needed for an unanticipated and nonrecurring extraordinary emergency – duplicates provisions in the District’s procurement law that establish procedures for handling such circumstances under emergency contracting procedures.” (Page 26)

The CFO Response:

We disagree that this is a needless duplication. Rather, it reasonably parallels other non-financial policy. We agree that the Office of Contracting and Procurement should be the determining agency as to what constitutes an “*unanticipated and nonrecurring extraordinary emergency*.” The OCFO is currently reviewing Financial Management and Control Order No. 05-002 - Revised October 17, 2005, and, if necessary, we will clarify this item; OCFO personnel should not be perceived as being responsible for making procurement related determinations. Our revision, if any, will be completed within the next three months, and we will include comments from District agency CFOs, the Office of Contracting and Procurement (OCP), in addition to the District’s Office of the Attorney General and the CFO’s General Counsel

GAO Statement: “The second circumstance allows agencies to make direct voucher payments for liabilities incurred through unauthorized commitments to vendors for goods and services without valid contracts after payment has been ratified – a practice that could further encourage employees to bypass established contracting procedures.” (Pages 26-27)

The CFO Response: We strongly disagree that this item encourages agency personnel to bypass established contracting procedures. As stated earlier, the District is required by Generally Accepted Accounting Principles (GAAP) to book a liability whenever the District has “received” and “accepted” goods and/or services from a vendor, regardless of whether that vendor had a valid contract or purchase order. The improper receipt and acceptance of goods and/or services is a procurement responsibility which will have to be resolved by procurement officials, and not by the OCFO. In fact, the OCFO has not used this exception to approve payment for unauthorized contracts.

See comment 3.

See comment 4.

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For example, the D.C. Public Schools did make such a request, in fiscal 2005, of the Deputy Chief Financial Officer, Office of Financial Operations and Systems, for the payment of Vendor Settlement Agreements and also for Accrued Liabilities. After thorough review, the Deputy CFO rejected the DCPS request, and directed them to initiate a proper ratification determination that followed D.C. law, OCP regulations, DCPS Office of Contracts and Acquisition (OCA) and OCFO requirements, before payment of such a request would be approved. The following language was used to deny the DCPS request:

“A DCPS OCA official will have to certify that the goods and/or services in question were “actually” received, not “probably” received, and to ratify each procurement. DCPS OCA officials will also have to follow both DCPS and District procurement authorization policies and procedures in order to make sure that each requested vendor payment is valid. Because of the large dollar amounts of some of these claims, the approval of the DCPS Superintendent or School Board may also be required. At that point, and only then, will OFOS reconsider your request for the authorization of direct vouchers to make these payments.”

This is the sort of payment request that should only be approved after the OCP, following District law and its procedures on contract ratification, determines that ratification of the unauthorized procurement is appropriate. Once proper ratification has taken place, the OCFO must have a mechanism for making the actual payment, and the use of a direct voucher is the only appropriate mechanism to do so. We must retain this item in the CFO Order to create the obligation in the financial management system to make the payment.

GAO Statement: “New York’s CPO described the city’s stringent controls and regular monitoring to detect and publicize agencies’ unauthorized commitments with vendors as well as its discipline of employees for bypassing contracting rules – steps that have greatly decreased the number of unauthorized commitments in that city’s procurement system.” (Page 28)

The CFO Response:

We would agree that the CPO’s stringent controls, regular monitoring, and discipline for infractions of the procurement process would greatly reduce unauthorized commitments. The OCFO does not have any control over the activities of OCP employees, or for the unauthorized commitments with vendors made at the agency level. Where such unauthorized commitments have been made and the goods or services have been delivered, the OCFO’s position, as stated earlier, is that a real “liability” has been created and must be recorded; actual payment should await the completion of the ratification process. However, as indicated previously, payments were made on 461 unauthorized commitments totaling \$4 million, and the average payment amount was less than \$9,000.00. These minor infractions in no way harmed the District’s financial stability.

See comment 5.

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This is not to dismiss the seriousness of the issue. The OCFO has implemented better internal controls at the agency level to make sure that all responsible employees -- OCP, agency procurement, and OCFO employees -- are made aware of the prohibitions against making unauthorized vendor commitments, and that their performance plans and evaluations will begin to reflect such errors in applying District procurement regulations.

OCFO General Comments: The use of direct voucher payments is not an unusual occurrence, either for governments or businesses, although there are different terms that are used for the process, such as: direct payment, direct payment orders, direct voucher, voucher payment, special payment, special expenditure, direct purchase order, etc. The District's financial operations are audited every year for the preparation of the District's Comprehensive Annual Financial Report (CAFR), and the District was not cited for a Yellow Book violation of a Material Weakness, Reportable Condition, or instance of Material Noncompliance, in regards to its use of direct vouchers during the entire period that direct vouchers have been in use by the District, from fiscal year 1996 through fiscal year 2005.

The use of direct vouchers is an accepted procedure that private businesses and governments use to make payments to other governments, business, or individuals, for items that are non-procurable. The contracting and procurement process anticipates procurements, or purchases, that can be issued as a result of competitive bidding, and in those cases where the good or service and its quantity is known in advance, then that is the practice that should be used.

Realistically though, there are many specific situations where the item is not a procurable item, such as the requirement to make a court ordered payment, payment (or transfers) between agencies or governments, utility payments, employee related benefits, worker's compensation and unemployment benefits payments, jury duty, court witness fees, stipends, debt service, payroll withholding, revenue refunds, etc.

These are not procurable because they are required payments by law, they are payments made directly to individuals, or they are refunds of payments made to the District, either in error or an excess amount, etc. Other governmental jurisdictions and private corporations have similar needs and in those situations they can, and do, make similar payments, although they may call them something else.

The two changes cited under Financial Management and Control Order No. 05-002, issued July 22, 2005, and revised October 17, 2005, in regards to emergency procurements and contract ratifications were undertaken, not to thwart OCP's ability to perform their responsibilities, but to document those instances where necessary goods or services were *actually* received, or unauthorized contracts where the goods or services were *actually* received, and to specify the conditions that must be met for the payment to be made.

See comment 5.

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The OCFO believes that GAO has failed to research the methods and procedures that other jurisdictions use to make payments in situations similar to what the District has been cited as having done improperly. We believe that if GAO had done such a study, then it would have been exceedingly clear that jurisdictions all face similar situations, and must use responses very similar to what the District use, even though they may call the process something other than "direct vouchers."

The OCFO is in the process of updating its Financial Management and Control Order No. 05-002, issued July 22, 2005, and revised October 17, 2005 to make necessary clarifications in response to the concerns of both the U.S. Government Accountability Office and the D.C. Office of Contracting and Procurement. We also plan to work with OCP to develop better communication and integration between OCP and OCFO computer systems and procedures.

We look forward to working with officials in the Administration and the Congress to find solutions to the District's procurement system issues.

Sincerely,



Natwar M. Gandhi
Chief Financial Officer

The following are GAO's comments on the CFO's letter dated January 5, 2007.

GAO Comments

1. As we state in the report, the CFO's analysis of fiscal year 2004 direct voucher payments showed that \$217 million fell outside a 1996 financial management and control order. It was only after the CFO, in 2005, added 7 more acceptable uses of direct vouchers to the original order, that these payments were found to be acceptable. The \$4 million in payments referred to in the CFO's comments are those that fell outside this updated policy.
2. We recognize that the CPO's office is not directly responsible for developing financial management policies. However, we believe that in order to effect meaningful procurement reform, the CPO should be consulted on any policy changes that affect procurement—particularly as such changes have been amended into the procurement law. Elevating the CPO within the District government, as we recommend, would facilitate needed coordination.
3. Because the District's procurement law already establishes emergency contracting procedures, we stand by our finding and recommendation that including emergency procurements as an acceptable use of direct vouchers duplicates the provision in the law and allows agencies to bypass established contracting procedures.
4. As we state in the agency comments section, we recognize the obligation to pay for accepted goods and services, but we are concerned that the current policy, now codified in the law, is a symptom of the lack of necessary management focus to minimize the number of unauthorized commitments that may be ratified and ultimately paid through direct vouchers. In meetings with CFO staff, they acknowledged that the ratification process needs strengthening to include, in appropriate cases, possible referrals for Anti-Deficiency Act violations.
5. The scope of our review was on the District's procurement system as a whole, not on the direct voucher process. As part of this review, we examined and discussed with chief procurement officers reform efforts in other cities. Through these discussions, we learned that other cities have consistently taken steps to curb the use of direct vouchers where at all possible and to ensure strict controls are in place to hold employees accountable when their actions result in an unauthorized commitment to vendors.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual named above, Carolyn Kirby, Assistant Director; Barry DeWeese; Cynthia Auburn; Rachel Girschick; Kevin Heinz; Bill Petrick; Sylvia Schatz; and Karen Sloan made key contributions to this report.

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