



# City of New York

## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## FINANCIAL AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

Audit Report on the Administration for  
Children's Services' Vendor  
Performance Evaluations

FK19-093A

October 5, 2020

<http://comptroller.nyc.gov>



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

October 5, 2020

To the Residents of the City of New York:

My office has audited the Administration for Children's Services (ACS) to determine whether ACS evaluated and documented vendor performance in accordance 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, the Mayor's Office of Contract Services 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, ACS was responsible for evaluating vendors' performance for 493 contracts with a combined maximum value of \$5.3 billion.

The audit found that ACS generally did not annually evaluate and document vendor performance in accordance with the PPB Rules. Based on our review of the above-mentioned 493 contracts, ACS did not complete PEs for 78 contracts (15.82 percent), and did not complete PEs timely for 415 contracts (84.18 percent). ACS failed to evaluate vendor's performance for contracts at all or timely because it did not ensure that PEs were in fact created on contract anniversary dates, improperly requested PE exemptions for contracts, did not adequately monitor staff to ensure they completed PEs, and did not establish adequate policies and procedures for PEs.

The audit recommends that ACS should: (1) ensure that PEs are completed and finalized within 90 days of the contract anniversary date; (2) review PASSPort data to 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; (3) request exemptions only for contracts that meet the PPB Rules' PE exemption criteria; (4) ensure that the ACCO and ACCO staff monitor PE completion status on an ongoing basis and periodically send written reminders to staff to complete PEs before their due dates; and (5) develop formal written policies and procedures, communicate them to staff, and train staff on their responsibilities for completing PEs.

The results of the audit have been discussed with ACS officials, and their comments have been considered in preparing this report. ACS' 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 on the Administration for Children's Services' Vendor Performance Evaluations

FK19-093A

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### EXECUTIVE SUMMARY

The Administration for Children's Services (ACS) is responsible for providing child welfare, juvenile justice, and early care and education services to New York City's children and their families. ACS contracts with vendors to provide goods and services on its behalf and to support its operations and, in doing so, is required to follow the Procurement Policy Board (PPB) Rules.

Section 4-01(b) of the PPB Rules states,

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.

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.

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 is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff. Within each Mayoral agency, the Agency Chief Contracting Officer (ACCO) is responsible for organizing and supervising the procurement activity of subordinate agency staff in conjunction with the CCPO.

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. 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."

During Fiscal Year 2018, ACS was responsible for evaluating vendors' performance for 493 contracts that were registered with the Comptroller's Office, with a combined maximum value of \$5.3 billion.

## **Audit Findings**

ACS generally did not annually evaluate and document vendor performance in accordance with the PPB Rules. Based on our review of the above-mentioned 493 contracts, ACS did not complete PEs for 78 contracts (15.82 percent), and did not complete PEs timely for 415 contracts (84.18 percent).

ACS failed to evaluate vendors' performance for contracts at all or timely because it did not ensure that PEs were in fact created on contract anniversary dates, improperly requested PE exemptions for contracts, did not adequately monitor staff to ensure they completed PEs, and did not establish adequate policies and procedures for PEs.

## **Audit Recommendations**

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

- ACS should ensure that PEs are completed and finalized within 90 days of the contract anniversary date;
- ACS should review PASSPort data to 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;
- ACS should request exemptions only for contracts that meet the PPB Rules' PE exemption criteria;
- ACS should ensure that the ACCO and ACCO staff monitor PE completion status on an ongoing basis and periodically send written reminders to staff to complete PEs before their due dates; and
- ACS should develop formal written policies and procedures, communicate them to staff, and train staff on their responsibilities for completing PEs including, but not limited to, monitoring and follow-up activities.

## **Agency Response**

In its response, ACS stated that it "consistently follows the relevant Procurement Policy Board (PPB) Rules and completes Performance Evaluations annually, as required." Further, ACS stated that it "has carefully reviewed and taken into consideration the [audit report's] five recommendations." ACS stated it implemented or will implement two recommendations and disagreed with three recommendations.

# AUDIT REPORT

## Background

ACS is responsible for providing child welfare, juvenile justice, and early care and education services to New York City's children and their families. ACS contracts with vendors to provide goods and services on its behalf and to support its operations and, in doing so, is required to follow the PPB Rules.

Section 4-01(b) of the PPB Rules states,

The agency shall monitor the vendor's performance against such standards and indicators on an ongoing basis and sufficiently far in advance of the end of the contract term to determine whether an existing contract should be extended, renewed, terminated, or allowed to lapse. 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.

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.

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. The ACCO is responsible for organizing and supervising the procurement activity of subordinate agency staff in conjunction with the CCPO.

Section 1-01(e) of the PPB Rules defines procurement activity as "all phases of contract administration, including ... evaluation of performance." Accordingly, the PPB Rules §4-01(b) and (c) 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, ACS was responsible for evaluating the vendors' performance for 493 contracts that were registered with the Comptroller's Office, with a combined maximum value of \$5.3 billion.



## Objective

The objective of this audit was to determine whether ACS evaluated and documented vendor performance in accordance 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 or due to be generated in Fiscal Year 2018 (July 1, 2017 to 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 ACS officials during and at the conclusion of this audit. ACS officials were notified of our findings during the course of the audit and agreed that an exit conference was not necessary. On July 28, 2020, we submitted a draft report to ACS officials with a request for comments. We received ACS' written response on August 17, 2020.

In its response, ACS stated that it "has carefully reviewed and taken into consideration the [audit report's] five recommendations." ACS stated it implemented or will implement two recommendations and disagreed with three recommendations.

Specifically, ACS disagreed with the audit's recommendation that the agency ensure that PEs are completed and finalized within 90 days of the contract anniversary start date. ACS stated that "[t]here is no requirement in the Procurement Policy Board Rules to complete performance evaluation within 90 days of the contract anniversary date. ACS will continue to use 90 days as an aspirational target for completion of PEs, emailing contract management staff to finish their tasks on time. But it should be understood as best practice rather than a fixed deadline."

However, as this report notes, MOCS is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff. In that capacity, MOCS informed the ACS ACCO that "[t]raditionally, PEs are expected to be completed within 90 days of the anniversary of the contract start date (for length of contract)." In addition, the ACS Contract Management Guidelines state that "[t]ypically evaluations are due 90 days from the anniversary of the contract start date." Therefore, ACS should ensure that PEs are completed and finalized within 90 days of the contract anniversary date, in accordance with MOCS and its own guidance, so that ACS' own and other City agencies' procurement personnel can make fully informed contracting decisions concerning vendors.

Additionally, ACS disagreed with the audit's recommendation that the agency should review PASSPort data to 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. ACS stated that it "agrees that all PEs that are

required to be completed should be created in PASSPort, and [it] will continue to rely on this process.” However, as this report notes, during Fiscal Year 2018, PASSPort did not create PEs for 238 of the 493 ACS contracts—48.27 percent—on their contract anniversary dates. Consequently, ACS should not continue to rely on PASSPort data.

ACS also disagreed with the report’s recommendation to request PE exemptions only for contracts that meet the PPB Rules’ PE exemption criteria and contracts for which services or goods were not provided during the evaluation period. ACS asserted that there were numerous “other instances in which an exemption may be granted by MOCS” such as “[w]hen the period to be evaluated is less than six months.” However, the PPB Rules do not provide for a number of the exemptions ACS referenced, and ACS did not cite a specific legal or authoritative basis for them.

Furthermore, ACS stated that,

In mid-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. Unfortunately, PASSPort’s Performance Evaluation functionality had some start-up challenges. For the first five months, the system improperly assigned all of ACS’ PEs to the ACS General Counsel . . . [who] was unable to forward or reassign the PEs to the proper staff until December 2017 when MOCS created a workaround for us to assign them to the correct evaluator. ACS worked diligently to capture and reassign the erroneously assigned PEs and made best efforts to capture all of them. We were surprised and disappointed the Comptroller chose to review PEs during this year of transition and technological learning. . . .

As with all complex new systems, PASSPort’s first months exhibited some bugs, which have since been resolved but which during the audit period – the system’s first months – created some delays.

ACS reported that it “completed more than 94% of the Performance Evaluations in FY19 and [is] on track to exceed that figure for FY20.”

The PASSPort implementation issue mentioned above contributed, in part, to ACS’ failure to complete PEs timely. However, as stated in the report, ACS failed to evaluate vendors’ performance for contracts at all or timely for a variety of reasons including that it did not ensure that PEs were in fact created on contract anniversary dates, improperly requested PE exemptions for contracts, did not adequately monitor staff to ensure they completed PEs, and did not establish adequate policies and procedures for PEs.

Further, based on our review of PEs generated or due to be generated in Fiscal Year 2019 (July 1, 2018 to June 30, 2019), ACS’ performance did not drastically improve, and the issues cited in the report persisted. For Fiscal Year 2019, ACS was responsible for evaluating 499 contracts. Based on our review, ACS did not complete PEs at all or did not complete PEs which fully covered the evaluation period for 76 contracts (15.23 percent), and did not complete PEs timely for 319 contracts (63.93 percent). ACS completed PEs timely for only 104 contracts (20.84 percent).

Finally, ACS stated that it “consistently follows the relevant Procurement Policy Board (PPB) Rules and completes Performance Evaluations annually, as required” and disagreed with several findings. We address those disagreements in the relevant sections of this report, below.



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

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

## FINDINGS

ACS generally did not annually evaluate and document vendor performance in accordance with the PPB Rules. This issue is discussed in detail below and in a separate Audit Report on MOCS' Monitoring of Vendor Performance Evaluations (Audit # FK19-091A).

### **ACS Did Not Complete PEs At All or Did Not Complete Them Timely**

As previously noted above, §4-01(b) of the PPB Rules states,

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.

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.<sup>1</sup>

ACS provided us with an email that it received from MOCS informing the ACS ACCO that "[t]raditionally, PEs are expected to be completed within 90 days of the anniversary of the contract start date (for length of contract)." In addition, the ACS Contract Management Guidelines state that "[t]ypically evaluations are due 90 days from the anniversary of the contract start date."

During Fiscal Year 2018, ACS was responsible for evaluating vendors' performance on 493 contracts. In its Calendar Year 2018 Comptroller's Directive #1 Checklist, ACS stated that procurement personnel received training in the PPB Rules and that it evaluated vendor performance at least once a year in accordance with the PPB Rules and CCPO procedures. However, based on our review of PASSPort data as of July 16, 2019 for the above-mentioned 493 contracts, ACS did not complete PEs for 78 contracts (15.82 percent), and did not complete PEs timely for 415 contracts (84.18 percent).<sup>2</sup> Those 493 contracts included vendors that provide child welfare, juvenile justice, and early care and education services.

ACS failed to evaluate vendors' performance for contracts at all or timely because:

- ACS did not ensure that PEs were in fact created in PASSPort;
- ACS improperly exempted contracts from PEs;
- ACS did not adequately monitor staff to ensure that they completed PEs; and
- ACS did not establish adequate written procedures for PEs.

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<sup>1</sup> The PPB Rules §1 02(f)(1) states that government-to-government contracts are "grants or contracts between City agencies and other governments or any public authority or public benefit corporation."

<sup>2</sup> ACS staff completed PEs between 38 and 805 days late. On average, ACS staff completed PEs 300 days late.

The above-listed issues are discussed in detail below.

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>3</sup>

Since ACS did not evaluate vendors’ performance on contracts either at all or timely, ACS and other City agency procurement personnel cannot make fully informed contracting decisions concerning those vendors. 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.

## **ACS 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. The agency ACCO is 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.” However, during Fiscal Year 2018, PASSPort did not create PEs for 238 of the 493 ACS contracts—48.27 percent—on their contract anniversary dates.

ACS relied on PASSPort and did not ensure that PEs were created—either automatically or manually in PASSPort—on contract anniversary dates. For 186 of the 238 contracts, ACS discovered that the PEs were not created automatically on contract anniversary dates. Subsequently, ACS notified MOCS and requested that MOCS create PEs for the 186 contracts. Since ACS did not review PASSPort data to ensure that PEs were created on contract anniversary dates, those 186 PEs were created between 64 and 270 days late.

For the remaining 52 of the 238 contracts, ACS appears to have been unaware that PEs were not created in PASSPort. For those 52 contracts, PASSPort did not create PEs at all or PASSPort did not create PEs which fully covered the evaluation period. On September 27, 2019, we provided ACS with a list of contracts that were not evaluated, which included the above-mentioned 52 contracts. On February 3, 2020, we requested that ACS provide us with documentation to show that it: (1) notified MOCS and requested that MOCS create PEs for those 52 contracts and (2) completed PEs.

On February 4, 2020, ACS provided us with documentation to show that it requested that MOCS create PEs for our scope period for 24 of the 52 contracts. In total, MOCS created 34 ad hoc PEs which include PEs for the above-mentioned 24 contracts and an additional 10 contracts. Based on our subsequent review of PASSPort data, ACS completed PEs for 28 of those 34 contracts. However, they were completed between 466 and 851 days late.

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<sup>3</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.

Additionally, ACS claimed that PEs were created for four contracts in VENDEX but were not completed. However, PEs for our audit scope period—Fiscal Year 2018—should have been created and completed in PASSPort. ACS also claimed that a PE for one contract was in progress and that another PE was completed but the evaluation period was recorded incorrectly. However, based on our subsequent review of PASSPort data, ACS did not create or complete PEs for our audit scope period.

ACS claimed that PEs were not required for 10 contracts as follows:

- ACS claimed that PEs were not required for four contracts on the basis that the contracts were for procurements of goods by competitive sealed bid. However, based on our review of the City’s Financial Management System (FMS) data, those four contracts were awarded based on best value and, therefore, are subject to PEs.
- ACS claimed that PEs were not required for three contracts on the basis that the contracts ended in 2016 and that vendors were not subject to PEs for our audit scope period. However, based on our review of FMS data, the three contracts ended in 2017, and, therefore, ACS should have completed PEs for the three contracts.
- ACS claimed that two contracts were for leases and, therefore, not subject to the PPB Rules. However, the two contracts were for early care and education services and building management services which are subject to PPB Rules.
- ACS claimed that a PE was not required for one contract on the basis that the contract was registered late. However, the PPB Rules do not provide exceptions based on registration status, and ACS did not cite a specific legal or authoritative basis for such an exception.

For the remaining two contracts, ACS failed to either state that it would create and complete PEs or, in the alternative, cite a specific legal or other authoritative basis for exempting them.

## **ACS Improperly Requested PE Exemptions for Contracts**

As previously mentioned, the PPB Rules §4-01(b) 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, ACS did not complete PEs for 23 contracts for which it improperly requested and MOCS erroneously approved exemptions.<sup>4</sup> Please see the Appendix for the 23 contracts.

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<sup>4</sup> MOCS provided us with a PASSPort Performance Evaluations Canceled because Exempt from Evaluation report which included 238 ACS contracts that MOCS exempted from PEs for evaluation periods between April 15, 2010 and February 7, 2020. Based on our review of those 238 contracts, MOCS improperly approved PE exemptions for 23 ACS contracts between November 1, 2015 and October 4, 2019.

ACS claimed that 16 contracts were exempt from PEs because the vendors did not provide services during the evaluation period. However, based on our review of FMS data, ACS paid those 16 vendors for services performed during the evaluation period, and, therefore, ACS should have completed PEs for those 16 contracts.

Additionally, ACS claimed that three contracts were for leases, and, therefore, not subject to the PPB Rules. However, the three contracts included construction services which are subject to PPB Rules.

ACS also 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.

Finally, ACS claimed that three contracts were exempt from PEs because either the contract was terminated (1 contract), the vendor was no longer in business (1 contract), or there was not enough time to evaluate (1 contract). However, the PPB Rules do not provide exceptions based on contract termination, vendor status, or contract duration, and ACS did not cite a specific legal or authoritative basis for such exceptions.

The above-mentioned 23 contracts for which ACS improperly requested and MOCS approved PE exemptions included 6 contracts with vendors who have a record of poor performance and whose contracts were either terminated or relinquished.<sup>5</sup> Most notably, ACS did not complete a PE for Brightside Academic Inc., whose performance was deficient and whose contract was relinquished. Further, MOCS failed to issue a caution in PASSPort to report significant adverse information about this vendor's performance.

ACS contracted with Brightside Academic Inc. to provide early learn services. The initial contract term was from October 1, 2012 to September 30, 2016, and the renewal contract term was from October 1, 2016 to September 30, 2018. However, on December 20, 2016, ACS advised Brightside Academic Inc. that,

As you know, Brightside Academy which is in Corrective Action Status through December 31, 2016, 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; five of these alone were at Webster Avenue, Bronx.

It is apparent that systemic improvements previously promised by Brightside Academy were either not sustainable or fully implemented; Downsizing the EarlyLearn contract also has not helped to strengthen or improve program performance. ACS ECE [Division of Early Care & Education], on behalf of the children and families served, is simply unable to assume this risk any longer.

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<sup>5</sup> The six contracts for which ACS improperly requested and MOCS approved PE exemptions are as follows: Father Flanagan's Boys' Home (2 contracts), Sheltering Arms Children and Family Services Inc. (2 contracts), Jewish Child Care Association of New York (1 contract), and Brightside Academic Inc. (1 contract).

ACS ECE, 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 Academic Inc. relinquished its contract effective July 3, 2017.

ACS completed PEs for Brightside Academic Inc. for the periods October 1, 2012 to September 30, 2013, October 1, 2013 to September 30, 2014, and October 1, 2014 to September 30, 2015. For those periods, Brightside Academic Inc. received overall ratings of “good,” “satisfactory,” and “good,” respectively. ACS failed to complete PEs and MOCS failed to issue cautions in PASSPort to document Brightside Academic Inc.’s performance for the periods of October 1, 2015 to September 30, 2016, and October 1, 2016 to September 30, 2017. Based on our review of PASSPort data, a PE was not created or completed for the period October 1, 2015 to September 30, 2016. Furthermore, ACS improperly requested and received a PE exemption from MOCS on August 14, 2018 for the period October 1, 2016 to October 1, 2017.

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

**ACS Response:** “ACS properly sought and received approval for exemptions for contracts that, pursuant to PPB rules and standard practice, did not require PEs. ACS disagrees with the auditors’ determination that these contracts were somehow not eligible for an exemption. During the audit period, ACS requested and was granted exemptions for three types of contracts: lease contracts, contracts where no work/service was done during the period (close out payments may have been made, but there was no basis for evaluation during the period) and contracts that had been terminated and final evaluation already completed.”

**Auditor Comment:** As previously mentioned, ACS improperly requested and MOCS erroneously approved exemptions for 23 contracts. ACS should have completed PEs for those 23 contracts because:

- Based on our review of the service dates reported by ACS in FMS, ACS paid 16 vendors for services that were performed during the evaluation period,
- Based on our review of PASSPort data, to date, ACS did not complete final PEs for six contracts that were either terminated or relinquished.
- Based on our review of lease agreements, ACS contracts with three vendors included construction services which are subject to PPB Rules.

**ACS Response:** “ACS questions why the audit report includes 3 contracts from 2019 in the appended list of improper exemptions, which are significantly outside the audit period.”

**Auditor Comment:** As stated in the report, we obtained a PASSPort Performance Evaluations Canceled because Exempt from Evaluation report which included 238 ACS contracts that MOCS exempted from PEs for evaluation periods between April 15, 2010 and February 7, 2020. For each of the 238 contracts, we reviewed FMS data to determine whether contracts met the PPB Rules’ PE exemption criteria and whether goods or services were provided during the evaluation period.



We initially reviewed PE exemptions for our audit scope period. Based on the results of our preliminary review, we expanded our testing to review all 238 contracts that MOCS exempted from PEs.

## **ACS Did Not Adequately Monitor Staff to Ensure They Completed PEs**

As previously stated, the ACS ACCO is responsible for organizing and supervising the procurement activity of subordinate agency staff in conjunction with the CCPO. Comptroller's Directive #1, Section 4.5 states,

A sound internal control system must be supported by ongoing activity monitoring occurring at various organizational levels and in the course of normal operations. Such monitoring should be performed continually and be ingrained throughout an agency's operations.

The ACS ACCO and ACCO staff informed us that ACS used PASSPort reports to monitor whether PEs were completed. Additionally, ACS ACCO staff informed us that they sent reminders to evaluators to complete PEs.

We requested that ACS provide us with documentation to show that ACS monitored PE completion and that it sent reminders to evaluators to complete PEs. In response, ACS provided us with emails that it sent to evaluators to remind them to complete only two PEs for our audit scope period. However, as previously mentioned, ACS was responsible for evaluating vendors' performance on a much larger number of contracts for Fiscal Year 2018—specifically, 493—and, of those, ACS did not complete PEs for 78 contracts (15.82 percent), and did not complete PEs timely for 415 contracts (84.18 percent).

## **ACS Did Not Establish Adequate Policies and Procedures for PEs**

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.

In its Calendar Year 2018 Comptroller's Directive #1 Checklist, ACS stated that it had formal written operating procedures and that it communicated procedures to appropriate agency staff. The ACS Contract Management Guidelines state that the Deputy Agency Chief Contracting Officers are the "[o]wner[s] of the end to end PE process, and responsible for the accurate and timely submission of PEs." Further, the ACS Contract Management Guidelines state that "typically evaluations are due ninety (90) days from the anniversary of the contract start date" and "task due dates and reminders are sent at a frequency predefined . . . to ensure all requirements are completed by MOCS deadline." However, the ACS Contract Management Guidelines do not include procedures for monitoring PE completion and do not specify when, how often, and the means by which reminders should be sent to evaluators to complete PEs.

**ACS Response:** “ACS also disputes the finding that we did not establish adequate policies and procedures to monitor staff and ensure completion of PEs. As demonstrated by the high completion rate for PEs due during the audit period, as well as improved rates in subsequent years, our staff takes seriously its responsibilities regarding contract evaluations.”

**Auditor Comment:** As previously stated, the ACS Contract Management Guidelines do not include procedures for monitoring PE completion and do not specify when, how often, and the means by which reminders should be sent to evaluators to complete PEs. The lack of adequate written procedures for PEs contributed, in part, to ACS’ failure to evaluate vendors’ performance for contracts at all or timely.

ACS was responsible for evaluating vendors’ performance for 493 contracts for Fiscal Year 2018, and ACS provided us with reminder emails for only 2 of those 493 contracts. Further, for both Fiscal Years 2018 and 2019, ACS generally did not complete PEs at all or timely as detailed in Table 1 below.

**Table 1**

ACS’ PE Completion Data for Fiscal  
Years 2018 and 2019

	<b>Fiscal Year 2018</b>	<b>Fiscal Year 2019</b>
Total Number of Contracts ACS Was Responsible for Evaluating	493	499
Number of Contracts that Were Not Evaluated At All	78	76
Number of Contracts that Were Not Evaluated Timely	415	319
Number of Contracts that Were Evaluated Timely	0	104

# RECOMMENDATIONS

ACS should:

1. Ensure that PEs are completed and finalized within 90 days of the contract anniversary dates;

**ACS Response:** “There is no requirement in the Procurement Policy Board Rules to complete performance evaluation within 90 days of the contract anniversary date. The ACS Office of Procurement will continue to use this timeframe as an aspirational target to organize the assignment and follow-up process with the ACS stakeholders that complete the PE content. ACS’ Director of Contract Management will assist Procurement staff in reminding contract managers whose PE deadlines are approaching.”

**Auditor Comment:** As previously stated, MOCS is responsible for coordinating and overseeing the procurement activity of Mayoral agency staff. In that capacity, MOCS informed the ACS ACCO that “[t]raditionally, PEs are expected to be completed within 90 days of the anniversary of the contract start date (for length of contract).” In addition, the ACS Contract Management Guidelines state that “[t]ypically evaluations are due 90 days from the anniversary of the contract start date.” Therefore, ACS should ensure that PEs are completed and finalized within 90 days of the contract anniversary date, in accordance with MOCS’ and its own guidance, so that ACS and other City agency procurement personnel can make fully informed contracting decisions concerning vendors.

2. Review PASSPort data to 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;

**ACS Response:** “ACS agrees that all PEs that are required to be completed should be created in PASSPort, and we will continue to rely on this process. The Office of Procurement will strengthen current processes and work with the Contract Management teams to facilitate structured review of PEs created by PASSPort to identify PEs that should be exempt from completion pursuant to PPB rules and standard practice. Specifically, we will provide enhanced guidance to contract managers about which contracts should be exempt in case Procurement staff should overlook any.”

**Auditor Comment:** As previously stated, during Fiscal Year 2018, PASSPort did not create PEs for 238 of the 493 ACS contracts—48.27 percent—on their contract anniversary dates. Consequently, ACS should not continue to rely on PASSPort to create PEs. ACS should independently review PASSPort data to 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.

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

**ACS Response:** “ACS will continue to request exemptions that meet the PPB Rules and exemption criteria. In addition to the criteria highlighted by the audit report, the following are other instances in which an exemption may be granted by MOCS.

- a. Lease Contracts,
- b. Contract for government or quasi-governmental agency,
- c. When the period to be evaluated is less than six months,
- d. When no work/service was done under the contract during the period,
- e. The contract is a master contract and evaluations are being done on the task orders, or vice versa,
- f. The contract passes funds through to another governmental entity,
- g. The contractor's performance was evaluated under a different contract,
- h. The contract has been terminated and final evaluation was completed,
- i. Confidential contracts,
- j. Contract determined by government mandate."

**Auditor Comment:** Although ACS asserted that there are "other instances in which an exemption may be granted by MOCS," the PPB Rules do not provide for several of the exemptions ACS mentions in its response, and ACS did not provide a legal or other authoritative basis for such exemptions.

Insofar as ACS relies on §1-02(f) of the PPB Rules to determine that certain transactions are exempt from PE requirements, it should also ensure that it complies with that rule's stipulation, "provided the ACCO determines that the process to be followed is in the best interest of the City and states the basis therefor." In sum, ACS should comply with the PPB Rules by requesting PE exemptions only for contracts that meet the PPB Rules' express exemption criteria, and it should maintain records of the ACCO's determinations where the rules require such determinations.

4. Ensure that the ACCO and ACCO staff monitor PE completion status on an ongoing basis and periodically send written reminders to staff to complete PEs before their due dates;

**ACS Response:** "Procurement staff monitor PE completion by program area, send reminder emails to the individual evaluators in advance of PE due dates, and monitor progress using a tracking tool. Procurement staff also use the PASSPort system to send reminders to evaluators."

**Auditor Comment:** As detailed above, ACS did not adequately monitor PE completion status and regularly send written reminders to staff to complete PEs before their due dates. For the audit scope period, ACS provided us with email reminders for only two of the 493 contracts—0.4 percent—that it was responsible for evaluating. Further, ACS did not provide us with the "tracking tool" that it maintains was used to monitor PE completion. Therefore, we reiterate that ACS should ensure that the ACCO and ACCO staff monitor PE completion status on an ongoing basis and periodically send written reminders to staff to complete PEs before their due dates.

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

**ACS Response:** “ACS will continue to use the procedure developed in 2018 for performance evaluations. However, we will review this procedure and determine if changes should be made. ACS has previously invited the MOCS training team to train contract managers and Finance staff on the PE process in PASSPort. That training took place on August 8, 2019 and was attended by approximately 40 ACS staff. ACS will request a repeat session from MOCS during the coming year.”

**Auditor Comment:** As previously stated, the ACS Contract Management Guidelines do not include procedures for monitoring PE completion and do not specify when, how often, and the means by which reminders should be sent to evaluators to complete PEs. Therefore, we reiterate that ACS should develop written policies and procedures, communicate them to staff, and train staff on their responsibilities for completing PEs including, but not limited to, completion timeframes.

## 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 to June 30, 2018) which evaluated vendor performance from the prior year.

To obtain an understanding of the rules and regulations governing ACS' documentation and evaluation of vendor performance, we obtained and reviewed as criteria the PPB Rules, the New York City Charter Chapter 13: Procurement, ACS' Contract Management Guidelines, a MOCS memorandum dated March 19, 2015 regarding Intergovernmental Procurement Procedures, and Comptroller's Directive #1, *Principles of Internal Controls and Financial Integrity Statement Checklist*.

To obtain an understanding of ACS' operating procedures and controls, we met with the ACCO, First Deputy ACCO, and two Deputy ACCOs. We also documented our interviews in memoranda. We reviewed ACS' Directive #1's Agency Evaluation of Internal Controls Checklists for Calendar Years 2017 and 2018.

To obtain an understanding of PASSPort, we reviewed PASSPort training manuals, and we conducted a walkthrough with MOCS officials and documented our discussion in memoranda.

To identify active ACS contracts for Fiscal Year 2017, we extracted the Agreements Franchises Concessions report from FMS. The extracted report included ACS 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 determine whether ACS 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 report provided by MOCS.

We also obtained a PASSPort Performance Evaluations Canceled because Exempt from Evaluation report which included 238 ACS contracts that MOCS exempted from PEs for evaluation periods between April 15, 2010 and February 7, 2020. For each of the 238 contracts, we reviewed the FMS Agreement, Franchise, and Concession Report, the FMS Expense Accounting Detail Listing Payment Request Report, and the FMS Expense Accounting Detail Listing Disbursements 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 ACS 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 requested documentation to show that ACS monitored PE completion and that it sent reminders to evaluators to complete PEs. We also reviewed ACS emails to determine whether they were sent to staff responsible for completing PEs and reminded them to complete outstanding PEs.

## APPENDIX

Based on the PASSPort Cancelled Report, MOCS improperly approved PE exemptions for 23 ACS contracts between November 1, 2015 and October 4, 2019 as follows:

Contract #	Vendor Name	Evaluation Period
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
CT1-068-20171425338	1175 GATES AVENUE LLC	January 20, 2017 to January 20, 2018
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
CT1-068-20171404008	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

<b>Contract #</b>	<b>Vendor Name</b>	<b>Evaluation Period</b>
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



August 17, 2020

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Dear Ms. Landa,

Thank you for the opportunity to review and respond to the draft audit FK19-093A, *Audit Report on the Administration for Children's Services' Vendor Performance Evaluations*. The Administration for Children's Services (ACS) provides services to ensure the safety and well-being of New York City's children and families. ACS contracts with vendors to provide goods and services on its behalf and to support its operations and has a rigorous performance monitoring process which includes, for child welfare contracts, the implementation of improvement plans and the issuance of a public scorecard which notes a provider's overall performance for the fiscal year. ACS consistently follows the relevant Procurement Policy Board (PPB) Rules and completes Performance Evaluations annually, as required.

As noted in the audit, the Mayor's Office of Contract Services (MOCS) facilitates and oversees citywide procurement activities. ACS has always worked closely with MOCS in its oversight capacity and implements its guidance and best practices. In mid-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. Unfortunately, PASSPort's Performance Evaluation functionality had some start-up challenges. For the first five months, the system improperly assigned all of ACS' PEs to the ACS General Counsel Joseph Cardieri. Mr. Cardieri was unable to forward or reassign the PEs to the proper staff until December 2017 when MOCS created a workaround for us to assign them to the correct evaluator. ACS worked diligently to capture and reassign the erroneously assigned PEs and made best efforts to capture all of them. We were surprised and disappointed the Comptroller chose to review PEs during this year of transition and technological learning.

Nevertheless, ACS takes seriously its obligation to evaluate vendors to uphold the City's vendor performance standards. We are pleased to report that we completed more than 94% of the Performance Evaluations in FY19 and are on track to exceed that figure for FY20. In addition, beyond the contract management PE process which was the focus of this audit, ACS maintains robust, comprehensive program

and service monitoring and evaluation systems for core programs serving children and families.

## COMPTROLLER'S FINDINGS

The draft report reflects two main findings, which are discussed in turn below.

1. *ACS generally did not annually evaluate and document vendor performance in accordance with the PPB Rules. Based on our review of the above-mentioned 493 contracts, ACS did not complete PEs for 78 contracts (15.82 percent) and did not complete PEs timely for 415 contracts (84.18 percent).*

*Response:* Given the challenging launch of the PASSPort system during this period, ACS argues that the completion of 85% of PEs showed the success of a strong procurement office and contract management effort. As discussed in response to Recommendation #3, below, we believe the audit miscalculates this percentage by including numerous PEs that should not have been included in the denominator. In addition, there is no requirement in the Procurement Policy Board Rules to complete performance evaluation within 90 days of the contract anniversary date. ACS will continue to use 90 days as an aspirational target for completion of PEs, emailing contract management staff to finish their tasks on time. But it should be understood as best practice rather than a fixed deadline.

2. *ACS failed to evaluate vendors' performance for contracts at all or timely because it did not ensure that PEs were in fact created on contract anniversary dates, improperly requested PE exemptions for contracts, did not adequately monitor staff to ensure they completed PEs, and did not establish adequate policies and procedures for PEs.*

*Response:* ACS does not agree with the finding that ACS failed to comply with all PE requirements during the audit period. As with all complex new systems, PASSPort's first months exhibited some bugs, which have since been resolved but which during the audit period - the system's first months - created some delays. Fortunately, PASSPort offered ACS the opportunity to request missing or mis-directed PEs, which we were largely able to do. MOCS created the PASSPort system to ensure that agencies can systematically evaluate vendor performance and ACS has worked in partnership with MOCS to meet our shared obligation. 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," or in the alternative, agencies may request the "ad hoc" creation of PEs in the system. PASSPort makes both tools available to agencies to ensure the completion of PEs. Given the diversity of start dates of our contract portfolio, we were pleased to adopt a system that automates the creation of PEs, but we continued to monitor the portfolio of contracts needing evaluations. ACS either completed the PEs created by the system or requested that MOCS create ad hoc PEs for a high percentage of PEs during the audit period. While our Contract Managers know their individual contract caseloads and are generally able to track the creation of corresponding PEs, their monitoring system is not automated. ACS relies on PASSPort for automated PE creation.

In addition, ACS properly sought and received approval for exemptions for contracts that, pursuant to PPB rules and standard practice, did not require PEs. ACS disagrees with the auditors' determination that these contracts were somehow not eligible for an exemption. During the audit period, ACS requested and was granted exemptions for three types of contracts: lease contracts, contracts where no work/service was done during the period (close out payments may have been made, but there was no basis for evaluation during the period) and contracts that had been terminated and final evaluation

already completed. ACS questions why the audit report includes 3 contracts from 2019 in the appended list of improper exemptions, which are significantly outside the audit period.

ACS also disputes the finding that we did not establish adequate policies and procedures to monitor staff and ensure completion of PEs. As demonstrated by the high completion rate for PEs due during the audit period, as well as improved rates in subsequent years, our staff takes seriously its responsibilities regarding contract evaluations.

## **COMPTROLLER'S RECOMMENDATIONS**

The Administration for Children's Services has carefully reviewed and taken into consideration the five recommendations issued on July 28, 2020 by the City of New York Office of the Comptroller in its draft audit report, which follow.

### **1. ACS should ensure that PEs are completed and finalized within 90 days of the contract anniversary date.**

ACS Response: There is no requirement in the Procurement Policy Board Rules to complete performance evaluation within 90 days of the contract anniversary date. The ACS Office of Procurement will continue to use this timeframe as an aspirational target to organize the assignment and follow-up process with the ACS stakeholders that complete the PE content. ACS' Director of Contract Management will assist Procurement staff in reminding contract managers whose PE deadlines are approaching.

### **2. ACS should review PASSPort data to 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.**

ACS Response: ACS agrees that all PEs that are required to be completed should be created in PASSPort, and we will continue to rely on this process. The Office of Procurement will strengthen current processes and work with the Contract Management teams to facilitate structured review of PEs created by PASSPort to identify PEs that should be exempt from completion pursuant to PPB rules and standard practice. Specifically, we will provide enhanced guidance to contract managers about which contracts should be exempt in case Procurement staff should overlook any.

### **3. ACS should request exemptions only for contracts that meet the PPB Rules' PE exemption criteria.**

ACS Response: ACS will continue to request exemptions that meet the PPB Rules and exemption criteria. In addition to the criteria highlighted by the audit report, the following are other instances in which an exemption may be granted by MOCS.

- a. Lease contracts,
- b. Contract for government or quasi-governmental agency,
- c. When the period to be evaluated is less than six months,
- d. When no work/service was done under the contract during the period,
- e. The contract is a master contract and evaluations are being done on the task orders, or vice versa,
- f. The contract passes funds through to another governmental entity,
- g. The contractor's performance was evaluated under a different contract,
- h. The contract has been terminated and final evaluation was completed,
- i. Confidential contracts,



j. Contract determined by government mandate.

4. **ACS should ensure that the ACCO and ACCO staff monitor PE completion status on an ongoing basis and periodically send written reminders to staff to complete PEs before their due dates.**

ACS Response: Procurement staff monitor PE completion by program area, send reminder emails to the individual evaluators in advance of PE due dates, and monitor progress using a tracking tool. Procurement staff also use the PASSPort system to send reminders to evaluators.

5. **ACS should develop formal written policies and procedures, communicate them to staff, and train staff on their responsibilities for completing PEs including, but not limited to, monitoring and follow-up activities.**

ACS Response: ACS will continue to use the procedure developed in 2018 for performance evaluations. However, we will review this procedure and determine if changes should be made. ACS has previously invited the MOCS training team to train contract managers and Finance staff on the PE process in PASSPort. That training took place on August 8, 2019 and was attended by approximately 40 ACS staff. ACS will request a repeat session from MOCS during the coming year.

Thank you for your consideration and attention in support of New York City's children and families.

Sincerely yours.

A handwritten signature in blue ink, appearing to read "Jennifer Fiellman".

Jennifer Fiellman, Esq.  
Assistant Commissioner