FCPS Audit Report: 19-1101 - Specific Contracts – Instructional Services Department and Department of Information Technology

December 2018

Prepared by
Office of Auditor General

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Executive Summary

This audit report summarizes the results of the Office of Auditor General's (OAG) performance audit of procurement and contract management controls and processes in place to support procurement and contracting activities, including compliance with laws, rules, and regulations, as well as vendor performance, within Instructional Services Department (ISD) and the Department of Information Technology (DIT). The audit was performed in accordance with the Fiscal Year (FY) 2019 Audit Plan approved by the Fairfax County School Board.

The primary objectives of the audit were to perform the following:

- Obtain and review laws, rules and regulations, FCPS directives, and contractual terms and conditions applicable to procurement and contract management within ISD and DIT.
- Determine whether ISD and DIT procurement controls and processes are followed in accordance with the laws, rules and regulations, FCPS directives, and contractual terms and conditions by reviewing a sample of ISD and DIT contracts (including sole source), and contract management documentation.
- Evaluate whether ISD and DIT has controls in place to ensure accountability and monitoring of vendor performance and delivery of services and goods by reviewing sample of ISD and DIT contracts (including sole source), and contract management documentation.

While the focus of this audit was on the contract management and procurement processes specifically within ISD’s and DIT’s span of responsibility, OAG found that Office of Procurement Services (OPS) plays an active role in both areas. Overall, both ISD and DIT demonstrated appropriate contract management responsibilities; however, OAG identified a disconnect between the departments and OPS as it relates to the assignment of contract management responsibilities for certain contracts. This disconnect, which is rated as a moderate finding, could negatively impact the efficiency and effectiveness of FCPS operations as departments may be unaware of contract management responsibilities for certain contracts. As the root cause of this finding is attributed to the lack of FCPS regulations related to the assignment of contract management responsibility, the Office of the Chief Operating Officer (COO) will take ownership and lead the charge to coordinate the corrective action process. COO agrees that assigning an owner for procurement processes should be included in a regulation. OPS will include a document to identify the factors and process for contract ownership in Regulation 5012 by April 30, 2019.

OAG also noted two observations related to the contract amendment and award processes.

Additionally, OAG performed analysis on recent sole source contract awards within each department and noted that the utilization of the sole source procurement method is trending downward during recent fiscal years. Specifically, ISD has increased competitive procurements during the past two fiscal years, and DIT continues to utilize sole source as the exception.

OAG is pleased to report that the audit found a professional and organized team of staff in both ISD and DIT. We appreciate the consultation, cooperation, and courtesies extended to our staff by ISD and DIT, as well as OPS.
Background, Scope and Objectives, and Methodology

Background

Procurement Overview

Office of Procurement Services (OPS), with delegated authority from the Fairfax County purchasing agent, is the central procurement office for Fairfax County Public Schools (FCPS). OPS is responsible for all procurements except those related to construction, as outlined in the Fairfax County Purchasing Resolution, Article 1, Section 3.A.2 and Article 3, Section 1.B. Departments, including Instructional Services Department (ISD) and Department of Information Technology (DIT), coordinate with and rely upon OPS to solicit for and award contracts once a need has been identified, or upon expiration of existing contracts. Departments are tasked with identifying needs, as well as providing input during the solicitation process and expertise during the negotiation process, as applicable.

OPS oversees the following four main types of procurements:

- **Invitation for Bid (IFB)** - This type of solicitation is also called competitive sealed bidding and is written with great specificity, and potential bidders must be willing to provide the product or service as specified. Price is the only criterion for selection.

- **Request for Proposal (RFP)** - This type of solicitation is also called competitive negotiation. RFPs may be written with less specificity to allow possible contractors room to offer creative solutions to FCPS needs. FCPS staff may also negotiate with bidders for greater level of service or in relation to price. RFPs look for best value, which means that price is not the only criterion for selection.

- **Sole Source/Best Practicable Source** - Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. A written record documenting the basis for this determination is required to be included in the appropriate contract file or other records of the procurement. Best practicable source contracts are used when there are multiple providers, but only one whose service can be practically provided.

- **Cooperative Procurement and Rider contracts** - A term that refers to the combining of requirements of two or more public procurement entities to leverage the benefits of volume purchases, delivery, supply chain advantages, and the reduction of administrative time and expenses. Rider contracts are those from other government entities which allow additional users. Generally, the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract.

ISD uses current research-based best practices to guide instruction that is customized to provide equal opportunity so all students can reach their full potential and be successful, productive citizens in the 21st century. Examples of goods and/or services procured by ISD to support its mission include contracts for curriculum and related materials, educational software, professional development, as well as tests and assessments.

DIT provides information technology leadership, products, and services, while managing division-wide information resources, ensuring security and integrity. Examples of goods and/or services procured by DIT in support of its objectives include contracts for technology hardware and parts, software products and licenses, as well as IT-related safety and security solutions.
As part of the objectives of this audit, OAG performed analysis on sole source and total contract awards assigned to ISD and DIT in FOCUS. Specifically, we utilized Fairfax County Unified System (FOCUS) to generate a listing of contracts assigned to each department to quantify the number of sole source contracts awarded each of the previous five fiscal years.

As shown below, during the past two fiscal years, ISD has reduced the frequency of sole source procurements and has increased the rate of contracts procured via competitive methods such as RFP and IFB. DIT has consistently relied upon competitive procurement methods for obtaining contracts during each of the previous five fiscal years.

### Contract Awards by Assigned Department FY 2014-2018

<table>
<thead>
<tr>
<th></th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructional Services Department</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Sole Source Awards</td>
<td>22</td>
<td>22</td>
<td>28</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>Total Contracts Awarded</td>
<td>31</td>
<td>35</td>
<td>38</td>
<td>30</td>
<td>36</td>
</tr>
<tr>
<td>Percent of New Awards</td>
<td>71%</td>
<td>63%</td>
<td>74%</td>
<td>50%</td>
<td>31%</td>
</tr>
<tr>
<td>Department of Information Technology</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Sole Source Awards</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Total Contracts Awarded</td>
<td>6</td>
<td>11</td>
<td>8</td>
<td>13</td>
<td>23</td>
</tr>
<tr>
<td>Percent of New Awards</td>
<td>33%</td>
<td>27%</td>
<td>25%</td>
<td>15%</td>
<td>4%</td>
</tr>
</tbody>
</table>

Note: The quantities reported above reflect FOCUS data as of October 30, 2018.

### Contract Management Overview

Contract management combines the functions of procurement and contract monitoring. In FCPS, contract management responsibilities are shared between schools, the various departments, and OPS. The focus of this audit was on the contracting and procurement processes specifically within ISD’s and DIT’s span of responsibility.

OPS, as the central procurement office within FCPS, maintains an online procurement manual which includes Contract Management Best Practices. OPS’ Contract Management Best Practices provides guidance in the following key areas:

- Post-Award Orientation
- Contractor Compliance
- Performance Monitoring
- Contract Modification
- Contract Closeout/Completion

In addition to these best practices, both ISD and DIT have developed internal contract management policies and procedures to provide guidance to employees within each department.

ISD’s Office of Operations and Communications oversees contract management within the department and supports programs and services through finance, administrative, logistics,

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1 As described in Finding 1 below, differences exist between contracts assigned to each department in FOCUS and contracts for which departments have stipulated management responsibilities.
and technology support. ISD’s contract management internal policies and procedures, Procurement Basics, was revised and updated in 2018 to more closely align with OPS Contract Administration Best Practices. ISD Procurement Basics provides guidance related to procurement and contract management processes, including departmental procurement contacts, procurement planning considerations, and training requirements. Additionally, ISD hosted OPS for a departmental specific procurement training in October 2018, with over 60 employees in attendance.

DIT’s Program Management and Planning (PMP) office works closely with all other offices across DIT, OPS, and other departments to plan, execute, and where applicable, monitor contracts. DIT’s full-time Project Manager is responsible for overseeing the management of contracts within the department. DIT is intentional and trades for this position on an annual basis because they recognize the importance of the position. Generally, DIT contracts can be categorized into three groupings: technical and program-based, tangible goods, and service-based. These groupings, as well as cross-departmental coordination, help determine the required or recommended DIT and vendor interaction, as described in DIT’s Contract and Management Vendor Management Toolkit:

- Technical and program-based contracts often require quarterly, or more frequent, meetings both internally and with the vendor(s). Especially for projects with multiple facets of implementation, a quarterly meeting may help to bring all stakeholders together and provide the opportunity to discuss big-picture issues, trouble-shoot and also plan for future considerations.
- Contracts for tangible goods require that issues be addressed immediately, so regular communication is the preferred method for these purchases. Unresolved issues should be escalated as needed, and purchasing/procurement should continue to be evaluated thoroughly.
- Service-based contracts require analysis and planning prior to purchasing. As with contracts for tangible goods, purchasing issues must be addressed immediately. Where changes in licenses or other services arise, temporary workgroups, which include a program manager, may be necessary. Frequent and regular meetings, both internal and with the vendor(s), may be required periodically with service-based contracts.

Within ISD and DIT, vendor performance evaluations are completed and provided to the contract office of record, OPS. The evaluations document whether or not goods and/or services are delivered in a timely manner, are of good quality, and other attributes related to vendor performance. While there is no codified regulation related to the frequency of these evaluations, OPS guidance is that vendor performance be evaluated quarterly. Within each department, vendor evaluations are conducted at least annually.

When contracts require modification, such as the addition or removal of goods and/or services, or changes to the pricing schedule, departments must coordinate with OPS to execute contract amendments. Additionally, departments must communicate with OPS to increase FOCUS contract spending limits, which cap the amount of allowable spending on a contract.

In addition to analysis on the quantity of sole source and total contract awards assigned to ISD and DIT, OAG calculated ISD and DIT purchase order (PO) expenditures incurred on their managed contracts, as identified on each department’s respective contract listing. Specifically, OAG obtained an FY 2018 PO expenditure report from FCPS Financial Services and calculated expenditures on contracts managed by ISD and DIT.

The following amounts include expenditures only incurred through the use of purchase
orders on departmentally managed contracts and do not include expenditures incurred using purchase cards (p-cards), expenditures not made on contract, or expenditures on contracts not included on each departments respective contract listing.

**FY 2018 Departmental Expenditures on Departmentally Managed Contracts**

<table>
<thead>
<tr>
<th>Purchase Order Expenditures</th>
<th>ISD</th>
<th>DIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Source Contracts</td>
<td>$7,718,856</td>
<td>$3,626,002</td>
</tr>
<tr>
<td>Other Contract Types</td>
<td>$4,703,383</td>
<td>$48,477,044</td>
</tr>
<tr>
<td><strong>Expenditures on Managed Contracts</strong></td>
<td><strong>$12,422,239</strong></td>
<td><strong>$52,103,046</strong></td>
</tr>
</tbody>
</table>

ISD expended approximately $7.7 million on sole source contracts managed by the department, of which $5.2 million is to *College Entrance Examination Board*, the vendor of college readiness programs and examinations such as Advanced Placement and the PSAT, and *International Baccalaureate Organization*, a provider of curriculum, materials, test scoring, and other services. The remaining ISD sole source expenditures were made on contracts for services such as online subscriptions, professional development, and student assessments.

DIT expended approximately $3.6 million on sole source contracts managed by the department. These contracts include services such as software licenses and support and maintenance.

**FOCUS Financial System**

FOCUS is the approved financial accounting system used by FCPS and Fairfax County. The FCPS *School Finance Handbook* contains a brief description of how FOCUS is used for the expenditure of appropriated funds. Additionally, resources such as ‘FOCUS Fundamentals,’ ‘Procurement Basics,’ ‘Other FOCUS Resources,’ and a FOCUS FAQ are available to FCPS employees in the online-based FOCUS Toolkit.

Contract documentation such as Acceptance Agreements, Notice of Awards, Amendments, and IFB and RFP solicitations, which route to the Fairfax County Contract Register, are maintained within FOCUS. Other documentation related to specific purchases, such as vendor quotes, purchase orders, receiving information, and invoices, is also maintained within FOCUS.

**Scope and Objectives**

We conducted this audit in accordance with generally accepted government auditing standards, with the exception of peer review. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding, observations and conclusions based on our audit objectives. The audit covered contracts active, at any time, during the period July 1, 2017 to June 30, 2018 (FY 2018), regardless of when the contract was awarded.

The primary objectives of the audit were to perform the following:

- Obtain and review laws, rules and regulations, FCPS directives, and contractual terms and conditions applicable to procurement and contract management within ISD

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2 Amounts include only expenditures incurred on contracts included on each department's respective contract listing.
and DIT.

- Determine whether the ISD and DIT procurement controls and processes are followed in accordance with the laws, rules and regulations, FCPS directives, and contractual terms and conditions by reviewing sample of ISD and DIT contracts (including sole source), and contract management documentation.
- Evaluate whether ISD and DIT has controls in place to ensure accountability and monitoring of vendor performance and delivery of services and goods by reviewing sample of ISD and DIT contracts (including sole source), and contract management documentation.

Methodology

To fulfill the audit objectives, the audit team performed the following:

- interviewed ISD, DIT, and OPS personnel,
- analyzed procurement trend information,
- reviewed applicable laws, rules, regulations, and FCPS policies and procedures,
- reviewed contract files and data maintained within FOCUS,
- tested internal controls, and
- inspected sample of contracts and reviewed purchase orders, receiving documents, invoices, and other documents for accuracy, completeness, and proper approvals.

OAG utilized the stratified random sampling technique, a statistical method which allows for each contract within a strata to have an equal chance of being selected, to sample contracts for review. The sample, which is proportional to the population, was selected from the following three types of procurement methods: (1) Cooperative/Rider, (2) Requirements (Invitation for Bid (IFB) and Request for Proposal (RFP)), and (3) Sole Source/Best Practicable Source. A sample size of 40 out of 183 total contracts, active\(^3\) and with spending during FY 2018, was determined to be adequate to achieve at least a 95% confidence factor.

<table>
<thead>
<tr>
<th>Procurement Methods</th>
<th>Number of Selections</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ISD</td>
</tr>
<tr>
<td>Cooperative/Rider</td>
<td>2</td>
</tr>
<tr>
<td>Requirements (IFB and RFP)</td>
<td>6</td>
</tr>
<tr>
<td>Sole Source/Best Practicable</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total Sampled:</strong></td>
<td><strong>20</strong></td>
</tr>
</tbody>
</table>

**Note:** Within FOCUS, both IFB and RFP procurement methods are referred to as “Requirements Contracts,” which was the basis for our sampling; both are competitive procurement methods.

OAG is free from organizational impairments to independence in our reporting as defined by government auditing standards. OAG reports directly to the School Board through the Audit Committee. We report the results of our audits to the Audit Committee and the reports are made available to the public via the FCPS website.

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\(^3\) Active contracts are those which were active, at any time, during the period July 1, 2017 to June 30, 2018 (FY 2018).
Audit Findings, Recommendations, and Management’s Responses

The finding within this report has been attributed a risk rating in accordance with established risk criteria as defined in Table 1.

Table 1 – Risk Criteria

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>One or more of the following exists: Controls are not in place or are inadequate. Compliance with legislation and regulations or contractual obligations is inadequate. Important issues are identified that could negatively impact the achievement of FCPS program/operational objectives.</td>
</tr>
<tr>
<td>Moderate</td>
<td>One or more of the following exists: Controls are in place but are not sufficiently complied with. Compliance with subject government regulations or FCPS policies and established procedures is inadequate, or FCPS policies and established procedures are inadequate. Issues are identified that could negatively impact the efficiency and effectiveness of FCPS operations.</td>
</tr>
<tr>
<td>Low</td>
<td>One or more of the following exists: Controls are in place but the level of compliance varies. Compliance with government regulations or FCPS policies and established procedures varies. Issues identified are less significant but opportunities exist that could enhance FCPS operations.</td>
</tr>
</tbody>
</table>

During this audit, OAG identified one moderate finding and two observations which are detailed below. The observations are classified as such due to OPS’ role in the contract management and procurement processes as well as the reasonableness of the purchases, as described below.
Finding 1 - Contract record differences noted between departments and OPS

Risk Rating: Moderate – Issues are identified that could negatively impact the efficiency and effectiveness of FCPS operations.

Responsible Party: Office of the Chief Operating Officer

Condition:

While OAG found contract monitoring to generally be performed adequately during our review of specific contracts within ISD and DIT, OAG identified a disconnect between OPS, who procedurally designates ownership within FOCUS, and the departments, as it relates to the assignment of contract management responsibilities for certain contracts. Specifically, OAG identified 18 contracts assigned to either ISD or DIT by OPS that were not included on the ISD and DIT contract master list. Of the 18 contracts, the departments agreed that three contracts should have been included on the respective departmental contract master list, but disagreed with OPS on the designation of the remaining 15. The three contracts agreed to by the departments have been added to the departmental contract listings. No resolution has been reached on the remaining 15 contracts that the respective departments did not agree to the designated ownership.

While this finding was identified during the departmental specific contract audit, this appears to be a division-wide systemic issue rather than one limited to the two departments. Based on discussions with ISD, DIT, OPS, and the Chief Operating Officer (COO), the COO will take ownership and lead the charge to coordinate the corrective action process.

OAG also notes that within FOCUS, only one department can be assigned contract ownership; however, based on our discussions, contracts exist that have more than one responsible party, such as non-IT based contracts that require IT implementation or maintenance. Additionally, some school-based contracts are centrally managed, but contract management responsibilities are not adequately assigned.

Criteria/Cause:

There are no existing FCPS regulations which provide the authority to assign ownership of contract management responsibilities.

Effect:

Departments may be unaware of contract management responsibilities, which could result in vendor non-performance or other issues not being recognized and remedied in a timely manner.

Recommendation:

- Office of the COO lead in developing regulation(s) which provides authority to assign contract management responsibility.
Management Response (Actions and Due Date):

The Chief Operating Office agrees that assigning an owner for procurement processes should be included in a regulation. The Office of Procurement Services will include a document to identify the factors and processes for contract ownership in the Regulation 5012. This document will be updated by April 30, 2019.

Due Date: April 30, 2019
Observation 1 - Contract amendment not executed prior to departmental purchase

OAG identified two instances out of 40 sampled contracts where an item was purchased which was not specifically itemized in the contract or prices were paid which were greater than stipulated, without a formal contract amendment. We consider these instances to be observations because OPS ultimately approved the purchase orders for the items within FOCUS, and the purchases appeared to be fair and reasonable based on the respective contracts and research conducted by OAG. User departments, as the day-to-day users of contracts, must be proactive in notifying OPS when a contract amendment is needed to add additional in-scope goods and/or services that are not explicitly included in the contract as well as when contract prices are modified.

a. OAG noted one instance out of 40 sampled contracts where the user department purchased goods that were not specifically itemized in the contract. Based on the vendor website, OAG was able to determine that a discount was given for the items and the price appeared reasonable. Additionally, the contracted vendor was the only vendor to respond to the IFB; however, the IFB was written for maintenance, rather than goods, therefore OAG was unable to determine if other vendors were available to provide the items at the time of purchase.

Section 4.1 of the IFB states: “Authorized individuals will place orders for specific quantities of items covered in the resultant contract, as requirements arise.”

Additionally, section 15.1 of the IFB states: “The County reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. Fairfax County and the Contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.”

b. OAG noted one instance out of 40 sampled contracts where the user department paid prices greater than stipulated without a formal contract amendment, as required by the contract.

In response to our inquiry regarding the pricing, the department stated that they work with OPS to determine the reasonableness of any contract increase. Specifically as it related to this contract, the department stated that the increase of approximately two percent was found to approximate the annual CPI figure for the year that the purchase order was written.

Acceptance Agreement section 3.1 states: “FCPS agrees to pay the Contractor at the rate specified in the attached Pricing Schedule for goods/services provided. As the Contractor is not a bonafide County employee the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be the sole responsibility of the Contractor.”

Acceptance Agreement section 3.2 states: “Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U) or other relevant indices and shall be mutually agreed upon. Upon receipt of the Contractor's request, the County shall make a determination to approve or adjust the requested rate increase based upon its investigations and the information provided by the Contractor.”
Additionally, Acceptance Agreement section 19.2 states: “No payment shall be made to the contractor for any extra material or services, or of an greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.”
Observation 2 - Sole Source procurement method not justified

OAG noted one instance out of 40 sampled contracts where the user department did not complete a Sole Source Procurement Request form, and OPS subsequently awarded the contract without the request form documentation. The requirement to complete a sole source procurement request form is only applicable to the sole source contracts included in the sample. We consider this to be an observation because this appeared to be an isolated occurrence and the department lacks the authority to award contracts.

This particular contract, awarded in 2013, replaced an expiring contract with the same vendor. OPS’ ‘Determination and Findings’ for this contract indicated that no request form was completed because the "contract replaces expiring contract [number] and provides the same deliverables."

Per Fairfax County Internal Procedural Memorandum No. 12-200, departments are required to complete and submit a Sole Source Procurement Request, which clearly identifies the following:

- Intended use and/or application of the requirement.
- Any unique features, mandatory requirements and/or critical installation schedules dictated by the intended use or application schedules, which will limit the purchase to a single source or a specific make and model.
- The fact that no other known or practical source of supply exists for the requirement (the steps which led to this conclusion must be elaborated upon).
- The existence of a patent or copyright.
- Practical factors which preclude the normal solicitation of competition.

Without a Sole Source Procurement Request form, or similar documentation which documents the justification of sole source procurement, a contract may be awarded to a vendor that is not actually a sole source of the good(s) and/or service(s).