

**William C. Thompson, Jr.
New York City Comptroller**

**Testimony before the Committee on Contracts
New York City Council**

**Presented by Greg Brooks, Deputy Comptroller, Policy, Audits, Contracts and
Accountancy
and John Graham, Assistant Comptroller, Contract Administration**

**The Administration's New Agency Procurement Indicators; and the Latest Data on
Contract Retroactivity.**

**October 18, 2004
1:00 pm**

Good afternoon. I am Deputy Comptroller Greg Brooks and with me is Assistant Comptroller John Graham. On behalf of Comptroller William C. Thompson, Jr., I would like to thank Contracts Committee Chair Robert Jackson and the Committee members for this opportunity to testify on the Mayor's Office of Contract Services' report on Agency Procurement Indicators and retroactive contracts.

On January 21, 2003, the Comptroller and the City Council issued a report on procurement reform. The report was the result of recommendations made by a task force brought together by our respective offices in an effort to improve the City's procurement process. The task force was comprised of leaders from the not-for-profit and for-profit communities. As you recall, the Administration was asked to join with us in this important endeavor, but declined.

The first and most critical issue tackled by our task force was retroactive contracts. The impact of retroactive contracts upon the human service vendors cannot be understated.

The Comptroller and City Council have championed this issue and, if one believed the MOCS Indicator Report, you would think that there has been substantial improvement in this area. Unfortunately, that is not the case.

Before I address specifics of the Indicator Report, I would like to take a minute to discuss the data it was based upon, which is contracts registered within FY 2004. This is an imprecise subset of contract data and does not adequately present information on FY 2004 contracts. In order to provide consistent information on contracts across fiscal years, one needs to analyze contracts which are identified in the City's Financial Management System to a particular Fiscal Year because there is always overlap at the beginning and end of each fiscal year while the City is preparing the year end close process. So contracts from one fiscal year are being registered in another fiscal year. To illustrate, MOCS represented that there were 4,586 contracts and 3,042 small purchases, totaling over \$9.5 billion in FY 2004. However, when you report on actual FY 2004 contracts, a more defined picture emerges. In FY 2004 there were actually 3,978 contracts and 8,210 transactions below the small purchase limits, totaling almost \$10.3 billion. This reflects a difference of almost three quarters of a billion dollars. Nevertheless, even when one uses the parameters MOCS used, i.e., contracts registered between July 1, 2003 and June 30, 2004, it turns out that MOCS numbers are wrong. They did not include 2,116 contracts totaling over \$600 million and failed to report at all on an additional 16,625 small and micro-purchases totaling over \$37 million.

Page thirteen of MOCS report provides information regarding the retroactivity of contracts and how, purportedly, it had significantly improved in FY 2004. Upon careful reading of the report, however, one finds that MOCS has included inappropriate data in an effort to provide more positive results. If you look at MOCS retroactive chart in Appendix D you will see that it reflects data for all agencies. It includes every late contract regardless of whether it was to purchase tables, construct a road or feed and care for children. That is a skewed set of contracts because a contract to feed children normally starts regardless of the date a contract is registered, while contracts to purchase tables or build roads, for the most part, do not start until the contract is registered. Consequently, the indicators depicted in Appendix D regarding retroactivity do not paint a full picture as they do not reflect whether there has been substantial improvement in human service contracts -- where it counts the most.

In FY 2003, the City registered 2,283 human service contracts totaling \$4.5 billion. Of these contracts, 1,375, or 60%, were retroactive contracts; that is, they were registered 30 days or more after the start date of the contract. The late contracts totaled \$1.6 billion. Fifty-seven percent of the number of retroactive contracts were over 90 days late.

In FY 2004, the City registered 1,748 client service contracts totaling \$3.8 billion. Of these contracts, 954 contracts, or 55%, were over 30 days late. MOCS report, however, states that only 25% of human service contracts were over 30 days late. The 954 late contracts totaled just over \$1 billion. Seventy-one percent of the number of retroactive

contracts were over 90 days late. Even when discretionary funded contracts are removed from the calculations, almost 42% of human service contracts are late.

Nevertheless, the data, while not overly positive, shows that there is an improvement in contract retroactivity. In FY 2002, 64% of human service contracts were late compared to 55% in FY 2004. It appears, therefore, that there has been some improvement in this area of concern.

MOCS also presents figures purporting to provide information on the time it takes agencies, and oversights, to process contracts. MOCS data included what it defined as the time in which it takes the Comptroller to register contracts. Those data are grossly inaccurate.

The City Charter gives to the Comptroller only 30 calendar days in which to register a contract. Page 14 of the Report references a chart contained on page 12 and asserts that the Comptroller's Office "uses nearly the entire 30 days maximum time period" to register contracts. That statement is false. Based upon data maintained in the Comptroller's OASIS system, which was previously shared with MOCS to allow it to accurately prepare the Indicator Report, registration takes place, on average, between eighteen and twenty-two days of receipt of the contracts identified in the chart. That is significantly different from the 21 to 34 days that MOCS reported. Attached to my testimony is a chart, which presents the average registration time frames for the identified

award methods. I would also be pleased to provide the Council with the actual raw data in any format it requests in order to independently verify the numbers on the chart.

Contracts submitted to the Comptroller's Office undergo a rigorous review covering areas, such as, integrity, sufficiency of documentation, contractor performance and budget. Often, during this review, issues are identified that prevent the Comptroller's Office from registering the contract. Accordingly, the Comptroller's Office cooperatively holds the contract, often until the last possible moment, to afford agencies an opportunity to address and correct the problem. Recently, for example, at MOCS request, contracts for procurement card services had been pending registration for the full 30 days because they failed to have the proper VENDEX documentation.

The staff of the Comptroller's Office provided extensive data to MOCS to allow it to perform various programming cycle analyses for the Report. The first footnote on the chart on page 12 of the Report indicates that the basis for the chart was not the Comptroller's data but was instead provided by the individual contracting agencies. The one exception was MOCS processing time where they conveniently used their own data rather than the agencies'. Given the unverifiable nature of the agencies' data, and given the misleading information presented in the report regarding registration time frames, I question the accuracy of the conclusions made in the Report.

Prior to release of our task force report, it was shared with MOCS for comment. The Comptroller's Office also shared with MOCS the format of the retroactive contract report

that is posted on our website and provided the actual computer query used to generate the report. It is unfortunate that MOCS report was not shared with the Comptroller's Office prior to its formal release.

I appreciate being afforded the opportunity to testify on this important matter and am available to answer any question you may have.

Award Method	Number	Average Days to Registration
Bid	1,224	21.60
Renewal	827	20.77
RFP	504	18.30
Negotiated Acquisition	334	22.58
Total Average		20.81
Amendments all	9,020	19.93