

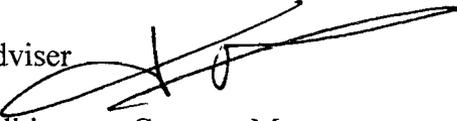
T&E/MFP COMMITTEE #1
March 30, 2009

Discussion

MEMORANDUM

March 26, 2009

TO: Management and Fiscal Policy Committee
Transportation, Infrastructure, Energy, & Environment Committee

FROM: Dr. Costis Toregas, Council IT Adviser 

SUBJECT: Effects of Current Economic Conditions on Contract Management

Expected to attend:

David Dise, Director, Department of General Services
Pam Jones, Acting Division Chief, Office of Procurement, Department of General Services
Steven Emanuel, Chief Information Officer
Dieter Klinger, Department of Technology Services

Background

During the FY09 Savings Plan discussions, the MFP Committee directed the Department of Technology Services to reduce expenditures in the Desktop Computer Modernization (DCM) program by replacing fewer computers than originally contemplated in FY09. Beyond reducing the number of computers replaced, the notion of further increasing savings by reducing the amount spent on the contract with the vendor providing DCM services (L3 Communications) through relaxed service level expectations was discussed. An example of such savings would be to increase the guaranteed amount of time within which each PC maintenance call receives service, and to pay the vendor less for that relaxed service standard. The more general question of the County's ability to reduce the "spend rate" on contracts for products and services (currently estimated at more than \$735 million) through Service Level Agreement (SLA) adjustments or other contractual means was raised, so that private vendors can be asked to absorb reductions similar to the ones that County employees are absorbing in these difficult times. The Office of Procurement has made the actual L3 contract document available to the Committee, and is providing options for just such a management approach in their answers below. ©1-2 show the Service Level Agreement definitions in this contract.

The current number of contracts is high (8,396 in 2008). Given this volume of awards, the use of existing information and reliance on automated systems may well define what is possible and feasible for analysis. The current procurement types used in the Record of Procurements (delivery orders, field orders, modifications, new awards, renewals) does not help pinpoint which contracts or contract types might yield a stronger possibility of cost reduction. The other existing typology (emergency procurement, non-competitive awards, modifications, bridge awards, cooperative awards, public entity, and Council resolutions) does not appear to help at all.

A summary of current contracts by category is on ©3-8. They are abstracted from the *Record of Procurements* and cover the time period July 1, 2007 - June 30, 2008. The size of the report (97 pages) and amount of line-item detail make it difficult to analyze trends and explore management options. A **management summary** of this document **categorizing contracts by type permitting cutback actions** would be extremely useful in this era of fiscal concerns.

Indirectly related to this discussion of contract management is the vital issue of process effectiveness. The CountyStat program has asked the Office of Procurement to develop new measures of effectiveness. In the most recent CountyStat review, the outcome was that “...DGS’s Procurement division will begin *tracking the stages of the procurement process in more detail in order to analyze and identify opportunities to improve the process...*”. As this effort is currently under way, the Office of Procurement is not yet ready to release details. However, here is what the Acting Director provided as a point of reference in this important effort:

Procurement will be working with contract administrators to come to an agreed upon timeline for each solicitation issued, factoring in the multiple departments and/or project specific requirements that are part of the process. The phases within the process are established, such as solicitation issuance, due date, QSC review, contract negotiation/preparation, etc. This is not specifically tied to ERP change effort but will help us work towards process improvements before ERP implementation.

As solicitations proceed through the procurement process, responsibilities (hand-offs) occur between the many parties involved: the user department, Procurement, QSC, OCA, Risk Management, and the awardee. As we capture these timelines and begin collecting the data, we will be able to report on how often we met these timelines and will also be able to identify if there are phases within the process in which improvements can be made. This information will be shared with departments so the process is open and collaborative.

A focused discussion on available procurement management tools that can create such savings opportunities, as well as their applicability across all contracts, is the topic of the joint MFP and T&E discussion on March 30, 2009. To prepare for this discussion, a series of questions was posed to the Office of Procurement. Their answers are provided in *italics* after each question.

1. Please provide a listing of procurement management tools available for use today that can reduce (rather than cancel) contract costs in tough times.
 - *Contracts may be amended, but such amendments are bilateral (few County contracts allow for unilateral amendment), and vendors are under no obligation to agree to a price adjustment (which may have a detrimental effect on their own lean earnings). While presenting an obvious staff burden, time is also a factor, as negotiations are likely to occur on a contract-by-contract basis. Some vendors may seek concession on other contractual matters in order to agree to a price or scope reduction. Requirements contracts (for the purchase of goods or services on a per-unit basis) with indefinite quantities would be simpler to adjust, since departments can simply order fewer quantities of goods or require less services to be performed, thereby reducing spending without requiring any amendments.*
 - *DGS has already begun, and recommended to departments, that service contracts should be more closely managed and, if necessary, amended from regular service intervals to a condition-based or will-call contract, under which services are performed only when specifically called for by the contract manager. While this may require some additional staff effort, DGS offers as an example of potential savings that managing grounds maintenance contracts in this manner will save over \$100,000.*
 - *Canceling contracts fails to address the need that prompted the contract creation. However, where contracts do not offer flexibility in management and are nearing the end of an anniversary, the County may elect to not renew contracts and issue new solicitations with more flexible management tools built into the contracts.*
 - *It is important to remember that, while trying to ease financial pressures on its budget, the County may unintentionally create a financial crisis for some of its contractors by acting without caution.*

2. Please provide a listing of tools for contract management that are not available because of some impediment, but are desired or could help.
 - *In terms of overall management, we are working with OHR to develop a higher level of training for contract administrators.*

3. Provide a listing of impediments (legislative, legal, contractual, business practice, tradition) that make a policy of focused contract cutbacks infeasible or difficult to implement.
 - *Contracts are binding on both parties. The County cannot arbitrarily alter contract terms, and in most cases contracts require bilateral action, with both the County and contractor agreeing on a change.*
 - *Certain fee structures, such as fixed price contracts, will prove very difficult to amend.*
 - *Amending contracts by reducing requirements may subject the County to legal challenge from companies that did not bid on the solicitation, since the original solicitation was competed with a different set of expectations that resulted in prices commensurate with those expectations.*
 - *The County's reputation in terms of good faith contracting and whether that has ramifications on future responses to County solicitations.*

- *Terminating contracts for convenience or for non-allocation of funds is a standard provision in County contracts.*
 - *To exercise termination rights solely to alter contract terms, and then re-solicit for the same goods or services, presents legal and ethical problems.*
 - *The County is legally obligated to pay for work up to the termination. All terminations need to go through the County Attorney.*
4. Identify elements from the County's standard Terms & Conditions (T&Cs) that strengthen the authority or ability of the County to reduce levels of service and commensurate cost and, alternatively, elements of the T&Cs that may make such reductions more difficult.
- *Again, the termination for convenience clause allows this, but the County needs to exercise good faith to legally hold up. There is also an element of competition that could be problematic if the County is drastically reducing work it competed and priced.*
5. In the case of DCM and the L3 contract, can you identify SLAs or other management strategies that would result in reduced services, but also reduced costs within the scope and legal standing of the contract?
- *This contract has unit prices, so the easiest reduction impact would be to order less equipment under the contract without further action being required contractually. Also, there is a help desk, and limiting or changing help desk hours and renegotiating unit price for help desk, but this could present competition issues and needs to be coordinated with the County Attorney. Also, reduction of equipment services, but this would have a negative impact on work productivity and increase long term equipment costs, and DTS has indicated it would result in increase of service calls to County IT staff as well as service calls to help desk that would have to be deferred if hours are reduced. Pricing was not specifically tied to SLAs; pricing paid a required certain minimum level, but the prices were based on units of service or purchase rather than SLAs.*
 - *The strategy above, in terms of having departments look at their service contracts to see if service intervals can be changed or service calls be made at County's request, instead of automatically, are some methods that could address reductions in general. Again, these may be dependent on negotiations and bilateral agreement with the contract, also addressed above.*
6. Can you provide suggestions for a small number (3-5) of contracts across all procurements (i.e., not only technology) that can be considered for cost reduction (and commensurate reduction of services received) within the framework of the FY10 budget discussion, after the L3 discussion and decisions are complete?
- *We are talking to some departments to identify some of these and can bring examples to the session. A general example is listed above, as it relates to DGS.*
7. The March 30, 2009 discussion will give the Procurement Office a chance to present data in whatever format and category is feasible, and provide an assessment of how they may move towards the desired new direction.

- *Budgets and service impacts have to be coordinated by using departments. Procurement can identify the types of contracts that may be reasonable for reduction, such as services or Invitation For Bid based contracts, or Requirements, but even within each category, the scope or compensation is going to depend on the using department's program needs at that time, and using departments would be more suited to define how, if at all, their contracts could be reduced, and what corresponding County service impacts those may have.*

Questions before the joint Committees

The questions before the joint Committees are the following:

1. Can the DCM program costs be further reduced by negotiating lower SLA agreements?

Staff Recommendation:

The DCM program review will be before the MFP Committee on April 21, 2009. Reflecting the outcome of the joint Committee discussions, this review should explore the feasibility of such an approach, and make recommendations to move in this direction if the current contract vehicle can accommodate them.

2. Should DGS favor contract vehicles with SLAs and other service level reduction methods that can be invoked in times of fiscal pressure?

Staff Recommendation:

DGS should provide an analysis of current contract tools that can have the desired effect, and also a listing of contracts that currently incorporate such tools in the body of the contract language. A subsequent joint worksession can review this information and consider service level reductions for relevant contracts accordingly.

3.12 Supplemental Staffing And Task Orders

The Contractor must provide supplemental staffing in the areas of ITHD analysts, PC Specialists and SMS Specialists, as requested by the County. For these supplemental staffing requirements, the County will issue individual task orders for each request based on the rates in this Contract (Section 6.2).

The Contractor must provide additional support services for software roll-outs and other County initiatives, as requested by the County. For these additional services, the County will issue individual fixed price or time and materials task orders to the Contractor based on the fixed rates in this Contract (Section 6.2).

3.13 Service Level Agreement (SLA)

The Contractor must actively work with the County in an ongoing assessment of its Contract performance. In order for the assessments to be meaningful to all parties, objective measures will be instituted and reviewed by both the Contractor and the Contract Administrator on a monthly basis – a “Project Monitoring Plan.” The goal of this Project Monitoring Plan is to provide benchmarks which will serve as objective measures for the purpose of identifying those areas of service which need improvement. The primary source of data collection on Contractor performance will be from the Magic Service Desk system which has the capability to track and report most of the metrics with which the County will evaluate the Contractor's performance.

The County will work with the Contractor in updating the service level indicators to ensure that those metrics being tracked are meaningful indicators of the quality of service being provided by the Contractor. At a minimum, the County and the Contractor will review all service level indicators at least once a year during the term of this Contract. The goal of this annual review is to outline the service level indicators which will be in effect for the next year of the Contract.

Shown below are the service level indicators that will be in effect for this Contract. Performance below the Minimum Acceptable Level will result in a reduction in the compensation paid to the Contractor.

No	Performance Category	Minimum Acceptable Level
1	IMAC Quality	99% of IMACs successful, no more than 1% of tickets require rework
2	IMAC efficiency	During 98% of all replacements, user is without access to PC for 90 minutes or less
3	ITHD wait time	Maximum total wait time (rings & queue time) is thirty (30) seconds or less for 98% of all calls received and fifteen (15) seconds or less for 50% of all calls received.

Desktop Computer Modernization (DCM) – PC Seat Management

4	Response to after-hours callers	All (100%) after-hours calls returned by 8:30 AM next business day
5	Ticket Quality	No less than 95% of not-closed-on-first-call tickets error free
6	Warranty repairs	All PCs repaired or Loaners installed within four (4) business hours of trouble call received
7	Non-warranty repairs for Full Seat and limited Seat PCs	Repair estimate provided to DCM program Office within four (4) business hours of trouble call received and PC repaired or Loaner installed within one (1) business hour of approval received.
8	Pricing and configurations	County order forms updated by 12 noon each Tuesday (or the first working day after Tuesday if the County is closed on that Tuesday) to incorporate manufacturer changes through start of business that day.
9	Timely inventory updates	All updates from IMACs or Department notification complete within two (2) business days
10	Accurate inventory updates	98% of all data updates accurate at all times, no more than 2% of updates require corrections
11	Accurate inventory	Quantity of systems by seat category 100% accurate in monthly report and invoice submissions
12	Customer Satisfaction	98% of all customer service survey responses are "satisfied" or better

To meet a Minimum Acceptable Level, the Contractor must have performed at or above the Minimum Acceptable Level in the twelve services categories described above for the month of services invoiced.

The Contractor must reduce the services amount charged to the County by five percent (5%) if two or more of the minimum service levels are not met for the month or if the same service level item is not met for two (2) consecutive months. Repeated Contractor failure to meet minimum service levels of performance may be cause to terminate this Contract.

3.14 Support Services

Support services are the services provided to Full Seat, Limited Seat, and Asset-Only Seat PC's (such as ITHD services, IMACs, PC asset management services, and maintenance services). Prices for the three categories of seat management will be a monthly charge for each PC under Contractor services. The initial number of PCs under Contractor services will be determined by an inventory provided by the County DCM Program Office. Subsequent unit counts will be reviewed and approved on a monthly basis by the County based on any additions/deletions for the previous month. The County reserves the right to reclassify systems into the different seat categories as it deems appropriate in its sole discretion. The Contractor must reflect any County specified changes in the monthly service invoice and management reports that cover the month immediately following County request (example, a change specified anytime in October will be reflected in the invoice and management reports for November).

OVERVIEW

As required by the Montgomery County Code, Section 11B-32, the Director must maintain a record of procurements awarded during each fiscal year. Therefore, this report includes and summarizes the number and the type of contracts awarded during fiscal year '08. There is a summary section detailing: (1) non-competitive awards, (2) emergency awards, modification awards exceeding \$25,000, (3) public entity awards, and (4) bridge awards, a chart section, and a record of procurements section.

The summary section also includes:

1. A summary of the total dollars awarded and the total actions awarded for delivery order, field order, modification, new award and renewal award categories.
2. A summary of the total dollars awarded and the total award actions by contract type.
3. A summary of the total dollars awarded for non-competitive non-professional and professional awards within the above award categories.
4. A summary of the total dollars awarded for the required award categories (emergency, modifications exceeding \$25,000, bridge, public entity, and county council resolution).

The charts presented summarize the total dollars awarded and the total actions awarded by delivery order, field order, modification, new award, and renewal category for fiscal year '08.

The record of procurements section describes the purchase order and/or change order action, the vendor name, the department number, and the dollar value awarded.

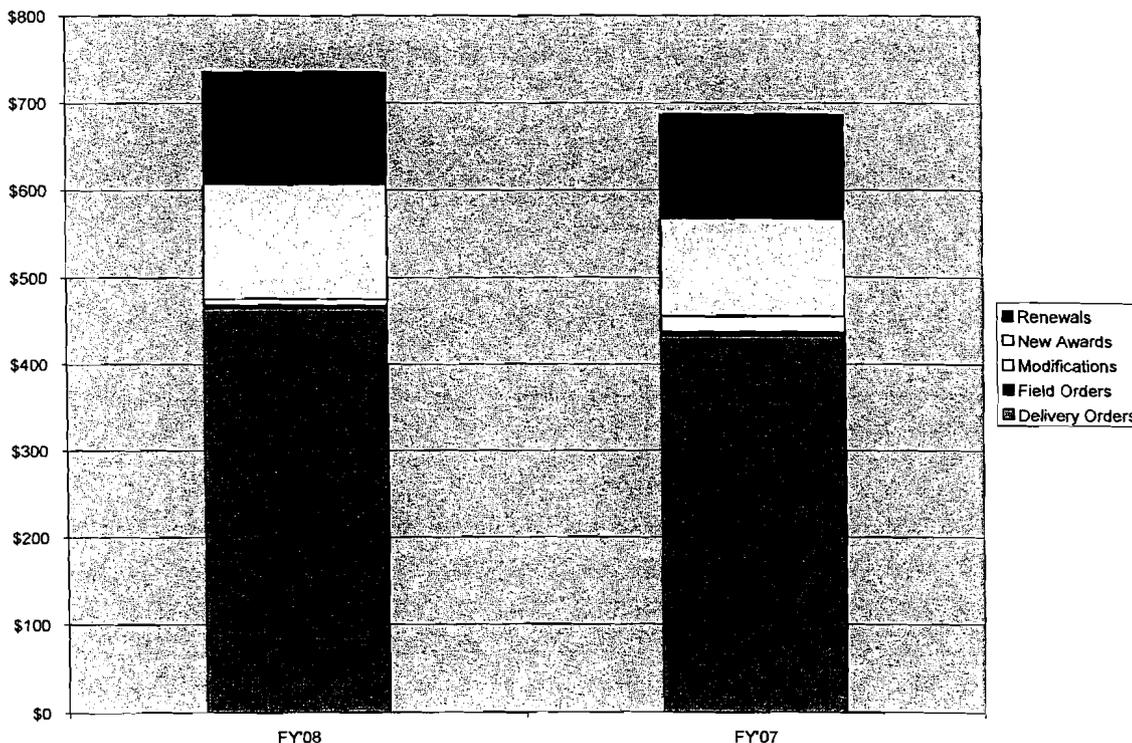
This report provides in appendix the following information:

- (A) An update on Protests
- (B) A list of Procurement Specialists and their assigned number of contracts
- (C) A report of current Cost/Price projects
- (D) A report of contracts terminated or in dispute
- (E) A report of purchases from Office Depot by using department accounts
- (F) A report of requests for Public Information
- (G) A report of contracts subject to the Wage Requirements law

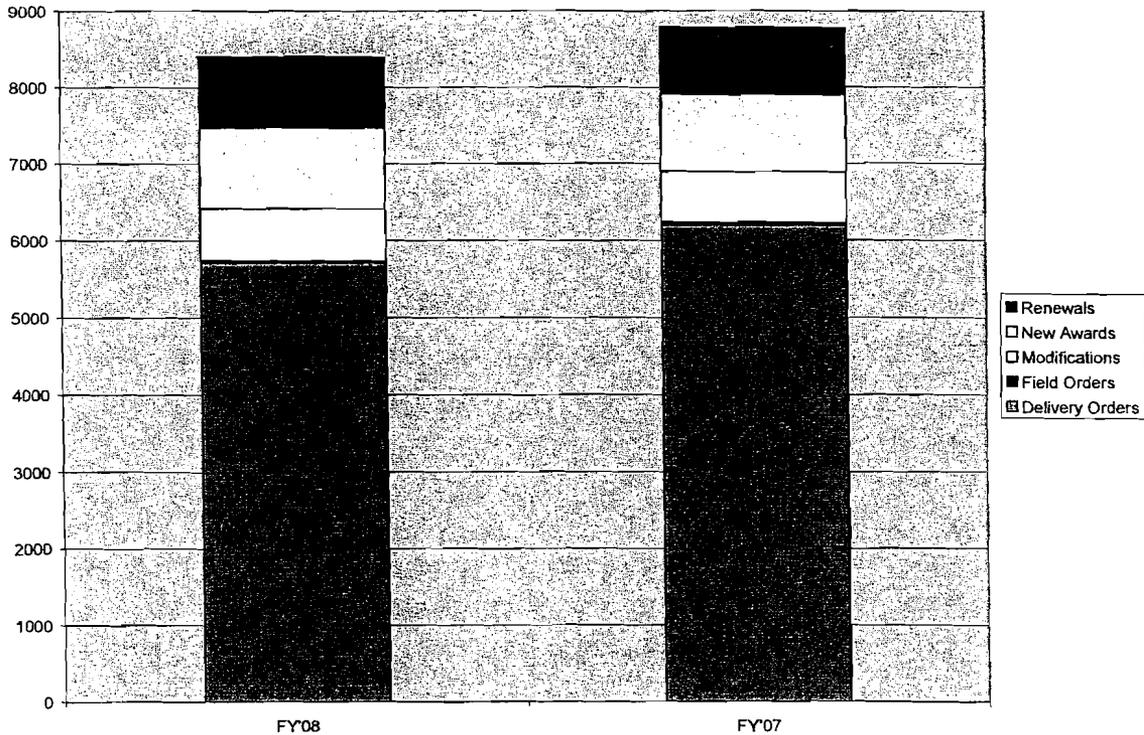
SUMMARY

In summary, the Office of Procurement awarded contracts for goods, services, and construction in fiscal year '08 totaling \$735,270,542. The number of award actions totaled 8396. This represents an *increase* over fiscal year '07 of 7.14% in dollars awarded and a *decrease* of 4.36% in award actions.

Procurement Type	Action		Award Amount	
	FY'08	FY'07	FY'08	FY'07
Delivery Orders	5710	6,197	465,090,138	\$432,282,855
Field Orders	25	32	2,836,637	\$5,179,391
Modifications	676	657	7,302,990	\$18,312,165
New Awards	1056	1,015	131,505,775	\$111,378,151
Renewals	929	878	128,535,002	\$119,122,401
Total	8396	8,779	735,270,542	\$686,274,963



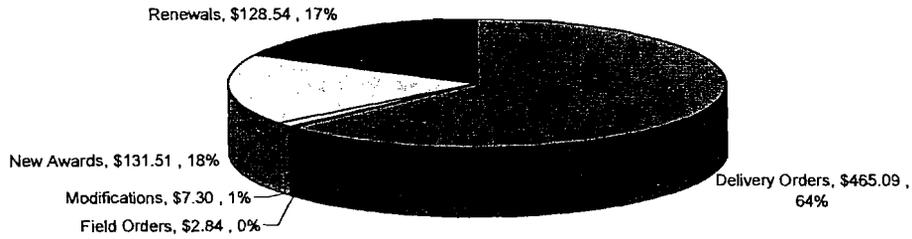
Contract Awards by Procurement Types (total amounts in \$millions)



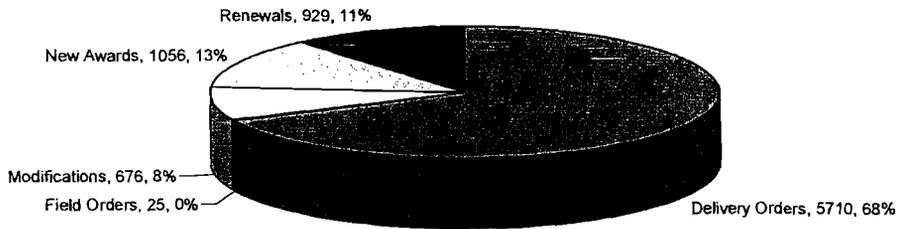
Contract Awards by Procurement Types (total actions)

A. Total Dollars Awarded and Actions by Procurement Type

Procurement Type	Actions	Awards	Description
Delivery Orders	5710	\$465,090,138	Purchases made through an existing contract
Field Orders	25	\$2,836,637	Purchases made against current construction contracts, as outlined by the Procurement Regulations
Modifications	676	\$7,302,990	Purchases which amend a contract's scope of work
New Awards	1056	\$131,505,775	Newly awarded contracts
Renewals	929	\$128,535,002	Authorized contract extensions
Total	8396	\$735,270,542	



Contract Awards by Procurement Types (total amounts in \$millions)



Contract Awards by Procurement Types (total amounts in actions)

Total Dollars Awarded by Contract Type

Procurement Category	Actions	Awards
Fed. Govt.	4	\$92,586
State	91	\$50,395,518
State Subs	22	\$891,456
Board/Commission	38	\$2,102,182
Org of Fed. or State	0	\$0
Non-profit	7	\$1,594,570
Abbreviated RFP	1	\$108,244
Abbreviated IFB	0	\$0
Grants	629	\$62,856,799
Open	999	\$34,571,419
IFB	2098	\$132,938,934
Bridge	496	\$51,673,104
Library	83	\$6,428,000
Joint	93	\$150,195,609
Comm. Informal	45	\$971,018
Prof. Informal	413	\$2,345,901
RFP	3187	\$220,200,371
Sole Source	190	\$17,904,831
Total	8396	\$735,270,542

Grants	Actions	Awards
General Grants	77	\$1,575,195
County Council Designated Grants	510	\$58,798,769
State Designated Grants	30	\$1,913,411
Federal Designated Grants	11	\$544,423

B. Noncompetitive Awards Exceeding \$10,000

Non-competitive Awards Exceeding \$10,000								
	Other than Professional		Professional		Goods		Construction	
Delivery Orders	\$40,169,931	34	\$19,993,510	120	\$5,964,843	64	\$ 0	0
Field Orders	\$ 0	0	\$ 0	0	\$108,100	3	\$2,628,118	17
Modifications	\$ 3,540,557	32	\$6,490,781	89	\$1,131,389	10	\$1,292,052	9
New Awards	\$4,073,147	19	\$12,357,161	71	\$2,073,507	9	\$1,250,000	3
Renewals	\$5,241,939	19	\$43,886,825	169	\$ 0	0	\$ 0	0

D. Special Award Categories

Dollars awarded in this category are subsets of the total award dollars shown in Items A and B above and therefore cannot be totaled.

Emergency Awards		
Other than Professional	\$745,567	6
Professional	\$11,167,660	16
Goods	\$0	0
Construction	\$0	0

Other Categories		
Modifications Exceeding \$25,000	\$11,724,376	92
Bridge Awards	\$51,673,104	496
Cooperative Awards	\$150,195,609	93
Public Entities	\$55,076,312	162
Council Resolutions	\$58,798,769	510