



# City of New York

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## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## FINANCIAL AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

Audit Report of the Mayor's Office of  
Contract Services' Monitoring of Vendor  
Performance Evaluations

FK19-091A

March 22, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

March 22, 2021

To the Residents of the City of New York:

My office has audited the Mayor's Office of Contract Services (MOCS) to determine whether MOCS adequately coordinated and oversaw City social service agencies' evaluation of vendor performance and ensured that they complied with the Procurement Policy Board (PPB) Rules. We perform audits such as this to increase accountability and to ensure that the City awards funds only to vendors that demonstrate a satisfactory record of performance and business integrity and that are capable of fully and satisfactorily meeting future contract requirements.

In 2017, MOCS launched the Procurement and Sourcing Solutions Portal (PASSPort), an online portal, to facilitate the City's procurement process and allow agencies to document and monitor vendor performance evaluations (PEs) in one centralized system. During Fiscal Year 2018, the City's four social service agencies were responsible for evaluating vendors' performance for 1,980 contracts with a combined maximum value of \$14.7 billion.

The audit found that MOCS generally failed to adequately coordinate and oversee the vendor PE process which increased the risk that the City contracted with vendors that were not capable of meeting contract requirements or lack business integrity. Based on our review of the 1,980 contracts that were due to be evaluated during Fiscal Year 2018, the four social service agencies did not complete PEs for 526 contracts (26.6 percent), and did not complete PEs timely for 1,384 contracts (69.9 percent). The four social service agencies completed PEs timely for only 70 contracts (3.5 percent). MOCS failed to adequately coordinate and oversee the vendor PE process because MOCS did not ensure that PEs were created in PASSPort, improperly approved PE exemptions, did not adequately oversee social service agencies, and did not establish adequate written procedures for PEs.

The audit recommends that MOCS should: (1) ensure that PASSPort creates PEs for all contracts except for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits; (2) ensure that PEs are completed and finalized within 90 days of the contract anniversary start date; (3) only grant exemptions for contracts that meet the PPB Rules' PE exemption criteria and contracts for which services or goods were not provided during the evaluation period; (4) ensure that each Agency Chief Contracting Officer monitors PE completion status on an ongoing basis; and (5) develop formal written policies and procedures, communicate them, and train City agencies on their responsibilities for completing PEs.

The results of the audit have been discussed with MOCS officials, and their comments have been considered in preparing this report. MOCS' complete written response is attached to this report. If you have any questions concerning this report, please e-mail my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

## Audit Report of the Mayor's Office of Contract Services' Monitoring of Vendor Performance Evaluations

FK19-091A

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### EXECUTIVE SUMMARY

The Mayor's Office of Contract Services (MOCS) facilitates and oversees citywide procurement activities. The Director of MOCS is the City Chief Procurement Officer (CCPO) and, as such, is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff, including the procurement activity of the City's four social service agencies—the Administration for Children's Services (ACS), the Department for the Aging (DFTA), the Department of Homeless Services (DHS), and the Human Resources Administration (HRA).<sup>1</sup> Section 1-01(e) of the City's Procurement Policy Board (PPB) Rules defines procurement activity as:

Buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction which includes all phases of contract administration, including ...evaluation of performance...

Accordingly, Sections 4-01(b) and (c) of the PPB Rules state, respectively, that “the CCPO shall establish procedures to ensure systematic evaluation of vendor performance” and “establish a centralized computerized database for storage and retrieval of the evaluation.”

In 2017, MOCS launched the Procurement and Sourcing Solutions Portal (PASSPort), an online portal, to facilitate the City's procurement process and allow agencies to document and monitor vendor performance evaluations (PEs) in one centralized system. City agencies use PASSPort to: (1) assign, complete, review, and send PEs to vendors; and (2) assist in making contract decisions to extend, renew, terminate or allow existing contracts to lapse, and award additional contracts.

During Fiscal Year 2018, the City's four social service agencies were responsible for evaluating vendors' performance for 1,980 contracts that were registered with the Comptroller's Office, with a combined maximum value of \$14.7 billion.

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<sup>1</sup> The Comprehensive Annual Financial Report (CAFR) of the Comptroller for the Fiscal Year Ended June 30, 2020 classifies City agencies based on their functions/programs which includes, among other things, social services. The CAFR identifies the City's four social service agencies as including ACS, DFTA, DHS, and HRA.

## Audit Findings

MOCS generally failed to adequately coordinate and oversee the vendor PE process. Based on our review of the 1,980 contracts that were due to be evaluated during Fiscal Year 2018, the City's four social service agencies did not complete PEs for 526 contracts (26.6 percent), and did not complete PEs timely for 1,384 contracts (69.9 percent). The four City social service agencies completed PEs timely for only 70 contracts (3.5 percent).

MOCS failed to adequately coordinate and oversee the vendor PE process because MOCS did not ensure that PEs were created in PASSPort, improperly approved PE exemptions for contracts, did not adequately oversee City social service agencies, and did not establish adequate written procedures for PEs.

## Audit Recommendations

Based on our findings, we made the following five recommendations to MOCS:

- MOCS should ensure that PASSPort creates PEs for all contracts except for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits;
- MOCS should ensure that PEs are completed and finalized within 90 days of the contract anniversary start date;
- MOCS should only grant exemptions for contracts that meet the PPB Rules' PE exemption criteria and contracts for which services or goods were not provided during the evaluation period;
- MOCS should ensure that each Agency Chief Contracting Officer (ACCO) monitors PE completion status on an ongoing basis; and
- MOCS should develop formal written policies and procedures, communicate them, and train City agencies on their responsibilities for completing PEs including, but not limited to, monitoring and follow-up activities.

## Agency Response

In its response, MOCS generally disagreed with the report's findings stating, "Unfortunately, the report misconstrues facts and ignores basic information provided during the course of the audit." Consequently, MOCS disagreed with four of the report's five recommendations regarding PE creation, timeframe for completion, its granting of exemptions, and the need for policies and procedures. MOCS agreed with the remaining recommendation regarding agency monitoring of PE completion status, stating, "MOCS will continue to work in partnership with agencies to evaluate vendor performance."

# AUDIT REPORT

## Background

MOCS facilitates and oversees citywide procurement activities. The Director of MOCS is the CCPO and is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff, including the procurement activity of the City's four social service agencies—ACS, DFTA, DHS, and HRA. Section 1-01(e) of the PPB Rules defines procurement activity as,

Buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction which includes all phases of contract administration, including ...evaluation of performance...

Section 4-01(b) of the PPB Rules requires agency staff to monitor vendors' performance and complete PEs "no less than once annually" with certain limited exceptions.<sup>2</sup> MOCS advised agency staff that "[t]raditionally, PEs are expected to be completed within 90 days of the anniversary of the contract start date (for length of contract)."

Accordingly, Sections 4-01(b) and (c) of the PPB Rules state, respectively, that "the CCPO shall establish procedures to ensure systematic evaluation of vendor performance" and "establish a centralized computerized database for storage and retrieval of the evaluation."

In 2017, MOCS launched PASSPort, an online portal, to facilitate the City's procurement process and allow agencies to document and monitor vendor PEs in one centralized system. City agencies use PASSPort to: (1) assign, complete, review, and send PEs to vendors; and (2) assist in making contract decisions to extend, renew, terminate or allow existing contracts to lapse, and award additional contracts.

During Fiscal Year 2018, the City's four social service agencies were responsible for evaluating vendors' performance for 1,980 contracts that were registered with the Comptroller's Office, with a combined maximum value of \$14.7 billion, as detailed in Table 1 below.<sup>3</sup>

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<sup>2</sup> Section 4-01(b) of the PPB Rules states that a "performance evaluation shall be done no less than once annually except that for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits, an evaluation report shall be prepared only in cases of deficient performance." Additionally, the PPB Rules do not apply to certain procurements as specified in §1-02(d) and certain transactions specified in §1-02(f), "provided [in the latter case] the ACCO determines that the process to be followed is in the best interest of the City and states the basis therefor." The transactions specified in §1-02(f) include government-to-government contracts, the provision of work or services by State-regulated public utilities, State- or federally-regulated cable television and other public services, professional memberships, and subscriptions.

<sup>3</sup> We conducted separate audits of the City's four social service agencies to determine whether they evaluated and documented vendor performance in accordance with the PPB Rules as follows: *Audit Report on the Human Resource Administration's Vendor Performance Evaluations*, issued on June 30, 2020 (Audit # FK19-092A); *Audit Report on the Administration for Children's Services' Vendor Performance Evaluations*, issued on October 5, 2020 (FK19-093A); *Audit Report on the Department of Homeless Services' Vendor Performance Evaluations*, issued on May 28, 2020 (Audit # FK19-094A); and *Audit Report on the Department for the Aging's Vendor Performance Evaluations*, issued on June 25, 2020 (Audit # FK19-095A).



**Table 1**

Summary of the Number and  
Combined Maximum Value of Social  
Service Agency Contracts Subject to  
PEs

<b>Agency</b>	<b>Number of Contracts That the Agency Was Responsible for Evaluating</b>	<b>Combined Maximum Dollar Value of the Contracts That the Agency Was Responsible for Evaluating</b>
<b>ACS</b>	493	\$5,275,708,782
<b>DFTA</b>	448	\$854,885,494
<b>DHS</b>	450	\$5,813,602,270
<b>HRA</b>	589	\$2,821,673,533
<b>Total</b>	<b>1,980</b>	<b>\$14,765,870,079</b>

## **Objective**

The objective of this audit was to determine whether MOCS adequately coordinated and oversaw City social service agencies' evaluation of vendor performance and ensured that they complied with the PPB Rules.

## **Scope and Methodology Statement**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

This audit covered PEs generated in Fiscal Year 2018 (July 1, 2017 through June 30, 2018) which evaluated vendor performance from the prior year. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

## **Discussion of Audit Results**

The matters covered in this report were discussed with MOCS officials during and at the conclusion of this audit. MOCS officials were notified of our findings during the course of the audit and agreed that a preliminary draft report and an exit conference was not necessary. On January 8, 2021, we submitted a draft report to MOCS with a request for comments. We received MOCS' written response on February 1, 2021.

In its response, MOCS generally disagreed with the report's findings stating, "Unfortunately, the report misconstrues facts and ignores basic information provided during the course of the audit." Consequently, MOCS disagreed with four of the report's five recommendations regarding PE creation, time frame for completion, exemptions, and policies and procedures. MOCS agreed with the remaining recommendation regarding agency monitoring of PE completion status, stating that "MOCS will continue to work in partnership with agencies to evaluate vendor performance."

As detailed below and throughout the report, we considered all information and documentation provided during this audit and our related audits of the City's four social service agencies. Further, we appropriately identified and applied relevant criteria.

MOCS asserted that it sufficiently allowed for the creation of PEs through an automated or ad hoc process. However, since at least November 2017, MOCS has known that PASSPort fails to automatically create PEs on contract anniversary dates—as it is supposed to do—and did not take any corrective action to address that issue. During Fiscal Years 2018 and 2019, PASSPort failed to create PEs for 43.9 percent and 50.0 percent of contracts, respectively, on their contract anniversary dates. As the agency responsible for overseeing the PE process and the owner of PASSPort, MOCS should ensure that PASSPort data is complete and accurate and that PASSPort is capable of performing basic functions—including, but not limited to, automatically creating PEs on contract anniversary dates.

MOCS also stated that "[t]here is no requirement in the Procurement Policy Board Rules or Charter to complete performance evaluations within 90 days of the contract anniversary date." MOCS stated that it will continue to use 90 days "as an aspirational target." However, MOCS' current position that the 90-day post-anniversary timeframe is merely "aspirational" conflicts with its previous statement made to the Mayoral agency procurement officials it oversees that completion of the mandated PEs within that timeframe was "expected."

Additionally, MOCS stated that the PPB Rules "provide the MOCS Director with the discretion to 'establish procedures to ensure the systematic evaluation of vendor performance' which includes allowing for logical exemptions for evaluations." However, in making this statement, MOCS erroneously relies on and misinterprets Section 4-01(b) of the PPB Rules. While MOCS correctly notes that Section 4-01(b) provides that the CCPO should "establish procedures to ensure the systematic evaluation of vendor performance," the PPB Rule expressly provides only certain limited exceptions to the requirement that PEs be completed and does not authorize the CCPO to grant additional exemptions to the rule.

MOCS stated that it created an abundance of formal written policies and procedures specifically tailored for PEs. However, the existing MOCS policies and procedures are inadequate because they do not provide, among other things, PE completion timeframes or procedures for monitoring and follow-up activities.

Furthermore, MOCS stated that, "it bears noting that the audit period overlaps with the launch of performance evaluation functionality in the City's new digital Procurement and Sourcing Solutions Portal (PASSPort). Agencies were working to adapt to the new system and internalize training materials during the review period." However, based on our review of PEs generated or due to be generated in Fiscal Year 2019 (July 1, 2018 through June 30, 2019), the four social service agencies performance did not significantly improve over time, and the issues cited in the report have persisted. For Fiscal Year 2019, the four social service agencies were responsible for evaluating 1,956 contracts. Based on our review, the four social service agencies did not complete PEs for 677 contracts (34.6 percent), and did not complete PEs timely for 1,102 contracts (56.3



percent). The four social service agencies completed PEs timely for only 177 contracts (9.0 percent).

After reviewing MOCS' response, we find no basis to alter any of the report's findings and recommendations.

The full text of MOCS' response is included as an addendum to this report.

## FINDINGS

MOCS failed to adequately coordinate and oversee the vendor PE process. This issue is discussed in detail below and in four separate audit reports of social service agencies' vendor PEs.

### **MOCS Failed to Adequately Coordinate and Oversee the Vendor PE Process**

Section 1-01(e) of the PPB Rules states that the CCPO is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff which includes, among others things, vendor performance evaluation. Further, Section 4-01(b) of the PPB Rules requires agency staff to monitor vendors' performance and complete PEs "no less than once annually" with certain limited exceptions. MOCS advised agency staff that "[t]raditionally, PEs are expected to be completed within 90 days of the anniversary of the contract start date (for length of contract)."

During Fiscal Year 2018, the City's 4 social service agencies were responsible for evaluating vendors' performance for 1,980 contracts. However, based on our review of PASSPort data as of July 16, 2019, the City's 4 social service agencies did not complete PEs for 526 contracts (26.6 percent), and did not complete PEs timely for an additional 1,384 contracts (69.9 percent). The 4 City social service agencies completed PEs timely for only 70 contracts (3.5 percent). Table 2 below summarizes the City's four social service agencies PE completion.

**Table 2**

Summary the City's Four Social  
Service Agencies Completion of PEs  
which Were Created or Should Have  
Been Created during Fiscal Year  
2018

<b>Agency</b>	<b>Number of Contracts That the Agency Was Responsible for Evaluating</b>	<b>Number of PEs That the Agency Did Not Complete</b>	<b>Number of PEs That the Agency Did Not Complete Timely</b>	<b>Number of PEs That the Agency Completed Timely</b>
<b>ACS</b>	493	78	415	0
<b>DFTA</b>	448	10	433	5
<b>DHS</b>	450	171	221	58
<b>HRA</b>	589	267	315	7
<b>Total</b>	<b>1,980</b>	<b>526</b>	<b>1,384</b>	<b>70</b>

MOCS failed to coordinate and oversee the vendor PE process because:

- MOCS did not ensure that PEs were in fact created in PASSPort for every contract that required one;
- MOCS improperly approved PE exemptions for contracts;
- MOCS did not adequately oversee City social service agencies, and
- MOCS did not establish adequate written procedures for PEs.

The above-listed issues are discussed in detail below.

In September 2019, we provided each of the four social service agencies with a list of contracts that were not evaluated. Based on our subsequent review of PASSPort data as of December 2020, the social service agencies completed PEs for only 96 of those 526 contracts—18.3 percent.

Section 2-08(a)(1) of the PPB Rules states that “[p]urchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.” Further, Section 2-08(b)(2) states that “[f]actors affecting a contractor’s responsibility may include...a satisfactory record of performance” and “a satisfactory record of business integrity.” Accordingly, Section 2-08(g) of the PPB Rules states that “ACCOs shall use [PASSPort] PEs and the [PASSPort] database of

debarred, suspended, and ineligible vendors when making responsibility determinations and ultimately, purchasing and contracting decisions.”<sup>4</sup>

Since MOCS failed to coordinate and oversee the vendor PE process to ensure that Mayoral agency staff completed PEs, City agency procurement personnel cannot make fully informed contracting decisions concerning those vendors, and as a result the City may extend, renew, or award contracts and funds to vendors that have not demonstrated a satisfactory record of past performance, are not capable of fully or satisfactorily meeting future contract requirements, or lack the business integrity to justify the award of public tax dollars.

**MOCS Response:** “With respect to time frames, the PPB Rules do not require evaluations to be completed within ninety days. MOCS has set ninety days as an aspirational goal for agencies to follow and continues to remind them of their obligation to complete evaluations as required.”

**Auditor Comment:** MOCS emailed the four social service agency ACCOs whose procurements it oversees to inform them that “timely completion of vendor evaluations is critical for responsible procurement. . . . Traditionally, PEs are *expected* to be completed within 90 days of the anniversary of the contract start date (for length of contract).” [Emphasis added.] Further, MOCS instructed the four social service agency ACCOs to “**complete any outstanding PEs as soon as possible.**” [Emphasis in original.]

As previously stated, Section 2-08(a)(1) of the PPB Rules states that “[p]urchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.” Further, Section 2-08(b)(2) states that “[f]actors affecting a contractor’s responsibility may include. . . a satisfactory record of performance” and “a satisfactory record of business integrity.” Accordingly, Section 2-08(g) of the PPB Rules states that “ACCOs shall use [PASSPort] PEs and the [PASSPort] database of debarred, suspended, and ineligible vendors when making responsibility determinations and ultimately, purchasing and contracting decisions.” This can only be done effectively if PEs are promptly completed and available to potential vending agencies.

Accordingly, rather than disavowing its stated expectations for timely performance evaluations, MOCS should ensure that PEs are completed and finalized within 90 days of the contract anniversary start date so that City agency procurement personnel can make fully informed contracting decisions.

**MOCS Response:** “The Audit Team identified 1,980 contracts that required a performance evaluation during Fiscal Year 2018, but their analysis erroneously included contracts that, by Procurement Policy Board (PPB) Rule, did not require an evaluation. . . . a cursory review of the Comptroller’s analysis shows that it included contracts that were below the small purchase limits.”

**Auditor Comment:** MOCS statement is not supported by any available evidence. We used FMS to generate a list of all active contracts and removed contracts that were below the small purchase limits based on their reported contract value. We provided each of the City’s four social service agencies with a list of the contracts that required a PE. In total, the four social service agencies claimed that only 21 of the 1,980 contracts were below

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<sup>4</sup> In 2017, MOCS launched PASSPort, which replaced the Vendor Exchange System (VENDEX), to facilitate the City’s procurement process and allow agencies to document and monitor vendor PEs.

the small purchase limits and therefore, did not require a PE. For each of those 21 contracts, we reviewed the FMS Agreements Franchises Concession report again and verified that all of the contracts did in fact require a PE.

## **MOCS Did Not Ensure That PEs Were Created**

As previously mentioned, the Director of MOCS is the CCPO and is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff. Agency ACCOs are responsible for organizing and supervising the procurement activity of subordinate agency staff in conjunction with the CCPO. City agencies use PASSPort to assign, complete, review, and send PEs to vendors. The PASSPort Performance Evaluations for Agencies user manual states that “PASSPort will create a draft PE for the contract 12 months after the contract start date.”

MOCS informed us that

FMS data are used to identify contracts subject to performance evaluations. An interface was created between PASSPort and FMS to allow for FMS data to be imported into PASSPort on a daily and automated basis. Performance evaluations are generated in an automated fashion or manually on an ad hoc basis for contracts that meet performance evaluation criteria.

However, during Fiscal Year 2018, PASSPort did not create PEs for 870 of the 1,980 City social service agency contracts—43.9 percent—on their contract anniversary dates. For 552 of the 870 contracts, City social service agency staff discovered that the PEs were not created automatically on contract anniversary dates. Subsequently, City social service agency staff notified MOCS and requested that MOCS create PEs for the 552 contracts. Since MOCS did not review PASSPort data to ensure that PEs were created on contract anniversary dates, those 552 PEs were created between 18 and 709 days late.

For the remaining 318 of the 870 contracts, MOCS and City social service agency staff appear to have been unaware that PEs were not created in PASSPort. For those 318 contracts, PASSPort did not create PEs at all or PASSPort did not create PEs which fully covered the evaluation period. We provided MOCS and the four City social service agencies with a list of contracts that were not evaluated, which included the above-mentioned 318 contracts. We requested that the City social service agencies provide us with documentation to show that they: (1) notified MOCS and requested that MOCS create PEs for those 318 contracts; and (2) completed PEs. Based on our subsequent review of PASSPort data, MOCS created PEs for those 318 contracts. However, the City social service agencies completed PEs for only 36 of those 318 contracts. Further, they were completed between 466 and 875 days late.

The City spent \$46,084,631 on PASSPort, which includes among other things, the PE application. However, MOCS did not take any steps to ensure that PASSPort data was accurate and complete before PASSPort was launched. Furthermore, MOCS did not take any corrective action after the City’s four social service agencies informed MOCS that PASSPort did not perform the basic function of creating PEs on contract anniversary dates. As previously stated, PASSPort did not create PEs for 870 contracts—43.9 percent—on contract anniversary dates in Fiscal Year 2018.

We asked MOCS “[w]hat actions were taken, if any, to ensure that PASSport performance evaluation data was accurate and complete.” In response, MOCS did not detail any actions that it took to ensure that PASSPort data was accurate and complete and that PEs were automatically generated on contract anniversary dates. MOCS simply reiterated that “FMS data are used to identify contracts subject to performance evaluations” and stated only that “any performance

evaluations that are not automatically generated may be created by submitting an ad hoc request.”

**MOCS Response:** “As previously explained to the Audit Team, PASSPort uses FMS data to identify contracts subject to performance evaluations. This allows evaluations to be created in an automated fashion. However, PASSPort was also designed to allow agencies to request evaluations on an ad hoc basis in the event that the system did not create an evaluation, or if a change in the underlying contract necessitated a change in the evaluation process or timing. The Audit Team misconstrues the ad hoc process as a flaw in the system instead of an intentionally designed feature. Agencies were instructed on numerous occasions to utilize the ad hoc functionality to create evaluations as necessary. PASSPort is intended to help agencies meet their performance evaluation obligations, but it does not replace agency accountability for evaluation completion.

Additionally, the Audit Team incorrectly states that MOCS did not take any corrective action to refine performance evaluation functionality in the system. As was also explained on numerous occasions, MOCS has deployed over 100 items in the performance evaluation functionality since its inception to enhance use. MOCS has consistently been attentive to feedback from agency partners and taken steps to adjust the system as necessary.”

**Auditor Comment:** In its response, MOCS inappropriately attempts to shift its mandated responsibilities to Mayoral agency staff. Not only is that contrary to the PPB Rules, but it is not an effective means of ensuring that PEs are created and so inconsistent with MOCS’ authority. As previously stated, the Director of MOCS is the CCPO and is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff, establishing procedures to ensure systematic evaluation of vendor performance, and establishing a centralized computerized database for storage and retrieval of the evaluations—which MOCS designated as the PASSPort system.

The City spent at least \$46,084,631 on PASSPort which was created to facilitate the City’s procurement process and to allow agencies to document and monitor vendor PEs in one centralized system. However, during Fiscal Year 2018, PASSPort failed to create PEs for 870 of the 1,980 City social service agency contracts—43.9 percent—on their contract anniversary dates. Likewise, during Fiscal Year 2019, PASSPort failed to create PEs for 979 of the 1,956 City social service agency contracts—50.0 percent—on their contract anniversary dates.

Since at least November 2017, MOCS has known that PASSPort failed to automatically create PEs on contract anniversary dates. MOCS provided us with, among other things, PASSPort R1.2 Release Notes which details 103 enhancements and bug fixes. However, none of the 103 enhancements and fixes addressed PASSPort’s failure to automatically create PEs on contract anniversary dates. As the agency responsible for overseeing the PE process and the owner of PASSPort, MOCS should ensure that PASSPort data is complete and accurate and that PASSPort is capable of performing basic functions—including, but not limited to, automatically creating PEs on contract anniversary dates.

## **MOCS Improperly Approved PE Exemptions for Contracts**

As previously stated, Section 4-01(b) of the PPB Rules states that City agencies shall annually complete PEs for contracts and provides exceptions “for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the



small purchase limits.” Further, the PPB Rules do not apply to certain procurements as specified in §1-02(d) and certain transactions specified in §1-02(f), “provided [in the latter case] the ACCO determines that the process to be followed is in the best interest of the City and states the basis therefor.” The transactions specified in §1-02(f) include government-to-government contracts, the provision of work or services by State-regulated public utilities, State- or federally-regulated cable television and other public services, professional memberships, and subscriptions.

However, based on our review of the PASSPort Performance Evaluations Canceled because Exempt from Evaluation report, the City social service agencies requested and MOCS improperly granted exemptions for 36 contracts.<sup>5</sup> Those 36 contracts included 7 contracts with vendors who have a record of poor performance and whose contracts were either terminated or relinquished.<sup>6</sup> Please see the Appendix for a list of the 36 contracts, vendor names, and the period(s) for which contracts were improperly exempted from PEs.

Most notably, MOCS improperly granted exemptions to Brightside Academy Inc. for the period October 1, 2016 through October 1, 2017, and LCG Community Services, Inc. for the period July 1, 2017 through June 30, 2018, as detailed below.

### ***Brightside Academy Inc., CT1-068-20131406816 and CT1-068-20171403626***

ACS contracted with Brightside Academy Inc. to provide early learn services. The initial contract term was from October 1, 2012 through September 30, 2016 (CT1-068-20131406816), and the renewal contract term was from October 1, 2016 through September 30, 2018 (CT1-068-20171403626). However, on December 20, 2016, ACS advised Brightside Academy Inc. that it

has been in either Heightened Monitoring or Corrective Action Status for most of the four year period since October 2012 of the ACS EarlyLearn contract. During this recent review period since August 2016, there have been seven (7) Child Abuse Maltreatment complaints mostly involving inadequate supervision of children or staff inappropriate behavior, and twelve (12) incidents of accidents or injuries involving children. . . .

ACS [Division of Early Care & Education], is therefore, offering Brightside Academy the opportunity to once again relinquish the EarlyLearn contract effective June 30, 2017 or it may expect ACS ECE to recommend termination of the contract.

Subsequently, Brightside Academy Inc. relinquished its contract effective July 3, 2017.

ACS completed PEs for Brightside Academy Inc. for the periods October 1, 2012 through September 30, 2013, October 1, 2013 through September 30, 2014, and October 1, 2014 through September 30, 2015. For those periods, Brightside Academy Inc. received overall ratings of “good,” “satisfactory,” and “good,” respectively. ACS failed to complete PEs and MOCS failed to

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<sup>5</sup> MOCS provided us with a PASSPort Performance Evaluations Canceled because Exempt from Evaluation report which included 487 social service agency contracts that MOCS exempted from PEs for evaluation periods between April 15, 2010 and February 7, 2020. Based on our review of those 487 contracts, MOCS improperly approved PE exemptions for 23 ACS contracts, 6 HRA contracts, 6 DHS contracts, and 1 DFTA contract between November 1, 2015 and November 27, 2019.

<sup>6</sup> The seven contracts for which MOCS improperly approved PE exemptions for vendors with a record of poor performance are as follows: Father Flanagan's Boys' Home (2 contracts—CT1-068-20160001448, CT1-068-20170000112), Sheltering Arms Children and Family Services Inc. (2 contracts—CT1-068-20151415738, CT1-068-20151424664), Jewish Child Care Association of New York (1 contract—CT1-068-20160001015), Brightside Academy Inc. (1 contract—CT1-068-20171403626), and LCG Community Services, Inc. (1 contract—CT1-071-20171412745).

issue cautions to document Brightside Academy Inc.'s performance for the periods of October 1, 2015 through September 30, 2016, and October 1, 2016 through September 30, 2017. Based on our review of PASSPort data, a PE was not created or completed for the period October 1, 2015 through September 30, 2016. Furthermore, ACS improperly requested and received a PE exemption from MOCS on August 14, 2018 for the period October 1, 2016 through October 1, 2017.

**MOCS Response:** "Brightside Academy Inc. has also had a caution for deficient performance available on the complete caution list since 2016."

**Auditor Comment:** Brightside Academy Inc. self-reported that the Department of Education terminated its Universal Pre-Kindergarten services contract for cause related to performance issues. As a result, a self-reported caution was created on March 24, 2016 for the five-year period March 24, 2016 through March 24, 2021. After March 24, 2021 there will be no record of Brightside Academy Inc.'s deficient performance or cautionary information in PASSPort.

Therefore, ACS should immediately complete PEs and MOCS should issue separate five-year cautions related to Brightside Academy Inc.'s deficient performance for its ACS early learn contracts.

### ***LCG Community Services, Inc, CT1-071-20171412745***

DHS contracted with LCG Community Services, Inc. to provide temporary emergency shelter for homeless adult families and assist them in obtaining permanent housing. The term of the contract was from April 1, 2015 through June 30, 2019. However, DHS informed us that it allowed this contract to "lapse" before the contract term ended.

Based on DHS site visit reports and correspondence for 2017 and 2018, LCG Community Services, Inc. was cited for a significant lack of documented social service provision, a failure to meet housing placement targets, and a failure to inspect apartments. LCG Community Services, Inc. was also cited for maintenance, health, and safety concerns.

DHS completed only one PE for LCG Community Services, Inc. for the period April 1, 2015 through March 31, 2016. For that period, LCG Community Services, Inc. received an overall rating of satisfactory. DHS failed to complete PEs and MOCS failed to issue cautions to document LCG Community Service, Inc.'s performance for the periods of April 1, 2016 through March 31, 2017, and April 1, 2017 through March 31, 2018. DHS improperly requested and received a PE exemption from MOCS on May 1, 2019 for the period July 1, 2017 through June 30, 2018.

**MOCS Response:** "With respect to and LCG Community Services, the Department of Homeless Services has updated the performance evaluations required."

**Auditor Comment:** On April 12, 2020, DHS completed PEs in PASSPort to document LCG Community Services, Inc.'s performance for the periods of April 1, 2016 through March 31, 2017, and April 1, 2017 through March 31, 2018. For those periods, LCG Community Services, Inc. received overall ratings of satisfactory and unsatisfactory, respectively. However, DHS completed those PEs 1,129 days and 742 days late, respectively.

MOCS improperly granted PE exemptions because it did not review agency requests to ensure that that they were for contracts that either met PPB exemption criteria or were not subject to PPB

Rules. Furthermore, MOCS asserted that there are other instances in which an exemption may be granted as follows:

1. Leases
2. Contract for government or quasi-governmental agency
3. The period to be evaluated is less than six months
4. No work/Service was done under the contract during the period
5. The contract is a master contract and evaluations are being done on the task orders, vice versa
6. The contract passes funds through to another governmental agency entity
7. The contractor's performance was evaluated under a different contract
8. All work under the contract has been completed
9. The contract has been terminated and final evaluation was completed
10. Confidential contract
11. Contract determined by Government Mandate

We asked MOCS what actions it took to ensure that contracts met MOCS exemption criteria prior to granting exemptions. In response, MOCS stated that “[r]equests are generally reviewed to determine whether they align with the request reason.” For 23 of the above-mentioned 36 contracts, City social service agencies requested PE exemptions on the basis that no work or service was performed during the evaluation period. However, based on our review of FMS data, City social service agencies paid vendors for services performed during the evaluation period, and, therefore, agencies should have completed PEs for those 23 contracts. Therefore, for each of those 23 contracts, it appears that MOCS did not review agency exemption requests to ensure that they did in fact meet exemption criteria.

Additionally, we asked MOCS for the legal basis for exempting other contracts from PEs. In response, MOCS stated that

Procurement Policy Board rule 4-01(b) states that the “CCPO shall establish procedures to ensure systematic evaluation of vendor performance.” The exemption categories allow for exceptions where there would otherwise be duplicative evaluations, evaluations done where no work was performed or an insufficient amount of time elapsed under the contract, or the performance of the contract was required by law or is confidential in nature.

However, the PPB Rules do not provide for several of the above-listed exemptions and MOCS did not provide an appropriate authoritative basis for such exemptions. MOCS erroneously relies on Section 4-01(b) of the PPB Rules as a basis for exempting other contracts from PEs. However, Section 4-01(b) of the PPB Rules pertains to the frequency of PEs, stating that PEs “shall be done no less than once annually” and that the “CCPO shall establish procedures to ensure systematic evaluation of vendor performance.” Section 4-01(b) of the PPB Rules provides certain limited exceptions and does not authorize the CCPO to grant additional PE exemptions.

Since PASSPort—the City’s system of record for vendor performance history—lacks any record of vendors’ deficient performance, the City cannot make fully informed contracting decisions in the future concerning this vendor or its principals.

**MOCS Response:** “The Audit Team cites several instances where MOCS allegedly improperly exempted performance evaluations. However, their list includes contracts where no work or services were performed during the evaluation period, leases where no

services were performed, or goods contracts that did not require an evaluation. MOCS attempted to discuss the appropriate criteria for performance evaluations on numerous occasions but the report still contains these inaccuracies.”

**Auditor Comment:** We discussed the 36 improper exemptions and the appropriate PE criteria with MOCS and the four social service agencies. The four social service agencies requested and MOCS improperly granted exemptions for 23 contracts on the basis that no work or service was performed during the evaluation period. However, as previously stated, based on our review of FMS data, City social service agencies did in fact pay vendors for services performed during the evaluation period, and, therefore, agencies should have completed PEs for those 23 contracts.

Additionally, social service agencies requested and MOCS improperly granted exemptions for four contracts on the basis that they were for leases where no services were performed and, therefore, not subject to the PPB Rules. However, those four contracts included construction services which are subject to PPB Rules.

Finally, a social service agency claimed that one contract was exempt from a PE because the contract was for a procurement of goods by competitive sealed bid. However, based on our review of FMS data, this contract was awarded based on best value and, therefore, was subject to a PE.

**MOCS Response:** “Moreover, the Audit Team improperly takes issue with certain categories of exemptions applied by MOCS. . . . For example, the Audit Team disagrees with exempting an evaluation where the contract is a master agreement and evaluations are performed on each individual task order, or vice versa. A master agreement provides a mechanism for work to be done as needed on a task order basis. Requiring an evaluation on both the master agreement and each individual task order would amount to a vendor being evaluated twice for the same work during the same period -- a scenario not envisioned by the rules.”

**Auditor Comment:** Contrary to MOCS’ assertion, the audit report did not take issue with PE exemptions to prevent duplicative evaluations or PE exemptions where no work or service was performed. We cited social service agencies for requesting and MOCS for improperly granting PE exemptions for contracts with vendors who have a record of poor performance and whose contracts were either terminated or relinquished, lease contracts which include construction services, contracts for which the evaluation period is less than six months, and intergovernmental contracts.

## **MOCS Did Not Adequately Oversee City Social Service Agency Staff to Ensure They Completed PEs**

As previously stated, Section 1-01(e) of the PPB Rules states that the CCPO is “delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including ACCOs” and defines procurement activity to include vendor performance evaluation.

MOCS stated,

The CCPO has established and manages the Procurement and Sourcing Solutions Portal (PASSPort), which allows agencies to systematically evaluate vendor

performance. . . . the system creates prompts for agency performance evaluation actions as they become due and provides a platform for completion of the evaluation process. MOCS also periodically provides agencies with updates on their performance evaluation actions.

Further, MOCS informed us that it periodically reminds City agencies of their obligation to complete PEs at monthly ACCO meetings and via email. MOCS provided us with documentation to show that it reminded City agencies of their obligation to complete Fiscal Year 2015, Fiscal Year 2016, and Fiscal Year 2017 PEs at monthly ACCO meetings. However, MOCS did not provide us with documentation to show that it reminded City agencies of their obligation to complete PEs at monthly ACCO meetings or via email during our scope period—Fiscal Year 2018.

As previously stated, City social service agencies were responsible for evaluating 1,980 contracts during Fiscal Year 2018, and of those, the City social service agencies did not evaluate PEs for 526 contracts (26.6 percent), and did not complete PEs timely for 1,384 contracts (69.9 percent). City social service agencies completed PEs timely for only 70 contracts (3.5 percent).

## **MOCS Did Not Establish Adequate Written Procedures for PEs**

As previously stated, Section 4-01(b) of the PPB Rules states the “the CCPO shall establish procedures to ensure systematic evaluation of vendor performance.” Additionally, Comptroller’s Directive #1, *Principles of Internal Controls*, states,

Internal control activities help ensure that management’s directives are carried out. They are, basically, the policies, procedures, techniques, and mechanisms used to enforce management’s direction. They must be an integral part of an agency’s planning, implementing, review and accountability for stewardship of its resources and are vital to its achieving the desired results. . . . Internal controls should be documented in management administrative policies or operating manuals.

MOCS stated that it “created detailed agency and vendor guidance materials and trainings to facilitate the completion of performance evaluations.” However, the MOCS guidance and training materials do not include procedures for, among other things, PE completion timeframes, and monitoring and follow-up activities.

**MOCS Response:** “MOCS provided extensive materials and information to the Audit Team regarding our PASSPort performance evaluation procedures and agency guidance, including but not limited to, performance evaluation course guides for vendors, job aids for vendors, job aids for mayoral agency evaluators, job aids for agency chief contracting officers, course guides, user manuals for evaluators, user manuals for chief contracting officers and user manuals for vendors. Additionally, MOCS offered numerous training sessions for city staff and maintains a full time help desk for any performance evaluation issues that may arise.”

**Auditor Comment:** MOCS provided us with guidance and training materials that instruct vendors, ACCOs and evaluators on how to use PASSPort and its functions and features. However, as previously stated, those materials are inadequate because they do not include procedures for, among other things, PE completion timeframes, and monitoring and follow-up activities. The lack of adequate written procedures contributed, in part, to the issues cited throughout this report.



# RECOMMENDATIONS

MOCS should:

1. Ensure that PASSPort creates PEs for all contracts except for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits;

**MOCS Response:** “MOCS created the PASSPort system to ensure that agencies can systematically evaluate vendor performance through an automated or ad hoc process. . . . MOCS will continue to work with agencies to create performance evaluations as necessary.”

**Auditor Comment:** As previously stated, the Director of MOCS is the CCPO and is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff, establishing procedures to ensure systematic evaluation of vendor performance, and establishing a centralized computerized database for storage and retrieval of the evaluation. As the agency responsible for overseeing the PE process and the owner of PASSPort, MOCS should ensure that PASSPort data is complete and accurate and that PASSPort can perform basic functions—including, but not limited to, automatically creating PEs on contract anniversary dates.

2. Ensure that PEs are completed and finalized within 90 days of the contract anniversary start date;

**MOCS Response:** “There is no requirement in the Procurement Policy Board Rules or Charter to complete performance evaluations within 90 days of the contract anniversary date. MOCS will continue to support agency completion of performance evaluations using 90 days as an aspirational target and follow up with Agency Chief Contracting Officers as appropriate.”

**Auditor Comment:** Contrary to its current assertion, MOCS previously emailed the four social service agency ACCOs it oversees to advise them that completion of PEs within 90 days of the contract’s anniversary start date was what was “expected,” not that evaluating vendors’ performance within that timeframe was merely an “aspirational” target they could choose to disregard. Section 2-08(a)(1) of the PPB Rules states that “[p]urchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.” Further, Section 2-08(b)(2) states that “[f]actors affecting a contractor’s responsibility may include...a satisfactory record of performance” and “a satisfactory record of business integrity.” Accordingly, Section 2-08(g) of the PPB Rules states that “ACCOs shall use [PASSPort] PEs and the [PASSPort] database of debarred, suspended, and ineligible vendors when making responsibility determinations and ultimately, purchasing and contracting decisions.” Those rules would be rendered meaningless if Mayoral agencies’ were not expected to evaluate vendors’ performance within a reasonable timeframe.

Therefore, rather than disavowing its own expectations for timely evaluation of City vendors, MOCS should ensure that PEs are completed and finalized within 90 days of the contract anniversary start date so that City agency procurement personnel can make fully informed contracting decisions.



3. Only grant exemptions for contracts that meet the PPB Rules' PE exemption criteria and contracts for which services or goods were not provided during the evaluation period;

**MOCS Response:** "As previously stated, the Procurement Policy Board Rules provide the MOCS Director with the discretion to 'establish procedures to ensure the systematic evaluation of vendor performance' which includes allowing for logical exemptions for evaluations. MOCS will continue to work with agencies to create performance evaluations as necessary."

**Auditor Comment:** As previously stated, Section 4-01(b) of the PPB Rules pertains to the frequency of PEs, stating that PEs "shall be done no less than once annually" and that the "CCPO shall establish procedures to ensure systematic evaluation of vendor performance." Section 4-01(b) of the PPB Rules provides certain limited exceptions and does not authorize the CCPO to grant additional PE exemptions. Therefore, MOCS should only grant exemptions for contracts that meet the PPB Rules' PE exemption criteria and contracts for which services or goods were not provided during the evaluation period.

4. Ensure that each ACCO monitors PE completion status on an ongoing basis; and

**MOCS Response:** "MOCS will continue to work in partnership with agencies to evaluate vendor performance."

**Auditor Comment:** As previously stated, Section 1-01(e) of the PPB Rules states that the CCPO is "delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including ACCOs." MOCS informed us that it periodically reminds City agencies of their obligation to complete PEs at monthly ACCO meetings and via email. However, MOCS did not provide us with documentation to show that it reminded City agencies of their obligation to complete PEs at monthly ACCO meetings or via email during our scope period—Fiscal Year 2018. For that same period, the City social service agencies did not evaluate PEs for 526 contracts (26.6 percent), and did not complete PEs timely for 1,384 contracts (69.9 percent). City social service agencies completed PEs timely for only 70 contracts (3.5 percent). Therefore, we reiterate that MOCS should ensure that each ACCO monitors PE completion status on an ongoing basis.

5. Develop formal written policies and procedures, communicate them, and train City agencies on their responsibilities for completing PEs including, but not limited to, monitoring and follow-up activities.

**MOCS Response:** "As discussed, MOCS has created an abundance of formal written policies and procedures specifically tailored to performance evaluations that are available through internal and external sources. We will continue to support and train agencies to complete performance evaluations as required."

**Auditor Comment:** MOCS provided us with guidance and training materials. However, as previously stated, those materials are inadequate because they do not include procedures for, among other things, PE completion time frames, and monitoring and follow-up activities. The lack of adequate written procedures contributed, in part, to the issues cited throughout this report. Therefore, MOCS should develop formal written policies and procedures which address PE completion timeframes, and monitoring and follow-up activities.

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

This audit covered PEs generated in Fiscal Year 2018 (July 1, 2017 through June 30, 2018) which evaluated vendor performance from the prior year.

To obtain an understanding of the procurement procedures and MOCS' oversight of PEs, we obtained and reviewed as criteria the PPB Rules, the New York City Charter Chapter 13: Procurement, the PASSPort User Manual, a MOCS memorandum dated March 19, 2015 regarding Intergovernmental Procurement Procedures, Comptroller's Directive #1, *Principles of Internal Controls*, and Comptroller's Directive #4, *Contract Agency Monitoring and Reporting*.

To obtain an understanding of PASSPort and MOCS' operating procedures and internal controls over the PE process, we met with General Counsel and agency officials who are responsible for overseeing the PE evaluation process. During our initial walkthrough we conducted an observation of the PASSPort system, which included a demonstration on how the PE process is completed in PASSPort through various agency personnel roles. We documented our interviews in memoranda.

To identify all active contracts for the four City social service agencies for Fiscal Year 2017, we extracted each agency Agreements Franchises Concessions reports from FMS. The extracted reports included their contracts between July 1, 1900 and June 11, 2019. We selected active contracts in Fiscal Year 2017 by removing those contracts with an end date prior to July 1, 2016 and a start date after June 30, 2017 from the report. We also removed contracts that met the PPB Rules' PE exemption criteria.

To identify all completed PEs for the four City social service agencies for Fiscal Year 2018, we requested and reviewed the PASSPort generated Performance Evaluation by Agency report. To determine the accuracy and validity of the Performance Evaluation by Agency report, we randomly selected 150 of the 1,487 PE records from the Performance Evaluation by Agency and traced them to PASSPort. To determine whether the four City social service agencies completed PEs for all contracts for Fiscal Year 2018, we compared the population of Fiscal Year 2017 active contracts extracted from FMS against the Performance Evaluation by Agency reports provided by MOCS.

To determine whether the four City social service agencies finalized PEs in a timely manner, we calculated the number of days between the contract anniversary date and the evaluation completion date. We considered a PE to be timely if it was completed within 90 days.

We also obtained a PASSPort Performance Evaluations Canceled because Exempt from Evaluation report which included 487 contracts from the four City social service agencies that MOCS exempted from PEs for evaluation periods between April 15, 2010 and February 7, 2020. For each of the 487 contracts, we reviewed the FMS Agreement, Franchise, and Concession Report, and the FMS Expense Accounting Detail Listing Payment Request Report to determine

whether contracts met the PPB Rules' PE exemption criteria and whether goods or services were provided during the evaluation period.

To determine whether MOCS adequately monitors the four City social service agencies, we reviewed the PE status update emails MOCS sent to the City social service agencies in addition to the ACCO meeting guidance presentations that were provided by MOCS in Fiscal Year 2018. To test the completeness of the status update emails, we requested that the City social service agencies also provide the status update emails received from MOCS.

## APPENDIX

Based on the PASSPort Cancelled Report, MOCS improperly approved PE exemptions for 36 social agencies contracts between November 1, 2015 and November 27, 2019 as follows:

Contract #	Vendor Name	Evaluation Period
<b>HRA</b>		
CT1-069-20201407761	NTT DATA INC.	November 1, 2018 to October 31, 2019
CT1-069-20191418500	IDEMIA IDENTITY & SECURITY USA LLC	August 7, 2018 to August 6, 2019
CT1-069-20191404689	JPI Technology LLC	July 1, 2018 to June 30, 2019
CT1-069-20171424887	RIDER REALTY CO C/O I LEIBEL	October 1, 2016 to October 1, 2017
CT1-069-20181405229	URBAN RESOURCE INSTITUTE	November 1, 2017 to October 31, 2018
CT1-069-20191407428	HOUSING WORKS INC	July 1, 2017 to June 30, 2018
<b>ACS</b>		
CT1-068-20160001448	FATHER FLANAGAN'S BOYS' HOME	July 1, 2016 to June 30, 2017 and July 1, 2017 to June 30, 2018
CT1-068-20170000112	FATHER FLANAGAN'S BOYS' HOME	August 1, 2017 to July 31, 2018
CT1-068-20151415738	SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.	September 11, 2016 to January 15, 2017
CT1-068-20151424664	SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.	September 11, 2016 to January 15, 2017
CT1-068-20160001015	JEWISH CHILD CARE ASSOCIATION OF NEW YORK	July 1, 2016 to July 28, 2016
CT1-068-20171403626	BRIGHTSIDE ACADEMY, INC.	October 1, 2016 to October 1, 2017
CT1-068-20171400391	CAMBRELENG CORP.	November 1, 2015 to November 1, 2016
CT1-068-20191404402	CORE SERVICES GROUP, INC.	October 1, 2018 to September 30, 2019
CT1-068-20171403454	CORPORATE TRANSPORTATION GROUP LTD.	July 1, 2018 to June 30, 2019

CT1-068-20171425338	1175 GATES AVENUE LLC	January 20, 2017 to January 20, 2018
CT1-068-20171404008	CORPORATE TRANSPORTATION GROUP LTD.	July 1, 2018 to June 30, 2019
CT1-068-20160003349	RISING GROUND INC.	November 1, 2016 to October 30, 2017 and July 1, 2017 to June 30, 2018
CT1-068-20191406812	ASIA TRADING INT'L LLC	September 20, 2018 to September 19, 2019
CT1-068-20191407410	1775 GRAND CONCOURSE LLC	October 5, 2018 to October 4, 2019
CT1-068-20171403765	H.E.L.P. DAY CARE CORP.	October 1, 2016 to October 1, 2017
CT1-068-20171403860	UTOPIA CHILDREN'S CENTER, INC.	October 1, 2016 to October 1, 2017
CT1-068-20170000078	INWOOD HOUSE, INC.	July 1, 2016 to June 30, 2017
CT1-068-20160000591	SAFE SPACE NYC, INC.	July 1, 2016 to June 30, 2017 and July 1, 2017 to June 30, 2018
CT1-068-20170000365	SAFE SPACE NYC, INC.	July 1, 2016 to June 30, 2017 and July 1, 2017 to June 30, 2018
CT1-068-20160000932	SAFE SPACE NYC, INC.	July 1, 2016 to June 30, 2017 and July 1, 2017 to June 30, 2018
CT1-068-20170000708	EPISCOPAL COMMUNITY SERVICES LONG ISLAND 1927	July 1, 2016 to June 30, 2017
CT1-068-20171401952	YOUTH ADVOCATE PROGRAMS, INC.	July 1, 2017 to June 30, 2018
CT1-068-20171409093	BELLA BUS CORP.	October 1, 2016 to September 30, 2017
<b>DHS</b>		
CT1-071-20171412745	LCG Community Services INC.	July 1, 2017 to June 30, 2018
CT1-071-20151403994	APEX Mechanical Corp.	January 1, 2016 to December 31, 2016

CT1-071-20181412439	CENTER FOR URBAN COMMUNITY SERVICES INC	October 1, 2018 to September 30, 2019
CT1-071-20171423328	BOWERY RESIDENTS' COMMITTEE, INC.	March 1, 2017 to February 28, 2018
CT1-071-20181408824	BUSHWICK ECONOMIC DEVELOPMENT CORP.	October 6, 2016 to April 5, 2017
CT1-071-20181422217	WEST SIDE FEDERATION FOR SR & SUPPORTIVE HOUSING INC.	May 15, 2017 to May 14, 2018
<b>DFTA</b>		
CT1-125-20131423019	COMMUNITY RESOURCE EXCHANGE INC.	March 1, 2016 to February 28, 2017





**Bill de Blasio**  
Mayor

February 1, 2021

**Dan Symon**  
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***Re: Mayor's Office of Contract Services Response to the Draft Audit Report  
Regarding Monitoring of Vendor Performance Evaluations FK19-091A***

Ms. Landa,

Please find the Mayor's Office of Contract Services (MOCS) response to the above-mentioned draft audit report. Unfortunately, the report misconstrues facts and ignores basic information provided during the course of the audit. Further, it bears noting that the audit period overlaps with the launch of performance evaluation functionality in the City's new digital Procurement and Sourcing Solutions Portal (PASSPort). Agencies were working to adapt to the new system and internalize training materials during the review period. Nonetheless, MOCS provides responses below.

**The Comptroller Audit Team Misunderstands Performance Evaluation Criteria, Exemptions and the Procurement Policy Board Rules**

The Audit Team identified 1,980 contracts that required a performance evaluation during Fiscal Year 2018, but their analysis erroneously included contracts that, by Procurement Policy Board (PPB) Rule, did not require an evaluation. PPB Rule 4-01(b) states that "[a] performance evaluation shall be done no less than once annually except that for ... procurements below the small purchase limits, an evaluation report shall be prepared only in cases of deficient performance." However, even a cursory review of the Comptroller's analysis shows that it included contracts that were below the small purchase limits.

Moreover, the Audit Team improperly takes issue with certain categories of exemptions applied by MOCS. PPB Rule 4-01(b) requires the City Chief Procurement Officer (MOCS Director) to "establish procedures to ensure systematic evaluation of vendor performance." That means the Director must consider instances where a performance evaluation would lead to an outcome that is contrary to the intention of the PPB rule. For example, the Audit Team disagrees with exempting an evaluation where the contract is a master agreement and evaluations are performed on each individual task order, or vice versa. A master agreement provides a mechanism for work to be done as needed on a task order basis. Requiring an evaluation on both the master



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agreement and each individual task order would amount to a vendor being evaluated twice for the same work during the same period – a scenario not envisioned by the rules.

The Audit Team cites several instances where MOCS allegedly improperly exempted performance evaluations. However, their list includes contracts where no work or services were performed during the evaluation period, leases where no services were performed, or goods contracts that did not require an evaluation. MOCS attempted to discuss the appropriate criteria for performance evaluations on numerous occasions but the report still contains these inaccuracies.

With respect to and LCG Community Services, the Department of Homeless Services has updated the performance evaluations required. Brightside Academy Inc. has also had a caution for deficient performance available on the complete caution list since 2016.

### **PASSPort Sufficiently Allows for the Creation of Performance Evaluations**

As previously explained to the Audit Team, PASSPort uses FMS data to identify contracts subject to performance evaluations. This allows evaluations to be created in an automated fashion. However, PASSPort was also designed to allow agencies to request evaluations on an ad hoc basis in the event that the system did not create an evaluation, or if a change in the underlying contract necessitated a change in the evaluation process or timing. The Audit Team misconstrues the ad hoc process as a flaw in the system instead of an intentionally designed feature. Agencies were instructed on numerous occasions to utilize the ad hoc functionality to create evaluations as necessary. PASSPort is intended to help agencies meet their performance evaluation obligations, but it does not replace agency accountability for evaluation completion.

Additionally, the Audit Team incorrectly states that MOCS did not take any corrective action to refine performance evaluation functionality in the system. As was also explained on numerous occasions, MOCS has deployed over 100 items in the performance evaluation functionality since its inception to enhance use. MOCS has consistently been attentive to feedback from agency partners and taken steps to adjust the system as necessary.

### **The Comptroller Audit Team Improperly Stated that MOCS Did Not Establish Adequate Written Procedures for Performance Evaluations**



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MOCS provided extensive materials and information to the Audit Team regarding our PASSPort performance evaluation procedures and agency guidance, including but not limited to, performance evaluation course guides for vendors, job aids for vendors, job aids for mayoral agency evaluators, job aids for agency chief contracting officers, course guides, user manuals for evaluators, user manuals for chief contracting officers and user manuals for vendors. Additionally, MOCS offered numerous training sessions for city staff and maintains a full time help desk for any performance evaluation issues that may arise. With respect to time frames, the PPB Rules do not require evaluations to be completed within ninety days. MOCS has set ninety days as an aspirational goal for agencies to follow and continues to remind them of their obligation to complete evaluations as required.

### Comptroller's Recommendations

MOCS addresses the Comptroller's specific recommendations below.

1. Comptroller's Recommendation: Ensure that PASSPort creates PEs for all contracts except for procurements of goods by competitive sealed bid other than sealed bids awarded based on best value and procurements below the small purchase limits.

**MOCS Response:** MOCS created the PASSPort system to ensure that agencies can systematically evaluate vendor performance through an automated or ad hoc process. Further, as stated above, the Procurement Policy Board Rules provide the MOCS Director with the discretion to "establish procedures to ensure the systematic evaluation of vendor performance" which includes allowing for logical exemptions. MOCS will continue to work with agencies to create performance evaluations as necessary.

2. Comptroller's Recommendation: Ensure that PEs are completed and finalized within 90 days of the contract anniversary start date.

**MOCS Response:** There is no requirement in the Procurement Policy Board Rules or Charter to complete performance evaluations within 90 days of the contract anniversary date. MOCS will continue to support agency completion of performance evaluations using 90 days as an aspirational target and follow up with Agency Chief Contracting Officers as appropriate.

3. Comptroller's Recommendation: Only grant exemptions for contracts that meet the PPB Rules' PE exemption criteria and contracts for which services or goods were not provided during the evaluation period.



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**MOCS Response:** As previously stated, the Procurement Policy Board Rules provide the MOCS Director with the discretion to “establish procedures to ensure the systematic evaluation of vendor performance” which includes allowing for logical exemptions for evaluations. MOCS will continue to work with agencies to create performance evaluations as necessary.

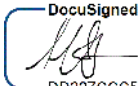
4. Comptroller’s Recommendation: Ensure that each ACCO monitors PE completion status on an ongoing basis.

**MOCS Response:** MOCS will continue to work in partnership with agencies to evaluate vendor performance.

5. Comptroller’s Recommendation: Develop formal written policies and procedures, communicate them, and train City agencies on their responsibilities for completing PEs including, but not limited to, monitoring follow-up activities.

**MOCS Response:** As discussed, MOCS has created an abundance of formal written policies and procedures specifically tailored to performance evaluations that are available through internal and external sources. We will continue to support and train agencies to complete performance evaluations as required.

Regards,

DocuSigned by:  
  
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Dan Symon