

MIAMI-DADE COUNTY
OFFICE OF THE INSPECTOR GENERAL



FINAL AUDIT REPORT

**Departmental Selection Processes Under the
Equitable Distribution Program (EDP)**

IG06-53

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MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
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INTRODUCTION

The Office of the Inspector General (OIG) performed an inspectional review of the selection processes and practices used by Miami-Dade County (County) departments when seeking architectural and engineering services under the County's Equitable Distribution Program (EDP). The EDP was established by the Board of County Commissioners in June 2001 and is currently administered by the Office of Capital Improvements (OCI). The EDP serves as the County's standard method to procure architectural and engineering services for miscellaneous projects not exceeding \$1 million in construction costs and \$50,000 for study activities. The Program consists of a pre-qualified pool of eligible architect and engineering (A&E) firms. It is designed to equitably distribute work assignments and to increase opportunities for locally based businesses. As of December 31, 2006, there were 221 active EDP firms. Since the EDP began, 695 assignments have been distributed to 220 EDP firms.

Our primary objective was to evaluate departmental EDP processes for compliance with County policies and procedures, with an emphasis on inspecting department records identifying the criteria used to select an EDP firm for a particular project.

This review is a follow-up to the *OIG's Final Audit Report of the Professional Service Agreement between the Office of Water Management (OWM) and EAS Engineering, Inc., Audit No. IG06-08A*, issued on September 28, 2006, wherein we identified that an EDP prime consultant improperly acted as a 100% pass-through for an unauthorized non-EDP firm. Additionally, OWM, the County department overseeing the agreement, failed to follow County procedures by hand-picking EAS Engineering from a list of EDP consultants without documenting the criteria used to determine that it was the most qualified firm to do the work. As such, the OIG felt it was prudent to perform a multi-departmental review focusing on the EDP selection processes and practices used elsewhere in the County.

SUMMARY

We reviewed ten EDP projects from ten County departments. A majority of the departments, six out of ten, maintained adequate records that documented their selection criteria. The other four departments did not have adequate records or could not provide any records of their selection criteria. Either these departments stated that they could not recall what criteria they used or that the person who was responsible for reviewing and selecting the firms is no longer with the department and, thus, were unable to provide an explanation.

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Additionally, eight of the ten projects had firms that submitted invoices for payment; the remaining two projects were still in their negotiating phase. Of the eight firms, three firms provided properly supported payment requisitions with monthly utilization reports (MURs) attached; however, the departmental project manager who is responsible for reviewing and approving the payment requisitions did not sign the MURs. The remaining five firms failed to provide properly supported payment requisitions with MURs attached. The number of payment requisitions submitted by the firms varied between one and 23.

Although most of the departments in the sample are complying, for the most part, with EDP procedures and other County guidelines, we strongly recommend that some changes be made. First, the Office of Capital Improvements (OCI) should provide training to departmental personnel instructing them on how they can establish reasonable selection criteria, the information that they should be obtaining from prospective firms, and how best to document that information.

Additionally, OCI should revise its written procedures to better define EDP process requirements and to facilitate compliance with A.O. 3-39, *Standard process for construction of capital improvements, acquisition of professional services, construction contracting, change orders and reporting*. OCI's EDP procedures state that a MUR is not a requirement. However, A.O. 3-39 states that EDP firms are required to submit utilization reports on all new and existing contracts, including new work authorizations. Therefore, we recommend that OCI amend its procedures to conform to A.O. 3-39 and eliminate the conflicting requirement.¹ Moreover, as explained in Finding No. 2, we believe that another good reason to maintain the MUR requirement is to aid departments in their monitoring of projects, especially those lasting over one year and/or those using sub-consultants.

Second, EDP procedures permit a firm to decline an offer for a work assignment twice per calendar year. After its second declination, a firm's EDP privileges may be suspended or revoked. In order for this guideline to carry any credence, departments should document all declinations with written acknowledgment from the declining firm, and forward them timely to OCI. From our review, six departments had firms that declined participation and they all informed OCI timely; however, only three departments had written records provided by the declining firms. The other

¹ This recommendation is a follow-up to one of our previous findings noted in the September 2006 report mentioned earlier. OCI's response to our audit was that the EDP *Close-Out Form* and the Utilization Form are synonymous and that during the EDP program development and implementation, DBD created the EDP *Close-Out Form* specifically to act as the EDP project utilization report. Departments now submit the *Close-Out Form* to OCI, which OCI forwards to DBD to process.

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departments did not follow-up with written confirmations to the firms that provided their declinations orally.

Third, with respect to one of the projects audited, the General Services Administration (GSA) should have completed an EDP *Close-Out Form* and performance evaluation of Schindler Architects, Inc. (Schindler) for its work order with Schindler where GSA terminated its service order due to non-performance issues.

We also conducted a survey of department personnel to gather information on their views, experiences and familiarity with the EDP and to solicit their suggestions on how to improve the Program. A majority of the department personnel stated that the EDP Program could be more efficient if the technical categories were better defined and if a firm's experiences and other qualifications were more closely matched to the technical category. The survey and its results are discussed beginning on page 22 of the report.

TERMS USED IN THIS REPORT

A&E	Architectural and Engineering
A.O.	Administrative Order
Behar	R.J. Behar & Company
CIIS	OCI's Capital Improvements Information System
County	Miami-Dade County
DBD	Department of Business Development (County) ²
DERM	Department of Environmental Resources Management (County)
DSWM	Department of Solid Waste Management (County)
EDP/the Program	Equitable Distribution Program
GSA	General Services Administration (County)
MDAD	Miami-Dade Aviation Department (County)
MDFR	Miami-Dade Fire Rescue (County)
MUR	Monthly Utilization Report
Park & Recreation	Park & Recreation Department (County)
PWD	Public Works Department (County)
OCI	Office of Capital Improvements (County)
OIG	Office of the Inspector General
Schindler	Schindler Architects, Inc.
UCI	UCI Engineering, Inc.
WASD	Water and Sewer Department (County)

² DBD was recently renamed Small Business Affairs and is now administered by the Department of Procurement Management.

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AUDITEE RESPONSES

Our report contains four findings, a section on our survey of EDP users and four recommendations. This report, in draft form, was provided to the Office of Capital Improvements (OCI), for its comments to our overall findings. Additionally, as related to our specific findings of noncompliance, we provided this report to the General Services Administration (GSA), the Park and Recreation Department, the Public Works Department and Fire Rescue. Lastly, as related to the GSA project that we reviewed more extensively in Finding No. 4, we provided our report to Schindler Architect, Inc. (Schindler). Responses were received from all except Fire Rescue and they are attached to the final report as Appendixes A - E.

Finding No. 1 addressed specifically the lack of documentation (MDFR, GSA and PWD) or incompleteness of documentation (Park & Recreation) at these departments and, in general, the disparate documentation supporting all of the reviewed EDP procurements at their respective departments.

The OIG recommended that OCI provide training to departmental personnel instructing them on how they can establish reasonable selection criteria, what information they should obtain from prospective consultants and how best to document that information. In addition, we recommended that OCI develop a standardized EDP selection worksheet for personnel that would also serve as a permanent record of departmental efforts.

Auditee Responses

GSA stated that it has “implemented the *EDP – A&E Interview Evaluation Form* (copy attached) to be utilized any time EDP firms are interviewed during the selection process...” GSA believes that completion of this form, which is to be placed in the project file, should help to ensure that there is consistent, documented support of the selection criteria for EDP.

PWD stated that they do have procedures to ensure a fair selection process. PWD attached copies of the documents that it uses and further added that it “has taken measures and reiterated to staff the importance of ensuring that the selection process of consultants through the EDP pool follows the departmental system ...”

Park & Recreation disagreed with the OIG finding that its records were incomplete. Additionally, Park & Recreation attached a copy of its departmental procedures, which it believes conform to the County’s EDP Procedures, and added that a “review to ensure that clear and transparent procedures with regard to the selection process

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documentation, selection criteria, and collection of the Monthly Utilization Reports (MURs) will be conducted.”

OCI responded by stating that it will provide, through its Capital Improvements Information System (CIIS), selection criteria outlined in Florida Statute 287.055 and a basic selection worksheet for use by departmental personnel during their selection processes and that can be used as a permanent record thereof. OCI mentions that it has provided training to departmental personnel and EDP participants and “[h]as implemented a number of recommendations not requiring an AO amendment, and periodically fine tunes the procedural documents.” In addition, OCI stated that it does not have the authority to mandate what records departments should maintain but, nonetheless, “OCI will develop a recommended list of project documents and post it on the CIIS with other OCI recommended procedures.”

As previously mentioned, Fire Rescue, while receiving a copy of the draft report to comment on its one project in our audit sample, did not provide the OIG with a response.

Finding No. 2 concerns our observation that several consultants did not include *Monthly Utilization Reports* (MURs) with their payment requisitions. When questioned, departmental personnel most often responded by saying that they believed MURs were only used for construction contracts and not for A&E services. We opined that one reason might be that there is an inconsistency between A.O. 3-39 and OCI’s EDP Policies and Procedures regarding MURs. We also mentioned this issue in this report’s SUMMARY section (page 2).

The OIG recommendation was that OCI’s EDP procedures should conform to those spelled out in A.O. 3-39.

Auditee Responses

OCI stated that it was going to develop new utilization reporting, including a requirement for intermittent reports since EDP projects often take several years to complete.

GSA acknowledges that there are discrepancies between A.O. 3-39 requirements and those of the EDP Procedures regarding the use of MURs. GSA continues that it has required MURs for its construction projects but not for its EDP projects; however, “GSA staff will now require that consultants submit utilization reports with every payment requisition submitted to the County.”

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Finding No. 3 is that departments do not always document a firm's declination to participate in an EDP solicitation. The important issue here is that a firm may lose its EDP status if it declines an offer to participate in an EDP solicitation more than twice per year. Departments typically inform OCI of a firm's declination, which they are required to do, but that they do not always prepare a formal record of a firm's declination. This could lead to unnecessary disputes between a firm and the County about its eligibility to participate in an EDP solicitation because of previous declinations. If the County has no formal record, it would be difficult for it to deny a firm's challenge. The OIG acknowledges that it did not find any instances where this was an issue. Nevertheless, the OIG recommended that a department should document in writing a firm's declination.

Auditee Response

OCI responded that a firm with repeated declinations has not been an issue to-date. In addition, OCI apparently agrees with the OIG that some form of written document supporting a firm's declination is a good idea, "An explanation via e-mail to OCI with a copy to the firm should be an acceptable procedure."

Finding No. 4 described a GSA project beset by a poor performing consultant—Schindler Architects, Inc. (Schindler)—and some questionable project management by GSA personnel. The consultant did not provide final signed and sealed project designs timely, in large part because of a dispute between it and its sub-consultants over payment of their fees. In total, GSA paid Schindler \$214,510 (95% of its fee) through December 2005, although Schindler had stopped paying its two sub-consultants earlier that year. As a result, Schindler collected about \$34,000 in fees payable to its sub-consultants that it did not pay out. GSA apparently was unaware of the dispute between Schindler and its sub-consultants until March 2006. Notwithstanding GSA efforts, Schindler did not complete its work and in September 2006, GSA terminated the service order. After terminating Schindler, GSA did not prepare the required *EDP Close-out Form* and consultant performance evaluation. To-date, GSA still has not completed this paperwork.

We believe that if it were not for the OIG's intervention, the issues of non-payment and non-performance would likely remain unresolved. After our initial conversation with Mr. Schindler in February 2007, Mr. Schindler informed us on May 8, 2007, that he paid both sub-consultants the remaining balances owed to them. Mr. Schindler provided us with copies of the checks issued to Behar, for \$11,635.83 and to UCI, for \$22,294.13.

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According to GSA, they have verified with both sub-consultants that they have received payment for their respective amounts owed. GSA added that it would continue to proceed with completing the A&E plans in-house in order to complete the project. Additionally, GSA Construction Manager stated that they do not plan to pay Schindler the remaining 5% of the service order amount.

The OIG recommended that GSA should complete an *EDP Close-out Form* and consultant performance evaluation and should consider pursuing remedial measures against Schindler.

Auditee Responses

GSA re-told the Schindler story in its response and added that it has yet to complete the required close-out form because it is continuing to communicate with Schindler with hopes that Schindler will complete the work. GSA adds that “[h]ad we completed the Close-Out Utilization Form, our only option would be to forward the case to the County Attorney’s Office in order to sue Schindler; try and recuperate the money paid to Schindler; and either complete the work in-house or hire a different consultant.” GSA reiterated that regardless of the outcome of one final meeting between the parties, it would complete the performance form.

OCI responded that it had deactivated Schindler from the EDP in December 2005.

Schindler gave a project chronology and description of its efforts, emphasizing that it had completed its portion of the work timely and that its sub-consultants were responsible for the delay. Schindler ends by stating: “As I was recently asked by GSA to bring the Fleet Shop project to a final permit approval, I hope that with my continuous dedication to this assignment, a [sic] proper assistance for my sub consultants and the support from the client [GSA], it will be done.”

As mentioned earlier in the summary section of this report, our EDP Survey was to gather information from Program users on their views, experiences and familiarity with the EDP and to solicit their suggestions on how to improve the Program. We obtained what we believe to be valuable information from users about the EDP and their recommendations on the EDP.

Of the concerns and recommendations voiced by user-department personnel, OCI addressed three specific areas. OCI’s first response dealt with user concerns that EDP firm qualifications and technical category specifications are not always carefully matched. OCI explained that ensuring a firm’s technical expertise matches the work requirements is the responsibility of the user departments and that if they are not

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satisfied with the initial firms provided, they could request the names of additional firms.

The OIG notes that in OCI's *Program Revisions Under Consideration*³ that it attached to its response, OCI is recommending that a firm have two (2) years experience—one (1) year experience is now required; and that a firm have at least one professional A&E staff in a local office to serve as the EDP contact—currently, there are no staffing requirements. These two changes, we believe, will help to ensure that prospective firms are better qualified and staffed and that this, in turn, should help to mitigate the expressed user concerns.

The second issue addressed by OCI related to increased training for EDP firms and user personnel. OCI stated that it “will conduct workshops for new EDP firms, as well as all active participants to discuss program requirements, procedures, and participants’ responsibilities ... OCI will also continue to provide training workshops for County project managers to discuss the EDP guidelines, user responsibilities ... Additional [CIIS] training and refresher sessions will be provided for staff that has not received training or would like to repeat the session.”

Finally, OCI did not agree with a user department’s survey recommendation that prime consultants should be able to choose non-EDP sub-consultants. One reason for creating the EDP, according to OCI, was to address A&E industry concerns that only a select few of their peers were receiving most of the work. Notwithstanding, OCI states: “We are proposing that the A.O. 3-39 amendment have the option to be more lenient with the sub selections for the pool of EDP participants. However, if we find that the same firms are being utilized over and over, then we will go back to a limited list so that the previous monopoly of a few firms will not resurface again.”

The OIG summarized user recommendations and concerns from our survey results, which are that OCI and DBD should collectively review the EDP certification and qualification process to ensure that each firm is qualified for their assigned technical categories; that more training is provided to new EDP firms; and that departmental personnel should receive more training on OCI’s CIIS system. OCI responded by affirming that “OCI will work with DBD and evaluate the technical certification requirements to better define and categorized the various services.”

³ This 3-page document shows a comparative listing of “Current Requirements” and “Proposed Requirements” to the program amendment to A.O. 3-39 that OCI, according to its response, intends to present to the Board of County Commissioners later this year.

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EDP PROGRAM OVERVIEW

The County established the EDP to provide County departments and agencies with a standard process to procure architectural and engineering (A&E) services for miscellaneous projects not exceeding \$1 million in construction costs and \$50,000 for study activities. The County's Office of Capital Improvements (OCI) administers the Program.

All participating firms in the Program must be pre-qualified by meeting certain eligibility requirements, which include, but are not limited to: a minimum of one year in business, maintaining a local office within Miami-Dade County, and ownership or control of only one firm in the EDP pool.⁴ The EDP is not associated with any minority or small business programs. It is open to all A&E firms that meet the eligibility requirements. Additionally, firms are required to sign an EDP Professional Service Agreement to participate in the Program.

After it is qualified, a firm is placed on a "rotational" list. Each firm is ranked by its year-to-date net County compensation and then categorized by its technical certification(s). The lowest compensated firms within each technical category are given the first opportunity to bid on the next work order.

In order to initiate an EDP procurement, a department must provide OCI with a completed EDP Request Form stating the project's scope of services and the estimated dollar amount. OCI, in turn, provides the department with a minimum of three prime consultants and four sub-consultants (if applicable), from the top of the rotation list, based on the technical categories of the service(s) requested. The department selects one prime and a sub-consultant (if applicable) for each technical category. The department has ten business days to complete its selection and to inform OCI of the result.⁵

OCI also provides another option for departments to obtain EDP services. Departments can make a special written request to obtain services from a specific EDP firm. Departments mostly use this option for unique projects, for firms with certain expertise or for extending A&E services for a particular firm where the original allocation and/or term has expired. A special request requires approval from OCI.

⁴ DBD (SBA/DPM) reviews and monitors a firm's eligibility for the EDP Program.

⁵ Prior to August 2006, departments had five business days to provide OCI with their selections.

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SAMPLE OVERVIEW

We sampled 11 projects from ten County departments. A&E services provided in our sample include building re-certification, environmental permitting, soil testing, traffic study and construction administration. As of March 1, 2007, two of the 11 projects were completed, eight were still active and one project was cancelled. This project was cancelled before an EDP firm was procured and, thus, only ten projects were audited. Noted below in Table 1 are the sampled County departments, the project's description and the status for each project through March 1, 2007.

Table 1 Project Status as of March 1, 2007

Item #	Department	Project Description	Project Status		
			Active	Complete	Cancel
1	Building	Structural Inspections & Plans Processing		√	
2	DERM	Site Assessment of North Runway Projects	√		
3	GSA	Convert Fountain into Park			√
4	GSA	Building Addition to Fleet Management	√		
5	Judicial Adm.	Courtroom Renovation	√		
6	MDAD	Homestead Airport Building Roof Design	√		
7	MDFR	Fire Stations Rehabilitation	√		
8	Park & Rec.	40-year Building Re-certification	√		
9	PWD	SW 248 St Corridor Master Plan		√	
10	DSWM	Structural Assessment of Vehicle Wash House	√		
11	WASD	Northwest Wellfield Permitting	√		
Total			8	2	1

OIG'S JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. The Inspector General has the power to analyze the need for, and the reasonableness of, proposed change orders. The Inspector General is authorized to conduct any reviews, audits, inspections, investigations or analyses relating to departments, offices, boards, activities, programs and agencies of the County and the Public Health Trust.

The Inspector General may, on a random basis, perform audits, inspections and reviews of all County contracts. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance and procurement process including, but not limited to, project design,

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establishment of bid specifications, bid submittals, activities of the contractor and its officers, agents and employees, lobbyists, and of County staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud.

The Inspector General shall have the power to review and investigate any citizen's complaints regarding County or Public Health Trust projects, programs, contracts or transactions. The Inspector General may exercise any of the powers contained in Section 2-1076, upon his or her own initiative.

The Inspector General shall have the power to require reports from the Mayor, County Commissioners, County Manager, County agencies and instrumentalities, County officers and employees and the Public Health Trust and its officers and employees regarding any matter within the jurisdiction of the Inspector General.

OBJECTIVES, SCOPE AND METHODOLOGY

Our primary objective was to evaluate departmental EDP practices for compliance with County policies and procedures, as noted in the County's Administrative Order 3-39 and OCI's EDP Procedures.⁶ Our other review objectives were to determine whether departments are maintaining records that identify the criteria used to select the EDP firm and that their records adequately document that the most qualified firm, according to their selection criteria, was chosen. We selected a sample of 11 EDP projects, initiated and/or extended between January 2005 and July 2006.

We interviewed each department's project manager about the selection criteria used and reviewed the departmental record keeping of the initial EDP request, the selection process and the award. Additionally, we reviewed consultant payment requisitions to determine that their invoices were properly supported and properly approved for payment. Furthermore, we determined whether MURs were properly completed and attached to the payment requisitions and that sub-consultants, if any, were properly identified on the MURs. We also surveyed departmental personnel to gather feedback on their views, experiences and familiarity with the EDP and how the Program can be improved.

⁶ Administrative Order 3-39, *Standard process for construction of capital improvements, acquisition of professional services, construction contracting, change orders and reporting*, states that the EDP objective is to procure and distribute architectural and engineering continuing contract work assignments, as defined in Florida Statutes Section 287.055, for County department and agencies among all qualified and interested firms. The EDP shall be the County's standard method to obtain such services, unless exempted in writing by the County Manager.

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FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 Some departments did not maintain documented support of their selection criteria. For the departments with documented support, there was no uniformity in the type of documents maintained.

Because A&E services are not procured based on price, but on who is the most qualified firm, it is paramount that there is a process, which is sufficiently documented, to show how a particular firm was selected over another. Departments are required to document the factors utilized to determine the most qualified firm. The selection criteria should be unambiguous and the records should demonstrate that the department selected the “winning” firm in accordance with those criteria.

Three of the ten departments reviewed lacked documentation on the selection criteria and process and one department had incomplete records.⁷ The other six departments had some form of paperwork that documented their selection criteria and process; however, there was no uniformity in the type of documentation maintained. Some departments had more detailed information than others did.

For the three departments lacking documentation, MDFR was not able to identify how or why the firm was selected, such as, whether the selection was based on familiarity with the firm or if the firm was randomly selected. GSA and PWD stated that the personnel who conducted the selection were no longer with the department and there was no one to ask. Under such instances, we were not able to affirm or validate the selection criteria used.

Parks was the one department with incomplete records. Parks did not document the selection criteria or maintain records for all the firms that it contacted. Records showed that of the nine prime firms provided by OCI, only three firms agreed to meet with the project manager. However, there were no meeting minutes or support that document what was discussed or provided by the firms. Additionally, the three firms that were later selected⁸ for the projects included only one of the three firms that agreed to meet with the project manager. There was no record identifying how the other two firms selected were initially contacted or whether there was any discussions or meetings

⁷ Our sample included 11 EDP projects. One project was cancelled before an EDP firm was selected.

⁸ The subject “project” was for performing 40-year building recertifications. Parks was seeking to make multiple awards to a number of firms to perform the work at locations throughout the County.

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between them. Furthermore, there was no documentation showing how or why these three firms were selected over the other firms.

The six departments that we determined had adequately documented their selection criteria and process had records showing that they evaluated the firms based on experience, timely response or by special requests through OCI. Although these departments had documents recording their selection criteria and process, there was no uniformity to the type of records maintained. Some departments had extensive records, while others had minimal records. These records varied from hand-written notes that identified the firms contacted by telephone and the responses noted by the project managers, to e-mails and faxes sent to firms requesting that they provide their experiences and qualifications and the corresponding responses received.

Additionally, EDP procedures do not provide guidance on the sufficiency of the documentation that departments should maintain. We had to determine whether handwritten notes carry the same level of sufficiency as detailed work histories and meeting minutes. We concluded that the collective information obtained from prospective firms or prepared by departmental personnel for the respective procurements was sufficient, although some departments had more information than others did.

We questioned OCI to determine if it monitors departmental selection processes, including, what criteria is used and the process followed by the department to select a firm for a particular project. According to OCI's EDP Coordinator, OCI has neither the responsibility nor the staff to oversee departmental selection processes. She added that each department should be capable of documenting or having some form of record on the criteria and process they used when selecting a firm. However, based on what we have found this is not being done by all departments.

As for the selection process, we believe that OCI should establish uniformity across County departments by creating an EDP selection worksheet, similar to the EDP Request Form and requiring its use. The project manager responsible for making the EDP selection would fill out the worksheet. The worksheet would affirmatively require user departments to document the factors utilized to determine the most qualified firm. Moreover, A.O. 3-39 states that the "selection process may include review of submitted qualifications and telephone interviews ..." Accordingly, the worksheet should have a section where the project manager would indicate how each firm was contacted, such as by telephone, fax, or email and the name of the person who provided the requested information.

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We also believe that the project manager's supervisor should approve the selection worksheet. The EDP selection worksheet would serve as an authoritative document and should be kept in the department's selection records in the same manner that the EDP Request Form is retained. Therefore, if the project manager that conducted the selection leaves, the new project manager will not be at a loss to explain how a particular firm was selected over others.

RECOMMENDATION NO. 1

The Office of Capital Improvements (OCI) should provide training to departmental personnel instructing them on how they can establish reasonable selection criteria, the information that they should be obtaining from prospective firms, and how best to document that information. Additionally, OCI should develop an EDP selection worksheet for departments to use as a uniform record to document the criteria and the process that they used when selecting an EDP firm. This worksheet should be maintained in the project's files and a copy should be forwarded to OCI.

FINDING NO. 2 **Several consultants did not include Monthly Utilization Reports (MURs) as part of their payment requisitions submitted to the County.**

During our fieldwork stage, eight of the 10 EDP consultants submitted payment requisitions. The remaining two projects were still being negotiated. Of the eight firms, three firms provided properly supported payment requisitions with monthly utilization reports (MURs) attached; however, the department's project manager did not sign the MURs. The remaining five firms failed to provide properly supported payment requisitions with MURs attached. Of these five firms, four firms had sub-consultants.

We questioned personnel from the five departments that did not have MURs attached to their consultants' payment requisitions. Departmental personnel overwhelmingly responded that they were not aware that the MUR is a requirement for EDP projects. Most of these departmental project managers explained to us that they believed that the form is for construction projects only and not A&E services.

We believe that the two main reasons for this unfamiliarity are that the OCI's EDP Policies and Procedures differ from A.O. 3-39, and that most department and consultant personnel are apparently unfamiliar with the County's A.O. 3-39. OCI's EDP procedure differs, from A.O. 3-39, in that it specifically states that DBD's MUR

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is not a requirement for an EDP project.⁹ Conversely, A.O. 3-39 says that it is. According to OCI's EDP procedure, the EDP Close-Out Form used at the end of the project, acts as the project's utilization report, and as such, a MUR is not required.

Additionally, we note that OCI's response to our prior audit report was that the EDP Close-Out Form and the utilization form are synonymous. The OIG disagrees. While the two forms may provide some similar information, the EDP Close-Out Form is prepared at the end of the project. However, project durations vary from several months to several years. In contrast, a MUR is prepared every time the consultant submits a payment request. As noted in Table 2, our ten projects have durations ranging from three to 34 months, including four project durations exceeding one year (as of stated date). Our average project duration is 14½ months.

Table 2 EDP Projects Duration Period as of February 28, 2007

Department	Initial EDP Request Date	Signed Date of First Work Order	Project Status of 2/28/2007	Project Completed Date	Number of Months Project Active
Building	8/9/05	9/22/05	Completed	12/31/06	15 months
DERM	8/9/05	3/10/06	Active	N/A	11 months
GSA	3/23/06	N/A	Cancelled	N/A	N/A
GSA	8/27/04	10/21/04	Terminated¹	9/29/06	23 months
Judicial Adm.	10/14/05	3/10/06	Active	N/A	11 months
MDAD	4/3/06	6/14/06	Active	N/A	8 months
MDFR	3/21/06	11/15/06	Active	N/A	3 months
Park & Rec.	2/24/04	4/26/04	Active	N/A	34 months
PWD	4/15/05	6/2/05	Completed	12/31/05	6 months
SWMD	4/4/06	6/19/06	Active	N/A	8 months
WASD	9/28/04	12/31/04	Active	N/A	26 months
Number of project periods to-date exceeding 12 months					4

¹ A&E services were terminated in September 2006 after EDP firms failed to provide completed signed and sealed plans. GSA currently preparing design plans in-house.

A.O. 3-39, on page 19, states that user departments should “[c]ollect and submit copies of monthly utilization reports for all awarded professional service agreements to DBD. Project invoices may be held if monthly utilization reports are not current.” For EDP agreements, A.O. 3-39, on page 20, adds:

⁹ The current EDP Policies and Procedures posted on OCI's website states that “EDP Close-out Form acts as the utilization report so the standard DBD A&E utilization reports are not required for EDP projects.”

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EDP firms issued a service order shall be required to submit utilization reports to the user department on all new and existing County contracts, including new work authorizations issued after the effective date of the EDP continuing contract.

As previously stated, during our review period, eight of the EDP firms submitted payment requisitions to the County. The number of payment requisitions submitted by each firm ranged from a minimum of one to a maximum of 23 (see Table 3). In addition, as shown in Tables 2 and 3, four of the ten EDP project durations exceeded 12 months. Therefore, waiting until the project is complete to provide a Close-Out Form, instead of presenting monthly utilization reports, defeats the purpose of adequately reporting on the progress of the project. In particular, as such reporting relates to payments made to the prime and, more importantly, amounts paid by the prime to its sub-consultants. Six out our ten projects had sub-consultants, including two projects with durations exceeding one year. Additionally, of the three sampled projects that were closed (completed or terminated), not one of the departments had completed a Close-Out Form and forwarded it to OCI.

Table 3 Invoices & MURs included in Payment Requisitions

Department	# of Months Project Active	# of Invoices submitted	MUR Submitted? (Yes/No)	Sub-consultants (Yes/No)
Building	15 months	17	Yes	No
DERM	11 months	3	Yes	Yes
GSA	23 months	11	No	Yes
Judicial Adm.	11 months	1	No	Yes
MDAD	8 months	2	No	No
MDFR	3 months	None ¹	None ¹	Yes
Park & Rec.	34 months	13	No	Yes
PWD	6 months	2	No	Yes
SWMD	8 months	None ¹	None ¹	No
WASD	26 months	23	Yes	No

¹ No invoices, thus, no MURs were submitted during our fieldwork.

In summary, we believe that the MUR is a valuable project progress-measuring tool that identifies the project or work authorization, the services provided to date, the amount of money received and the amount of money paid to sub-consultants, if any. This is especially true in light of the several lengthy project durations illustrated in Table 3. Moreover, it is a requirement of A.O. 3-39 that MURs must be attached to consultant payment requisitions under all professional service agreements, whether or not a sub-consultant is attached to project.

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RECOMMENDATION NO. 2

OCI's EDP procedure should conform to those contained in the County's A.O. 3-39 requiring departments to obtain MURs for all professional service agreements.

FINDING NO. 3 **Several departments had a firm that declined consideration for an EDP work assignment; however, not all departments adequately documented the firm's declination.**

EDP procedures allow a firm to decline an offer for a work assignment twice within one year. After a third declination, a firm may be suspended or revoked from the Program. EDP procedures further state that the department should send OCI an e-mail describing the firm's declination to participate. Six departments had firms that declined participating in the selection process, and they all informed OCI of the declinations. However, EDP procedures are silent on whether departments should document a firm's declination and, thus, there is no standard for obtaining or preparing acceptable documentation of a firm's declination. We observed that only three departments had written documentation from the declined firms. The other departments either did not obtain a written declination from the firm or did not document a firm's oral declination by written communication to the firm confirming its declination.

According to the departments, firms decline work by stating that either they are busy with other work, that they lack the experience necessary or that they do not wish to be considered for the project. The declinations provided by the firms are either oral or written. Whatever the reason, EDP procedures should require departments to obtain or prepare written documentation of a firm's declination and the reasons stated, and required the department to forward copies of this documentation to OCI. We believe that this is most important in situations when a department receives an oral declination. This additional step is necessary so that there will be no misunderstanding or miscommunication between a department and a firm. Furthermore, if a firm's EDP participation is revoked or suspended, based on its declinations, then both the department(s) and OCI will have written proof of the firm's declinations.

RECOMMENDATION NO. 3

The EDP procedures should require that a department document a firm's declination, either by a written declination from the firm itself or by departmental-prepared written correspondence to the firm confirming its declination.

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FINDING NO. 4 Schindler Architects, Inc. (Schindler) services were terminated by GSA in September 2006; however, GSA has not completed an EDP Close-Out Form and performance evaluation of Schindler's services. Furthermore, Schindler failed to pay approximately \$34,000 to its sub-consultants for services performed.

The prime consultant to the GSA project, *Building Addition to Fleet Management*, (Item # 4 in Table 1 on page 10 of the report), did not perform according to its work order terms and conditions, its EDP professional service agreement and OCI's EDP procedures. The prime consultant, Schindler Architects, Inc. (Schindler), failed to provide final signed and sealed design plans for the project and did not fully pay its sub-consultants, although it received 95% of the service order amount from the County. As a result, Schindler's service order was terminated and the actual project has been on hold for over one year.

During the course of our audit, we decided to conduct a more in-depth review of this particular project when we observed that Schindler had not submitted any invoices in almost a year. In addition, we noted that GSA had paid Schindler 95% of its fee and GSA acknowledged that there were issues of consultant non-performance. We initially met with GSA on September 13, 2006, to discuss the subject project and review project record keeping. Records showed that GSA sent a notice to cure letter, dated September 6, 2006, to Schindler for its failure to perform in accordance with the EDP professional service agreement. GSA later sent a termination of service letter to Schindler on September 29, 2006 and informed OCI in writing, pursuant to EDP procedures. As later discussed, GSA did not prepare an EDP *Close-Out Form* or performance evaluation, upon its terminating Schindler.

In late October 2004, GSA issued Schindler and its sub-consultants a service order to provide architectural, structural, mechanical, electrical and plumbing drawings for the expansion of GSA Fleet Management Repair Shop 3C. According to GSA's Design and Construction Services Division, in March 2006, they "found out" that the project was at a standstill due to disagreements between Schindler and its sub-consultants. According to GSA, Schindler had stopped paying its sub-consultants by claiming that they were not performing, while the sub-consultants were claiming that Schindler did not timely pay them for their work. Records showed that the service order amounts totaled \$226,206 and GSA had paid Schindler \$214,510.¹⁰

¹⁰ Schindler made three payments totaling \$44,182.37 to R.J. Behar & Company (Behar). The last payment of \$20,000 is dated October 21, 2005. Schindler made one payment to UCI Engineering, Inc. (UCI) for \$28,421.27. This payment is dated May 3, 2005. Schindler still owes a balance of approximately \$12,000 to Behar and a balance of approximately \$22,000 to UCI.

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GSA stated that the design plans were almost 100% completed and not much more was required of the firms other than for them to make corrections and then to submit signed and sealed plans. GSA added that they spent several months trying to resolve the issues between Schindler and its sub-consultants in its attempt to complete the design phase of the project. Several months later, however, in September 2006, GSA terminated the EDP service order with Schindler due to its non-performance, and has since decided to complete the designs in-house.¹¹

Almost a year earlier, on a different front, OCI removed Schindler—at Schindler’s request—from the EDP in December 2005, although the project was not completed. According to the EDP Coordinator, there was a mutual understanding that Schindler was expected to complete the project although the firm was no longer part of the Program. She added that Schindler was removed from the Program before anyone was aware of its lack of performance and non-payment to its sub-consultants.

We observed that Schindler did not submit a MUR with any of its 11 payment requisitions, including its last payment requisition that it submitted in December 2005. We believe that if Schindler had submitted MURs, the MURs could have probably shed some early light on the status of the project and the payments made to the sub-consultants. On the MUR, Schindler would have had to identify the amounts requisitioned by the sub-consultants and the amounts paid to the sub-consultants. MURs would have reflected that Schindler was requesting payments for sub-consultant services, although it was not timely paying its sub-consultants.

We contacted Mr. Jacek Schindler, the principal of Schindler Architects, Inc., in February 2007, to obtain his comments on what transpired. Mr. Schindler stated that the sub-consultants did not fully complete and timely provide their portions of the plans. He added that R.J. Behar & Company (Behar) completed 95% of the designs while UCI Engineering, Inc. (UCI) completed approximately 75%.¹² We did not contact the sub-consultants to obtain their views on what occurred.

As for the sub-consultants, Mr. Schindler stated that he still has the remaining \$34,000 and is willing to pay both sub-consultants their unpaid amounts. We would like to emphasize that Mr. Schindler has been in possession of the \$34,000 since January 2006 and, as of the date of his interview with the OIG, he had not taken the initiative to

¹¹ GSA has since received incomplete A&E plans from each firm and will use these incomplete plans to create their own in-house plans to continue with the renovation of their repair shop. GSA expects to have their plans permitted and approved by May 2007, with construction work beginning in the latter part of the year.

¹² Schindler’s final invoice (Invoice #12, dated December 13, 2005) to the County reflected that 95% of all A&E services were completed.

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either pay its sub-consultants or return the funds to the County. Table 4 below shows the amounts that were still owed to the sub-consultants as of March 30, 2007.

Table 4 Allocation of Payment to Sub-consultants (Subs) by Schindler¹

Sub-consultants	Amounts Invoiced by Subs ²	Payment received by Schindler ³	Diff in Subs & Schindler Amt	Amounts paid to Subs	Balance due to Subs	% Amt paid to Subs
Behar	\$ 56,032	\$ 57,028	\$ 996	\$44,182	\$11,850	77%
UCI	\$ 53,558	\$ 50,715	(\$2,843)	\$28,421	\$22,294	56%
Total	\$109,590	\$107,743	(\$1,847)	\$72,603	\$34,144	

¹ Amounts are reduced by the OIG fee of .25%

² The total service order amount is for \$226,206, which include Schindler's A&E services for \$99,274 and total construction administration of \$15,180.

³ Amounts include 95% of A&E services and reimbursable expenses for additional services, which is not included in the total service order amount.

The impact of Schindler's non-performance on the completion of the A&E design plans has delayed the overall project and will likely result in added costs to the project. GSA records showed that the project's total cost, including construction costs, was budgeted in June 2004 at \$1.7 million. Three years later, with half of the budget already spent on in-house and outside A&E services, it will unlikely remain the same. Additionally, GSA in-house staff will have to complete the A&E plans, thus adding more cost and time for services already paid for.

We note that the Program provides certain remedies for departments dealing with non-performing firms. EDP procedures state that when a firm fails to comply with the Program, sanctions and administrative penalties may be imposed against the firm in accordance with A.O. 3-39 and the EDP professional service agreement. Such sanctions and penalties may include termination of agreement, suspension and debarment. These remedies are in addition to a department's right to withhold payment to non-performing firms, including ones that do not provide MURs with their payment requests. Additionally, EDP procedures state that the department is required to notify OCI of the firm's non-performance, in writing, and to complete an EDP project *Close-Out Form* and performance evaluation of the firm upon its termination.

Additionally, we note that GSA has not pursued any further sanctions, beyond the termination of the service order, against Schindler. When we asked GSA if they have contacted DBD to find out if debarment could be pursued against Schindler, GSA stated that they were waiting for OCI to contact DBD since it is OCI's responsibility, and not theirs. This is not correct. We later contacted DBD who informed us that if a department wishes to make a request for debarment against a firm—EDP or otherwise—the department needs to contact DBD. So far, we noted that GSA has not initiated any remedial action against Schindler.

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We believe that GSA could have been more prompt in addressing Schindler's non-performance. After GSA found out in early 2006 that design work had stopped and that Schindler had not paid one sub-consultant since May 2005 and the other since October 2005, it did not need to wait another six months to terminate Schindler's service order. Since the service order was terminated in September 2006, an additional six months have past and GSA has not forwarded an EDP *Close-Out Form* and performance evaluation to OCI. GSA needs to timely address these outstanding issues and be more proactive with complying with County procedures.

RECOMMENDATION NO. 4

GSA should complete an EDP *Close-Out Form* and a past performance evaluation of Schindler and forward copies immediately to OCI. Additionally, based on Schindler's non-performance, GSA should consider pursuing remedial measures against Schindler and its principal, Mr. Schindler, from conducting future business with the County.

Subsequent Events

We believe that if it were not for our intervention, the issues of non-payment and non-performance would likely remain unresolved. After our initial conversation with Mr. Schindler in February 2007, Mr. Schindler informed us on May 8, 2007, that he paid both sub-consultants the remaining balances owed to them. Mr. Schindler provided us with copies of the checks issued to Behar, for \$11,635.83 and to UCI, for \$22,294.13.

According to GSA, they have verified with both sub-consultants that they have received payment for their respective amounts owed. GSA added that they would continue to proceed with completing the A&E plans in-house in order to finish the project. Additionally, the GSA Construction Manager stated that they do not plan to pay Schindler the remaining 5% of the service order amount. Lastly, we would also like to point out that Schindler still owes the County \$996 in excess amounts billed on behalf of Behar. Schindler should return the funds to the County.¹³

¹³ In a follow-up letter from Mr. Schindler, dated May 10, 2007, Mr. Schindler confirmed that a mistake was made on one of its invoices where he double-billed the County for \$550.

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SURVEY OF THE EDP PROCESS

As a final segment to this audit, we took the opportunity to survey each department to gather feedback on their experiences with the Program and suggestions on how to improve the Program. We found their responses to be both productive and useful. A copy of our survey is attached as Exhibit 1.

We surveyed all of project managers involved in our audit. The main concerns voiced by the project managers are that the Program could be more efficient if the technical categories were more precisely defined and a firm's experiences were more carefully matched to a technical category. Additionally, three of those surveyed stated that they feel as if they have to "baby-sit" the less experienced firms on how the process works, such as, design plan permit issues or how to prepare an invoice or a proposal. These issues tend to extend the overall project duration.

Some respondents made similar suggestions that OCI should provide a workshop for new EDP firms, which should include an overview of the permit process and how to prepare documents. Additionally, some project managers believe that they themselves should receive annual training on the OCI's Capital Improvements Information System (CIIS). Some project managers stated that they have not received training in almost three years while another stated that he has not received any training at all. Noted below are some of the concerns and recommendations provided by the project managers.

<u>Concerns</u>	<u>Occurrences</u>
❖ Firm lacks experience	7
❖ Firm's experiences do not necessarily match technical category	3

<u>Recommendations</u>	<u>Occurrences</u>
❖ Thorough review of firm's experience and placement in technical category	3
❖ Training/workshop for EDP firms	2
❖ Annual training for departmental personnel	3
❖ Prime consultants should be able to choose non-EDP sub-consultants	3

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Additionally, below are some of what we believe to be more insightful response summaries commenting on the Program procedures and suggestions thereto. Our questions are followed by the responses.¹⁴

- ❖ *Question #2: Do you think that three prime consultants are an adequate number of firms to select from? If no, please explain.*

Some of the answers we received were:

- Yes, three firms are sufficient. If necessary, we request additional firms.
- The number of firms provided should be based on the dollar value of the project. If the project is less than \$10,000, then three firms are sufficient; however, if the project amount is over \$100,000, then more than three firms should be provided.
- Sometimes, firms are not qualified to perform the services. Five firms should be enough.

- ❖ *Question #4: Do you think that EDP procedures to document the selection criteria are:*

- a) *Reasonable*
- b) *Too cumbersome*
- c) *Too lax*

One of the answers we received was:

- Too cumbersome; the selection criteria are not well defined. OCI should state what is sufficient, such as, whether telephone interviews or detailed meetings with the firms are required.

- ❖ *Question #5: How would you rate the quality of service provided by the consultants under the EDP?*

- a) *Excellent*
- b) *Above average*
- c) *Average*
- d) *Below average*
- e) *Poor*

Some of the answers we received were:

- Average; some firms do not have the required experience to perform the work.

¹⁴ These statements are the OIG paraphrasing the project manager's responses.

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- Average; some firms are very good at getting the work done, while others are not. We believe this happens because there is no liability or damages available to the departments. Also, the system is too lenient with the firms.
- Average; it is hard to enforce timeliness of the project. We have to nurse the firms on what to do. This affects our budget milestone.

❖ *Question #12: How would you rate the overall EDP program?*

- a) *Excellent*
- b) *Above average*
- c) *Average*
- d) *Below average*
- e) *Poor*

Some of the answers we received were:

- The program is excellent; however, the firms are average, sometimes below average.
- Average; prime consultants are not familiar with the EDP sub-consultants. Prices and services would be better if the prime consultant could select its own sub-consultants instead of the EDP sub-consultants.

❖ *Question #14: What ways can the overall EDP process be improved?*

Some of the answers we received were:

- The experience and certification of firms should be reviewed thoroughly since some firms are listed in technical categories for which they have no experience.
- There should be better guidelines for the selection criteria. Is a telephone interview with the firms sufficient, or is a face-to-face interview required?
- Weed out the sub-consultants that are not interested in working. Too many of them tend to turn down jobs. The departments may be the weak link in the chain since they may not be reporting problematic sub-consultants to OCI.
- OCI should have a specialized or technical person on staff to assist large departments. The EDP Coordinator is not necessarily familiar with all that is happening in each department.

Overall, the departments were happy with the support received from OCI staff, such as, providing timely responses and addressing and resolving issues. A more detailed result of the survey is available to OCI, DBD and others, for review, if needed.

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RECOMMENDATION

OCI should partner with DBD on the certification and qualification process of the EDP firms to ensure that each firm is qualified for their assigned technical categories. OCI should provide workshops and/or training materials to new EDP firms. Additionally, departments should also receive continuing training on CIIS and be timely informed of updated procedures.

Based on our review of the EDP selection processes and practices observed, we believed that the overall Program could be improved. We hope that OCI and DBD will put these recommendations into practice and utilizes the feedback from the survey in order to have a more effective and efficient Program.

* * * * *

The OIG requests that OCI provide to the OIG a report in 90 days, on or before October 23, 2007, regarding the implementation status of its *Program Revisions Under Consideration*, including copies of any new policies, procedures and forms.

The OIG appreciates the cooperation and assistance afforded to us by all of those involved in our review.

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EXHIBIT 1

Questions for the Equitable Distribution Program (EDP)
Customer Satisfaction Survey

Purpose: To determine whether the services provided by OCI under the EDP are currently meeting its objectives of providing a process to equitably distribute qualified A&E firms to user departments, whether user departments are satisfied with these services and ways in which the EDP services can be improved.

1. How would you rate OCI's timeliness in responding to your initial EDP request?
 - a) Excellent
 - b) Above average
 - c) Average
 - d) Below Average
 - e) Poor

2. Do you think that three prime consultants are an adequate number of firms to select from? If no, please explain.

3. Do you believe that the firms provided to you under the EDP are qualified to perform the desired services? If no, please explain.

4. Do you think that EDP procedures to document the selection criteria are:
 - a) Reasonable
 - b) Too cumbersome
 - c) Too lax

5. How would you rate the quality of service provided by the consultants under the EDP?
 - a) Excellent
 - b) Above average
 - c) Average
 - d) Below average
 - e) Poor

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6. What is your understanding of the reporting process for the Monthly Utilization Reports (MURs)? Please explain.
7. Do you believe that the EDP Close-Out Report is:
 - a) Reasonable
 - b) Too cumbersome
 - c) Too lax
8. Have you received any training on how to access EDP forms, procedures and reports on OCI's Capital Improvements Information System (CIIS)? If yes, how would you rate the training you received?
 - a) Excellent
 - b) Above average
 - c) Average
 - d) Below average
 - e) Poor
9. Do you have any suggestions on how training could be improved?
10. Does OCI provide timely assistance in addressing or resolving issues that arise during the EDP process?
11. How often have you used EDP in the last 12 months?
12. How would you rate the overall EDP program?
 - a) Excellent
 - b) Above average
 - c) Average
 - d) Below average
 - e) Poor
13. Beside yourself, are there any other individuals in your department that access / use the EDP?
14. What ways can the overall EDP process be improved?