

Testimony and Recommendations of Michael Siegel,
Submitted to the Committees on Transportation and Environment & Education, Re:
Department of General Services Contracting and Procurement Practices for Constructing and Modernizing
District of Columbia Public Schools
July 8th, 2015 hearing date

Background

The original School Modernization Act was passed in 2006 to rectify nearly 50 years of disinvestment and neglect of the District's public schools. Modernization-advocates (including this witness) sought bond financing backed by a dedicated revenue stream and a 10-year completion date. The Act provided for inflation-adjusted pay-go financing from dedicated incremental sales tax revenue to modernize all then-operating DCPS schools within 15 years to be overseen by a Modernization Review Committee.

Council adopted the 15-year schedule and pay-go revenue package adopting – at the suggestion of this witness - an annual construction cost inflator to assure the revenue package kept pace with future construction costs. Together with legacy levels of CIP investment, the 2006 Act would have modernized all DCPS schools within 15 years at a cost of approximately \$3.2 billion (in 2006/07 dollars).

It did not take long to begin undoing key elements of the Act. The Modernization Review Committee was disbanded after a year or so, thereby removing critical oversight and accountability components together with the only party having an interest in cost-control.

Soon thereafter the Council amended the Act to remove its dedicated revenue stream, reverting to ad-hoc bond financing. Yet it failed to compress the modernization schedule as bond financing would allow. It also did away with the cost inflator. The amendments exposed the program to delays and inflation-risk. Council also abolished the Office of Public Education Facilities Management and awarded management of the program to a single private contractor, DCPEP.

Use of Inappropriate Benchmark Construction Costs

The Auditor's Report of July 1, 2015 on the District's school modernization program relies upon benchmark costs per square foot (SF) from 2009/10 that cause the Report to erroneously suggest several tens of millions of modernization funds to have been misspent.

Use of outdated 2009/10 benchmarks promotes an unrealistic view of the actual cost of recent and scheduled modernizations.¹ **It is inexplicable why the Auditor's Report expects more recent and scheduled projects to reflect 2009/2010 costs that fail to account for substantial inflation in construction costs since that time.** 2009/10 marked the bottom of the most severe economic downturn since the 1920's depression. Some contractors at the time were reportedly bidding below cost to keep crews active, and material, equipment and supplies also reflected depressed demand.

Nationally, the Turner construction cost index shows non-residential costs to have increased 17 percent between 2009Q4 and 2015Q2. Construction costs in the District tend to run ahead of the national average. Accordingly, the Report's use of 2009/10 SF costs understates current SF costs by more than 17 percent.

Three recent school construction projects confirm the magnitude of the Report's error in applying 2009/10 SF costs. The \$460 per SF figure cited in my oral testimony represents the current cost of a new "prototype" high school on a green-fields site in suburban Loudoun County, VA (excluding land). Loudoun has built more schools since the early 1990's than perhaps any other school district in the nation. The County's facilities staff is very familiar with what it costs to build a new public high school.

The current SF cost of a modernized general education school in DC could be expected to exceed Loudoun's due to the need for demolition and hauling, asbestos and/or lead paint remediation, historic preservation requirements, site constraints, underground parking, and higher costs associated with renovation and construction in the District.

¹The cost per SF of post 2009/10 modernized schools cited by the Auditor's Report is incomplete: it may not reflect all change orders; the Report acknowledges that full cost accounting of completed projects has yet to be accomplished; and, cited costs apparently exclude some or all design, legal, engineering, permitting, and project management fees.

Let's now look to a just-completed elementary school (ES) located two blocks north of the District in Montgomery County, MD. The Rock Creek Forest ES shares a visibly similar quality, fit and finish with DC's newly modernized schools. The project included demolition of the existing school, site clearance, and construction of an entirely new facility for a 2012 CIP cost of \$270 per SF. This figure is equivalent to \$310 per SF in 2015 for a new (not renovated) elementary school (Turner cost index, 2012Q1 to 2015Q2).

Arlington County, VA completed its new 97,000 SF Arlington ES Number 1 in 2014 at a reported cost of \$331 per SF. This is equivalent to about \$340 per SF in 2015 based on the Turner index. Arlington's ES1 included LEED and active energy conservation features and a turf field.

Here we have a new suburban HS scheduled for construction this FY at a cost of \$460 per SF and two recently completed close-in new ES's with LEED and recreational amenities similar to DC schools evidencing a construction cost of \$310 to \$340 per SF in 2015 – none of which were renovations or subject to remediation and historic preservation requirements that characterize DC's modernizations. The Auditor Report's implication that the District has overspent tens of millions for modernizations is not supportable.

The SF cost of a middle school typically falls between that of an ES and a HS, while a specialized high school such as Ellington can be expected to cost substantially more than a general education high school.

Can The District Accelerate its School Modernizations?

Yes, and it should.

Twenty-four existing DCPS schools have yet to be modernized – most in generally poor condition and some with potentially dangerous code violations. Modernizing six schools annually will accomplish all remaining modernizations within four years. Modernized schools pay dividends to students, parents, and the community, and promote neighborhood revitalization and private investment.

Accelerating the modernization program can be accomplished by:

- Mobilizing additional program/project management capacity by issuing one or more additional program management contracts to a qualified firm(s).
- Obtaining additional revenue by re-programming unjustified capital facility payments made by the District to Charter schools and/or by restoring the dedicated sales tax increment the Council removed from the original Modernization Act.

The Auditor and Committee Chairs might turn their attention to the creative accounting of the Charter's capital facility costs by the Public Charter School Board (PCSB) that forms the basis for about \$130 million in annual payments to the Charter schools. **About \$30 million of this payment arises from double-counting of the Charter's capital facility costs when accepted accounting practices are applied.** The PCSB's creative accounting has been submitted to the Council, the District's Public Education Finance Reform Commission, and the Consultants and Advisory Committee for the Public Schools Adequacy study.²

In this witness's opinion, had the PCSB's presentation of the Charter's facility costs been signed by a CPA or submitted as a securities filing the CPA could potentially lose his/her accounting license and subject the submitting firm to potential civil or criminal penalties.

Oversight and Accountability

Issues pertaining to sufficiency of paperwork, documentation, and compliance with existing procedures fall under the responsibility of the Mayor and the Council. The responsible District agencies and DCPEP, the private contractor selected by the Council to manage the modernization program, must do better and the shortcomings noted by the Auditor must be corrected. **Establishment of claw-back and holdback provisions secured by a performance bond, together with re-activation of the Oversight Committee as provided in the original Act, are paramount.**

² "Cost of Student Achievement: Report of the DC Education Adequacy Study", The Finance Project for the District of Columbia Deputy Mayor of Education, December 20, 2013, p. 83.

The Auditor's Report documents a breakdown of internal controls within DGS and DCPEP calling attention to the potential for improprieties. **If sustained by a forensic audit (assisted by subpoena as necessary) the Auditor's suspicions³ should be immediately referred to the Attorney General for civil and criminal action and to recoup any inappropriate payments.**

Disbanding of the Review Committee removed effective public oversight by the only involved entity for which cost-containment and community issues would be a priority. Subsequent amendments to the Act stripped it of its dedicated revenue source and inflation protection - both of which have likely contributed to schedule delays.

Other administrative and oversight issues raised in the Auditor's Report can be readily rectified by administrative means without jeopardizing continuation of the modernization program.⁴ Additional revenue to complete all modernizations before FY2022 can be secured from the excessive facility payments to Charter schools and/or by restoring the dedicated sales tax revenue. Additionally:

- 1) The District's traditional public schools are not amenable to a "prototype" (cookie-cutter) design approach. Virtually all DCPS schools have different acreage, design, structures, historic features, and programmatic constraints and requirements. Some have asbestos and lead-paint issues, while others share their sites with Park Service land and DC park and recreation facilities.
- 2) The Wilson HS atrium exemplifies appropriate and cost-effective adaptive re-use. The atrium is perhaps the most utilized space in the building. Given Wilson's designation as an historic property it is difficult to know where else this space might have been accommodated. Most "overruns" at Wilson were attributable to the school's historic designation in the midst of the design process that subjected it to redesign, delays, and additional historic preservation costs.
- 3) A certain amount of documentation deficiencies can be expected in any large capital improvements program – perhaps more so when school doors are expected to open in late-August. Verification of legitimate completed work can be rectified after-the fact, and contract provisions can provide for claw-back or holdbacks to correct and limit such deficiencies.
- 4) Delays and change-orders are to be expected for a large, high-priority, multi-site modernization program. Procedures to accommodate and approve such should be anticipated and established.
- 5) Comparing the cost of Charter and DCPS school construction costs - an apples to oranges exercise - is highly problematic.
- 6) As to Ellington, the performing arts program should have been relocated to a more centralized and Metro-accessible space. The inclusion of a 100-space underground parking garage at the existing facility has added considerably to its cost and was necessitated by the failure to relocate the specialized performing arts program to a more central-located site.
- 7) Even without the underground garage Ellington's modernization should have been expected to be the most expensive modernization project on a per SF and per student basis due to its specialized program that requires substantial and costly practice and performance space.
- 8) Ellington's original cost estimate of \$81 million had no basis in reality.
- 9) The inadvisable decision to retain the Ellington program at the existing site was made contrary to warnings and advice from a number of quarters.

Recommendations

The Auditor should revise elements of its Report related to its use of outdated construction costs as documented herein. The following recommendations are made to address other significant issues noted by the Auditor and difficulties with the current Modernization program.

- 1) Re-commit to completing 100 percent of all school modernizations before FY 2022.
- 2) Accelerate the modernization schedule as possible.
- 3) Re-program excess facilities payments to the Charters or re-commit dedicated sales tax revenue to the modernization program as may be necessary.
- 4) Re-constitute the Modernization Review Committee and **retain an ADVISORY value design and engineering firm that would support the Committee's work.**

³Auditor's Report, p. 43.

⁴Some issues in the Auditor's Report are trivial, such as \$45,000 of modernization funds expended on DC park facilities. The amount is small and of little concern considering that many DCPS schools are co-located with DC park facilities.

- 5) Undertake a forensic audit should the Auditor suspect fraud or serious financial improprieties and refer findings to appropriate authorities for prosecution and/or civil action.
- 6) Change orders exceeding a certain threshold (e.g., 5 percent of project budget including contingency) could be required to go back before the Review Committee.
- 7) Omit underground on-site parking where off-site parking can be provided by zone parking stickers for faculty and staff. A limited number of surface parking spaces for handicapped parking, special needs bus and transport vans, and key personnel can be provided at space-restricted sites.
- 8) Projects should not make it into the Year 1 CIP (current year, funded in the budget) before the SIT and the Modernization Review Committee have signed off on the final budget and design.
- 9) Enable the public, school administrators and residents served by individual school clusters to prioritize modernization projects within each cluster.
- 10) **Empower the re-constituted Modernization Review Committee to modify projects as may be recommended by the value-review firm, subject to override by a Council super-majority.**
- 11) **Conduct in-progress and post-completion sample-audits. Should a specified number of deficiencies be found a full audit should be triggered with unsupported expenditures subject to claw-back (secured by a performance bond) or holdback if not cured.**
- 12) Maintain the privatized management structure.
- 13) There is little reason to include Charter schools in the MFP. Neither DCPS, the Council, nor the Board of Education have purview over their location, budget, cost, design, or programs.
- 14) **With respect to Ellington, subject the current plans to value engineering and design review and consider relocating the program to a central-located site.**

Mr. Siegel is a public and environmental finance consultant specializing in urban and regional economic and fiscal impact analysis, land use issues, utility regulation rates and demand forecasting, capital facilities, and public education finance. He is the former Assistant Director of the Government Finance Officer's Association and the Office of Commercial Revitalization for the State of Maryland. His clients include federal agencies, state and local governments, attorneys, landowners, citizen groups, and NGO's. Mr. Siegel was an appointed Commissioner to the District's Public Education Finance Reform Commission, he provided expert testimony and analysis related to the original School Modernization Act, and was a member of the Advisory Committee for the DC Schools Adequacy Study. Mr. Siegel can be reached at (202) 237-2455 or at msiegel@aol.com