



City of New York

OFFICE OF THE COMPTROLLER

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COMPTROLLER



FINANCIAL AUDIT

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Deputy Comptroller for Audit

**Audit Report on the New York City
Economic Development Corporation's
Contracts Related to Environmental
and Other Engineering Services**

FN13-104A

March 26, 2014

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
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NEW YORK, NY 10007

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March 26, 2014

To the Residents of the City of New York:

My office has audited the New York City Economic Development Corporation (EDC) to determine whether EDC has adequate oversight over its contracts related to environmental and other engineering services, made proper payments based on contract requirements, and complied with its procurement rules and regulations. We audit agencies performing City work, such as EDC, to ensure that they effectively manage the City assets entrusted to them and follow applicable rules and regulations.

EDC is a not-for-profit corporation organized under §1411 of the Not-For-Profit Corporation Law of the State of New York. EDC's primary activities consist of rendering a variety of services and administering economic development programs on behalf of the City. One of EDC's primary responsibilities is to use the City's assets to drive growth, create jobs, and improve the quality of life. In order to carry out this responsibility, EDC solicits and awards numerous contracts in connection with developing commercial space, improving access to the waterfront, enhancing pedestrian connectivity, and creating waterfront amenities for public use and enjoyment in the City.

In guiding development projects through the necessary public approvals, EDC performs financial analyses, coordinates planning and feasibility studies, and issues Environmental Impact Statements prepared by engineering consultants. From July 2007 to April 2013, EDC awarded nine environmental and other engineering consultant contracts totaling \$18,821,628, in connection with its development projects. As of June 5, 2013, EDC had made payments of \$8,595,731 on these contracts.

Our audit found that EDC generally complied with applicable procurement rules and regulations governing its contracts. However, we found weaknesses in EDC's process for awarding contracts and for making payments. Specifically, EDC did not adequately track proposal submissions or document the date and reason for rejecting the proposals upon submission. It also did not ensure that affidavits regarding potential conflicts of interest on the part of contract evaluators were completed prior to their ranking proposals. Moreover, EDC did not document any follow-up conducted in instances where evaluators were identified as potentially having a conflicts of interest. Further, EDC did not ensure that resumes of consultants and sub-consultants working on projects were properly submitted, reviewed, and approved. As a result, there was insufficient information to allow the auditors to determine that all of the consultants were qualified and approved to work on the projects and that the related payments were appropriate and justified. EDC also did not properly review the consultants' timesheets before payments were made. In addition, EDC did not ensure that contractors who were awarded contracts obtained Department of Investigation clearances prior to contracts being executed. Finally, EDC failed to ensure that all of the contractors maintained sufficient insurance as required by their contracts.

The results of our audit have been discussed with EDC officials and their comments have been considered in preparing this report. Their 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.

Sincerely,

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the New York City Economic Development Corporation's Contracts Related to Environmental and Other Engineering Services

FN13-104A

AUDIT REPORT IN BRIEF

The New York City Economic Development Corporation (EDC) is a not-for-profit corporation organized under §1411 of the Not-For-Profit Corporation Law of the State of New York. Pursuant to contracts with the City of New York, EDC is obligated to administer economic development projects on behalf of the City. In guiding these economic development projects through the necessary public approvals, EDC performs financial analyses, and coordinates planning and feasibility studies, including those where Environmental Impact Statements prepared by engineering consultants are issued. Based on EDC's records, from July 2007 to April 2013, EDC awarded nine environmental and other engineering consultant contracts in connection with its development projects totaling \$18,821,628. As of June 5, 2013, EDC had made payments of \$8,595,731 on these contracts.

In accordance with its contracts with the City, EDC must comply with City laws, rules, and regulations when performing its services. Among other things, the City requires EDC to procure professional services from competent and qualified vendors at fair and reasonable prices, and to establish proper internal controls to monitor contract performance and payment.

Audit Findings and Conclusions

Our audit found that in connection with its contracts for environmental and other engineering services, EDC generally complied with applicable procurement rules and regulations. However, we found the following weaknesses in EDC's contract awarding and payment processes:

- EDC did not adequately track proposal submissions or document the date and reason for rejecting proposals upon submission.
- EDC did not ensure that evaluator affidavits requiring disclosure of potential conflicts of interest were completed prior to the evaluators ranking proposals.
- EDC did not document any follow-up conducted in instances where evaluators were identified as potentially having a conflict of interest.
- EDC did not ensure that resumes of consultants and sub-consultants working on projects were properly submitted, reviewed, and approved. As a result, there was

insufficient information to allow us to determine that all of the consultants were qualified and approved to work on the projects and that the related payments of at least \$466,544 were appropriate and justified.

- EDC did not properly review the consultants' timesheets before payments were made.
- EDC did not ensure that contractors who were awarded contracts obtained Department of Investigation (DOI) clearances prior to contracts being executed.
- EDC did not ensure that the contractors maintained sufficient insurance as required by their contracts.

Audit Recommendations

To address these issues, we make the 11 recommendations summarized below, and advise EDC to:

1. Create proper procedures to document time and date of all submitted proposals at the time of receipt.
2. Document the date and reason for rejecting proposals at the time of submission.
3. Ensure that all evaluators' affidavits regarding potential conflicts of interest are signed and on file before ranking each proposal.
4. Follow up where evaluators disclose in their affidavits potential conflicts of interest and document the justification for any decision allowing or disqualifying the evaluators from the proposal review process.
5. Ensure prospective vendors submit all required resumes as part of their proposals.
6. Ensure contractors submit resumes when staff who work on the project need to be replaced and update the fee schedules accordingly.¹
7. Ensure contractors only bill for staff listed on the fee schedules.
8. Carefully review consultant invoices and ensure supporting documentation is sufficient to justify payments.
9. Ensure that all DOI clearances are performed prior to contracts being awarded.
10. Ensure that contractors maintain insurance coverage as required by the contracts.
11. Ensure that all requests to change the mandated insurance requirements be in writing.

Agency Response

EDC generally disagreed with our findings and recommendations. In its response, EDC stated that its current policies and procedures address the majority of the issues discussed in this report.

¹ Fee schedules include the hourly rate that should be billed and the names and titles of the consultants who will work on the projects.

AUDIT REPORT INTRODUCTION

Background

EDC is a not-for-profit corporation organized under §1411 of the Not-For-Profit Corporation Law of the State of New York. EDC's primary activities consist of rendering a variety of services and administering economic development programs on behalf of the City.² EDC performs its services under two contracts with the City, the Master Contract and the Maritime Contract. One of EDC's primary responsibilities is to use the City's assets to drive growth, create jobs, and improve the quality of life. In order to carry out this responsibility, EDC solicits and awards numerous contracts in connection with developing commercial space and open new spaces, improving access to the waterfront, enhancing pedestrian connectivity, and creating waterfront amenities for public use and enjoyment in the City.

In guiding development projects through the necessary public approvals, including facilitating access to City programs and incentives, EDC performs financial analyses, coordinates planning and feasibility studies,³ and issues Environmental Impact Statements prepared by engineering consultants.⁴ Based on EDC's records, from July 2007 to April 2013, EDC awarded nine environmental and other engineering consultant contracts (eight through the request for proposal process and one through the sole source selection process) totaling \$18,821,628, in connection with its development projects. As of June 5, 2013, EDC has made payments of \$8,595,731 on these contracts. (See Appendix.)

Pursuant to its contracts with the City, EDC must comply with City laws, rules, and regulations when performing its services. Among other things, the City requires EDC to procure professional services from competent and qualified vendors at fair and reasonable prices and to establish proper internal controls to monitor contract performance and payment.

Objectives

The objectives of this audit were to determine whether EDC has:

- Adequate oversight over its contracts related to environmental and other engineering services;
- Made proper payments based on contract requirements; and
- Complied with its procurement rules and regulations.

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

² In November, 2012, the New York City Economic Development Corporation merged into a not-for-profit corporation named the New York City Economic Growth Corporation (EGC). Upon the merger, EGC's name was changed to the New York City Economic Development Corporation.

³ Feasibility studies involve analyses of comprehensive financial performance projections in connection with specific development projects.

⁴ Environmental Impact Statements generally analyze whether development resulting from the proposed actions could result in significant adverse environmental effects.

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.

The scope of this audit was July 2007 to April 2013. The Detailed Scope and Methodology at the end of this report describes the specific procedures and tests that were conducted.

Discussion of Audit Results With EDC

The matters covered in this report were discussed with EDC officials during and at the conclusion of this audit. A preliminary draft report was sent to EDC officials and discussed at an exit conference held on December 6, 2013. On December 10, 2013, we submitted a draft report to EDC officials with a request for comments. We received a written response on December 24, 2013. In its response, EDC stated that its current policies and procedures address the majority of the issues discussed in this report. The full text of EDC's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Our audit found that EDC generally complied with applicable procurement rules and regulations governing its contracts. However, we found weaknesses in EDC's process for awarding contracts and for making payments, as is discussed in detail in the following sections of this report.

Inadequate Tracking of Proposal Submissions

EDC did not maintain adequate records to show that it tracked all proposal submissions for either accepted or rejected proposals. In particular, our review found that EDC did not record the dates the proposals were submitted and did not have adequate records to document the basis for rejecting the proposals at the time they were submitted. Rather, instead of recording the actual dates the proposals were received, EDC recorded the submission due date (deadline) as the date received in the database it uses to keep track of the status of the Request for Proposals (RFPs). Therefore, where a proposal was rejected because it was submitted after the deadline, the reason for that rejection was not documented.

According to EDC's Procurement Manual, Chapter 2, Section 3 — Contract Files and Record Keeping, EDC "shall maintain files that contain all documentation pertaining to the solicitation, award, and management of each of its contracts, purchase orders, amendments, renewals and change orders." To ensure a fair and competitive process and avoid the possibility of late proposals being accepted and considered, EDC should properly document the dates and times of receipt of all proposals, as well as the basis of a rejection for those proposals that are rejected at the time of submission. These proper controls could prevent potential protests by prospective vendors excluded from the selection process.

Weaknesses in Proposal Evaluation Process

Our review found that EDC did not ensure all affidavits regarding potential conflicts of interest on the part of the EDC employees who review and rank proposals were signed prior to their evaluating and ranking the proposals.⁵ Further, EDC did not maintain signed affidavits on file of the evaluators and did not have a record of any follow-up procedures for evaluators who might have potential conflicts of interest.

Each ranking team member is required to sign an evaluation affidavit before reviewing each proposal to attest to the statement below:

To the best of my knowledge, information and belief neither I nor any member of my immediate family is, has ever been, or has current plans to be a sole proprietor, director, officer, stockholder, partner or employee of or has, ever had, or has current plans to have a fiduciary relationship with any of the proposers responding to this RFP, nor have I ever discussed employment upon conclusion of my City service with any such proposers.

This allows EDC to be aware of any potential conflicts of interest that might influence the ranking process. However, we found no evidence that EDC followed up on any evaluator

⁵ According to EDC procurement procedures, all accepted proposals are reviewed by a ranking team, which consists of between three and five EDC employees. Proposals are rated based on quality of proposals, respondents understanding and ability to perform services, experience of staff, quality of management, reputation and reference, history of doing business with the City, and proposed fee and cost schedules. EDC's contracts department selects employees from its ranking team member list to evaluate the proposals. Ranking team members are selected by the project managers based on their experience and qualifications.

affidavit that did not attest to the statement above.

After the ranking team attests that it was free from conflicts of interest, the team then evaluates each proposal and submits the rankings to the project manager for review. However, based on our review of the affidavits, we found the following problems:

- For Contract #38430001, three out of five evaluators signed the affidavits several weeks after they ranked proposals.
- For Contract #10140002, two out of five evaluators signed the affidavits one to two days after they ranked the proposals. In addition, two other evaluators disclosed that they were former employees of one of the proposers: one employee worked as a planner for the proposer in 2004, and the other was employed as project engineer in 2009, two years prior to the award of the contract in 2011. These two employees were allowed to remain on the ranking team without any explanation on file of why this was allowed by EDC. EDC officials stated that they had verbal discussions with the staff, but these were not documented. The proposing company that these two evaluators had previously been employed by was ultimately awarded the contract.
- For Contract #38430001, two of the five affidavits were not on file. Consequently, we cannot determine whether these two evaluators ever signed affidavits.

It is important for EDC to ensure evaluators are free from actual, potential, or perceived conflicts of interest during the solicitation process and the evaluation process. EDC should obtain affidavits from the evaluators prior to reviewing the proposals and maintain and review the affidavits to ensure all proposers are receiving fair evaluations. Allowing a prior contractor employee to participate in the review process could present the appearance that proposals might not be evaluated fairly.

Qualifications of the Consultant Staff Were Not Properly Evaluated, Resulting in \$466,544 in Payments for Unapproved Staff

EDC did not ensure that prospective vendors included resumes in their proposals for all the consultant staff, including staff provided by subcontractors, who would work on the projects as required by the contracts. Of the nine environmental and engineering services contracts that were the subject of the audit, only seven required the consultants to submit resumes. We found that six contractors did not include resumes for 75 of the total of 293 consultant staff (i.e., 26 percent) listed on the fee schedules that were included as part of their bid packages. Reviewing resumes is an important component of the evaluation. Indeed, the staff experience and qualifications can represent up to 25 percent of the weight used for rating each proposal submitted. Without the resumes, EDC is not able to evaluate whether the listed staff are qualified for the tasks they are to perform. In addition, we found no evidence that EDC evaluated the qualifications and approved at least 95 of the staff consultants who worked on the projects.

According to the RFPs, the selected contractors were expected to use substantially the same personnel listed in the proposals to perform services under the contracts. Moreover, the contracts between EDC and the contractors specifically require, "If the Consultant or a Subcontractor proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution." This review process is designed to help EDC to ensure vendors are not replacing experienced staff with less experienced staff, which can result in EDC receiving

substandard work as well as potential overpayment for underqualified staff.

Based on our review of the five highest payment vouchers for eight of the contracts and all three of the payment vouchers for contract #298400006, EDC paid at least \$466,544 for unapproved staff who worked on various projects. Because these consultants were not approved by EDC, we cannot determine whether these payments were appropriate and justified.

Inadequate Review of Consultant Invoices and Timesheets

EDC did not ensure that all consultant invoices were fully supported before payments were made. As summarized in Table I, we found instances when timesheets were approved prior to the end of the work week, timesheets with no approval dates, and missing timesheets. In addition, we found that certain invoices only stated the particular task performed but did not include who actually worked on the project.

Table I
Summary of Issues Related to Consultant Timesheets

Contract Number	Number of Invoices Reviewed	Total Amount of Invoices Reviewed	No Timesheets	No Approval Dates on Timesheets		Timesheets Approved before Work Week Ended	
				Number of Employees	Amount	Number of Employees	Amount
29840006	3	\$ 83,565		37	\$ 80,170	-	
29840007	5	202,008		12	26,191	-	
29840008	5	813,061	\$ 3,645	51	114,779	49	\$49,420
29840009	5	354,051	230,391	13	95,571	-	
29840010	5	256,703	12,460	96	218,564	2	2,734
18210002	5	315,980	315,980	-		-	
49160001	5	785,353	748,471	6	17,049	-	
Totals	33	\$2,810,721	\$1,310,947	215	\$552,324	51	\$52,154

These timesheets and invoices should have been rejected for lack of proper documentation. Before accepting an invoice for payment, EDC should require the consultant to submit a timesheet for those working on the project and resubmit timesheets that were not approved and/or approved after the actual work was performed. EDC officials said that certain tasks performed do not require timesheet submission and only require a breakdown of tasks completed and so some invoices contain timesheets and other invoices only have task completed information. However, we noted that the terms of certain contracts do not make clear what documents should be submitted to EDC to support payment requests because they do not clearly state when the contractors will be paid based on deliverables and when they will be paid based on actual hours worked.

Department of Investigation Clearances Not Done in a Timely Manner

EDC did not ensure that contractors who were awarded contracts had DOI clearances prior to the contract being awarded. We found background checks for two contractors that were not completed until at least three months after the commencement date. EDC's Procurement Manual, Chapter 1 Section 5 (VENDEX), states, "Vendex background checks are required for all vendors wishing to do business with EDC. EDC then makes a responsibility determination after

a VENDEX investigation has been conducted.”

Without background checks being completed prior to awarding the contract, EDC did not have complete information with which to evaluate whether the vendor being awarded the contract was “responsible.”⁶ EDC’s failure could leave the City vulnerable to working with a contractor with a history of problems and potentially a substandard work product.

Insufficient Insurance Coverage

EDC did not ensure that contractors maintained sufficient insurance coverage as required by their contracts. Each contract required specific insurance coverage throughout the duration of the contract. During our review, we found two out of the nine consultant contracts had insufficient insurance coverage as is reflected in Table II:

Table II
Summary of Insufficient Insurance Coverage

Contract Number	Type of Coverage	Time Period	Required Coverage Amount per Contract	Actual Coverage	Insurance Coverage Shortage
38430001	Umbrella Liability per Occurrence & Aggregate	6/22/11 - 3/31/13	\$10,000,000	\$8,000,000	\$2,000,000
38430001	Umbrella Liability per Occurrence & Aggregate	4/1/13 - 4/1/14	\$10,000,000	\$6,000,000	\$4,000,000
49160001	Umbrella Liability per Occurrence & Aggregate	4/1/13 - 4/1/14	\$10,000,000	\$2,000,000	\$8,000,000

When we brought this issue to the attention of EDC officials, they provided a letter for Contract #49160001 which stated that EDC agreed to lower the coverage amount as per the contractor’s request. EDC officials informed us that they had no documentation of that request because it was verbal. For the other contract, #38430001, EDC did not maintain documents that justified the contractor obtaining less insurance coverage than the amount required by the contract.

The insurance coverage requirement in the contract protects the City from potential lawsuits while contractors are providing services to the City. EDC should closely monitor contractors to ensure they maintain sufficient insurance coverage as required.

⁶ EDC’s Procurement Manual defines a responsible contractor as “one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.”

Recommendations

EDC should:

1. Create proper procedures to document time and date of all submitted proposals at the time of receipt.

Agency Response: “NYCEDC strongly disagrees with the statement in the audit report asserting that NYCEDC did not maintain adequate records that tracks proposal submissions. NYCEDC currently has proper procedures in place and electronic tracking programs that document and track all proposal submissions. Our procedure includes an electronic log where all vendor responses for procurements are entered into a database by the close of business on the project submission due date. In addition, we have a separate bid desk within our Administrative Services Department which electronically tracks and monitors time and date of all submissions in real time.”

Auditors’ Comment: We are pleased to know that EDC now has procedures in place to keep track of all proposals. During the course of the audit, we made numerous requests to review EDC’s records for tracking the exact time and date of all submissions; however, EDC either did not have these controls in place during the audit scope period or did not provide records to us.

2. Document the date and reason for rejecting proposals at the time of submission.

Agency Response: “NYCEDC strongly disagrees with the implication that there are weaknesses in the NYCEDC’s RFP evaluation process. NYCEDC currently has a policy and procedure for documenting and justifying any proposal that is rejected from a procurement process. During the ten month period in which the Comptroller audited nine (9) contracts, there were no proposals that were rejected, resulting in the Comptroller’s Office incorrectly stating that there is no such policy.”

Auditors’ Comment: Because EDC did not have any record to track the basis for accepting or rejecting its contract proposals at the time they were submitted, we cannot verify EDC’s claim.

3. Ensure that all evaluators’ affidavits regarding potential conflicts of interest are signed and on file before ranking each proposal.

Agency Response: “NYCEDC currently ensures that all Evaluator Affidavits are submitted prior to review of proposals. During the course of this ten-month audit, the Comptroller’s Office reviewed only nine (9) contracts out of hundreds that flow through NYCEDC at any given time. One contract file did not have a signed affidavit. That file was corrected. These results do not warrant the finding and recommendation that was cited in the report.”

Auditors’ Comment: Our recommendation is based on our finding that a number of conflict affidavits were signed *after* the evaluation process as well as on our finding that one contract file did not contain two of the five conflict affidavits. During the course of the audit, we had repeatedly asked EDC officials to provide the missing affidavits from that one file for our review. However, EDC officials did not provide the requested documents. Consequently, we could not determine whether these two evaluators ever signed affidavits.

Problems with conflicts affidavits were found in 22 percent of the contracts

reviewed. The records we were provided reflected that in these instances, EDC had failed to comply with its own internal procedures. Accordingly, we recommend that EDC ensure that affidavits are signed prior to reviewing proposals to avoid any conflicts of interest.

4. Follow up where evaluators disclose in their affidavits potential conflicts of interest and document the justification for any decision allowing or disqualifying the evaluators from the proposal review process.

Agency Response: “NYCEDC disagrees with this recommendation. All potential conflicts of interest are reviewed by our Legal and Contracts Department. If a conflict of interest is identified, the employee is not allowed to be part of the evaluation process. If no conflict of interest is identified, the employee is permitted to participate in the evaluation process. We will add a line to our evaluation process checklist that affirmatively confirms this.”

Auditors’ Comment: The records reviewed did not contain any evidence that such review occurred. We support EDC’s changing its evaluation checklist process to include evidence that a documented review of a potential conflict of interest took place.

5. Ensure prospective vendors submit all required resumes as part of their proposals.
6. Ensure contractors submit resumes when staff who work on the project need to be replaced and update the fee schedules accordingly.
7. Ensure contractors only bill for staff listed on the fee schedules.

Agency Response: In its response EDC stated that this response applies to recommendations 5, 6, and 7. “NYCEDC disagrees with the assertion that the lack of oversight resulted in inappropriate payments. All payments were made for work product and work progress that was accepted by NYCEDC staff. That some of this work was performed by consultant staff that had not been preapproved does not undermine whether these payments were appropriate and justified. NYCEDC has strengthened its review administration of all contract requirements pertaining to approval of consultant staff.”

Auditors’ Comment: We are glad that EDC agrees to strengthen its administrative controls over approving consultant staff. However, we disagree with EDC’s contention that unapproved staff does not undermine whether these payments were appropriate and justified. Because many of these consultant contracts require skilled engineering and technical expertise, being aware of staff credentials is essential to ensuring a quality work product and appropriate payments for work performed.

8. Carefully review consultant invoices and ensure supporting documentation is sufficient to justify payments.

Agency Response: “All invoices submitted for payment to NYCEDC are certified by consultant management as to accuracy. Payments by NYCEDC are only made after NYCEDC staff accepts work products and work progress as conforming to the scope of work and standards of the contract. Moving forward, task orders and payment requests will more clearly identify assignments made under a percentage completion mode or timesheet mode...”

Auditors’ Comment: A “certified” statement from consultant management does

not substitute for a thorough review by EDC of progress payment documentation. We re-emphasize the need for ensuring that supporting documentation is sufficient to justify payments.

9. Ensure that all DOI clearances are performed prior to contracts being awarded.

Agency Response: “NYCEDC already complies with this recommendation. In regards to the contracts that were audited by the Comptroller’s Office, NYCEDC had prior precedence and clearances from NYC Departments of Investigations on the contract vendors named in the findings. These contract vendors had ongoing open contracts with the City of New York, as well as NYCEDC, at the time of commencement.”

Auditors’ Comment: Despite the prior clearances, EDC should request a new background check from DOI every time it enters into a new contract to ensure that no problems have arisen since the last background check was provided.

10. Ensure that contractors maintain insurance coverage as required by the contracts.

Agency Response: “NYCEDC already complies with this recommendation. NYCEDC provide the Comptroller’s Office with adequate proof of insurance coverage for the corresponding contracts...”

Auditors’ Comment: At the exit conference, EDC provided us with revised certificates of insurance that show the required coverage for the two consultant contracts that had insufficient insurance. However, the certificates given to us were dated November 25, 2013. This is over a year after the coverage period began. The fact remains that the original certificates in the contract files clearly reflected that the contracts had insufficient insurance. Providing us current insurance documents that are dated after the policy coverage date indicates that EDC is not actively monitoring the vendors’ insurance coverage.

11. Ensure that all requests to change the mandated insurance requirements be in writing.

Agency Response: “This procedure will be changed to require written approval of changes.”

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.

The scope of this audit was July 2007 to April 2013.

To identify and understand the EDC's procurement process, we requested and reviewed EDC's procurement manuals and flowcharts and general procurement guidelines issued by the Deputy Mayor for Economic Development. These guidelines were used as criteria in evaluating the adequacy and effectiveness of EDC's internal controls. We also interviewed EDC Senior Vice Presidents and Project Managers regarding their procurement administration roles and responsibilities and documented the processes in flowcharts and memorandums.

To obtain an understanding of EDC's controls over the selection and award processes, we requested EDC's complete listing of all environmental and engineering consultant contracts awarded from July 2007 through April 2013. The contract list provided by EDC contained nine contracts and so we then requested all nine environmental and engineering consultant contract files and reviewed the specific requirements for each contract. The terms of the contracts provided the criteria against which we evaluated whether EDC had properly ensured that consultants complied with contract requirements for submission of proposals, insurance requirements, task and staff fee schedules, consultant timesheets, and other contract documentation.

To assess the controls over the selection process, we checked whether EDC properly advertised the RFPs in the City Record and maintained a logbook for the receipt of RFPs submitted to ensure EDC considered all proposals received by submission deadlines. We checked whether all accepted proposals were evaluated by reviewing RFP submissions and rating sheets that are used to evaluate each RFP. We reviewed the evaluation affidavits to ensure there was no bias or conflict on the part of the individual EDC employees rating the companies and that all conflict affidavits were on file and completed in a timely manner as required by EDC's procurement processes.

To determine whether EDC documented and properly selected the most qualified and responsible consultant, we reviewed the summary of rating sheets, the Selection Committee's Recommendation for Award, and Vendor Responsibility memorandums. We checked whether EDC maintained DOI clearances in a timely manner and the Executive Committee's and Deputy Mayor's authorizations were present.

To determine whether EDC ensured compliance with contract insurance requirements, we reviewed each contract's insurance terms and coverage requirements and compared it to the consultant's insurance certificates and checked to ensure that the City was named as an additionally insured.

We reviewed each contract to determine if it included: fee schedules listing employees to work on the project; insurance coverage requirements; contracts signed by all parties; and contract amounts that were approved by the Deputy Mayor. To determine the controls over contract payments, we judgmentally selected a sample of the five highest payment amounts for each contract with the exception of contract #29840006. For this contract, we reviewed all three

payments paid prior to June 5, 2013. We checked each payment to determine if the hourly rate charged for each consultant matched the hourly rate set forth in the contract staff fee schedule. We determined whether staff originally listed on the consultant's fee schedule matched the staff who actually worked on the project by comparing the staff names to the consultant invoices. When replacement employees were used, we checked to determine if EDC reviewed the qualifications and had their resumes on file. We reviewed payment fee schedules for task-oriented contracts to determine if payments were within the budgeted amount and the task and payment vouchers supported the percentage completed. We checked the hourly rates detailed in the contract fee schedules to ensure the correct rate was used. We also calculated the number of hours worked by the stated rates to ensure accurate calculations.

To determine whether EDC adequately monitored each consultant's performance and ensured consultants fulfilled contract reporting requirements, we interviewed EDC officials and reviewed the Environmental Impact Statements, progress reports, and final reports submitted to EDC.

Summary of EDC's Environmental and Engineering and Consultant Contracts and Payments

Contract #	Contract Commencement Date	Term of Contract	Method of Solicitation	Total Contract Amount	Total Payments*	Total Payments Reviewed	% of Total Reviewed
29840006	4/15/2011	4/15/11 - 4/15/14	RFP	\$ 2,000,000	\$ 83,565	\$ 83,565	100%
29840007	4/15/2011	4/15/11 - 4/15/14	RFP	3,000,000	288,588	202,008	70%
29840008	4/15/2011	4/15/11 - 4/15/14	RFP	2,000,000	946,494	813,061	86%
29840009	4/15/2011	4/15/11 - 4/15/14	RFP	2,000,000	864,104	354,051	41%
29840010	4/15/2011	4/15/11 - 4/15/14	RFP	2,000,000	485,896	256,703	53%
49160001	6/22/2011	6/22/11 - 6/22/13	RFP	1,534,989	851,134	785,353	92%
10140002	5/4/2011	5/4/11 - 1/4/13	RFP	2,055,000	1,771,504	827,705	47%
38430001	5/17/2012	5/17/12 - 5/17/14	RFP	3,881,639	2,968,466	1,556,046	52%
18210002	4/17/2008	4/17/08 - 10/17/08	Sole Source	350,000	335,980	315,980	94%
TOTALS				\$18,821,628	\$8,595,731	\$5,194,472	60%

* Auditors' Note: Total payments are payments made as of June 5, 2013.



New York City Economic Development Corporation

December 24, 2013

New York City Comptroller's Office
One Centre Street, Room 1100
New York, New York 10007-2341
Municipal Building
Attn: H. Tina Kim, Deputy Comptroller

Re: Response to Audit Report on the New York City Economic Development Corporation Contracts Related to Environmental and Other Engineering Services (FN13-104A)

Dear Ms. Kim:

New York City Economic Development Corporation ("NYCEDC") has reviewed the Draft of the above-referenced audit report, dated November 19, 2013. NYCEDC's responses to the recommendations cited in the audit report are attached hereto.

Should you have any questions or concerns regarding NYCEDC's responses please feel free to contact me directly at (212) 312-3503 or via e-mail at shobson@nycedc.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Hobson".

Spencer Hobson
Director of Finance

Cc: Kyle Kimball, President
Kim Vaccari, Chief Financial Officer
Bulent Celik, Controller
Maryann Catalano, SVP Contracts
Hardy Adasko, SVP Planning
George Davis, Mayor Office of Operations

Environmental and other Engineering Contract Audit (FN13-104A) Draft Responses to Audit Recommendations

1. Create proper procedures to document time and date of all submitted proposals at the time of receipt

NYCEDC strongly disagrees with the statement in the audit report asserting that NYCEDC did not maintain adequate records that tracks proposal submissions. NYCEDC currently has proper procedures in place and electronic tracking programs that document and track all proposal submissions. Our procedure includes an electronic log where all vendor responses for procurements are entered into a database by the close of business on the project submission due date. In addition, we have a separate bid desk within our Administrative Services Department which electronically tracks and monitors time and date of all submissions in real time.

2. Document date and reason for rejecting the proposals

NYCEDC strongly disagrees with the implication that there are weaknesses in NYCEDC's RFP evaluation process. NYCEDC currently has a policy and procedure for documenting and justifying any proposal that is rejected from a procurement process. During the ten month period in which the Comptroller audited nine (9) contracts, there were no proposals that were rejected, resulting in the Comptroller's Office incorrectly stating that there is no such policy.

3. Ensure that all affidavits regarding potential conflicts of interest are signed and on file before proceeding with ranking each proposal

NYCEDC currently ensures that all Evaluator Affidavits are submitted prior to review of proposals. During the course of this ten-month audit, the Comptroller's Office reviewed only nine (9) contracts out of hundreds that flow through NYCEDC at any given time. One contract file did not have a signed affidavit. That file was corrected. These results do not warrant the finding and recommendation that was cited in the report.

4. Follow up on affidavits where evaluators disclose potential conflicts of interest and document the justification for any decision allowing or disqualifying them to continue rating proposals

NYCEDC disagrees with this recommendation. All potential conflicts of interests are reviewed by our Legal and Contracts Department. If a conflict of interest is identified, the employee is not allowed to be part of the evaluation process. If no conflict of interest is identified, the employee is permitted to participate in the evaluation process. We will add a line to our evaluation process checklist that affirmatively confirms this.

(Recommendations 5. / 6. / 7. are responded to jointly below)

5. **Ensure prospective vendors submit all resumes in their proposals**
6. **Ensure contractors submit resumes to EDC when certain staff who work on the project need to be replaced and update the fee schedules accordingly**
7. **Ensure contractors only bill for staff listed on the fee schedule**

NYCEDC disagrees with the assertion that a lack of oversight resulted in inappropriate payments. All payments were made for work product and work progress that was accepted by NYCEDC staff. That some of this work was performed by consultant staff that had not been preapproved does not undermine whether these payments were appropriate and justified. NYCEDC has strengthened its review administration of all contract requirements pertaining to approval of consultant staff.

8. **Carefully review consultant invoices and ensure supporting documentation is sufficient to justify payments**

All invoices submitted for payment to NYCEDC are *certified* by consultant management as to accuracy. Payments by NYCEDC are only made after NYCEDC staff accepts work products and work progress as conforming to the scope of work and standards of the contract. Moving forward, task orders and payment requests will more clearly identify assignments made under a percent completion mode or timesheet mode. Both payments are subject to NYCEDC acceptance of the work product or work progress.

9. **Ensure that all background checks are performed prior to contracts being awarded**

NYCEDC already complies with this recommendation. In regards to the contracts that were audited by the Comptroller's office, NYCEDC had prior precedence and clearances from NYC Department of Investigations on the contract vendors named in the findings. These contract vendors had ongoing open contracts with the City of New York, as well as NYCEDC, at the time of commencement.

10. **Ensure that contractors maintain insurance coverage as stated in contracts**

NYCEDC already complies with this recommendation. NYCEDC provided the Comptroller's Office with adequate proof of insurance coverage for the corresponding contracts. These included the following items:

- 38430001- Umbrella Liability per Occurrence and Aggregate,
- 38430001 Professional Liability Insurance per Occurrence,
- 49160001 Umbrella Liability per Occurrence

11. **Ensure that all requests to change the mandated insurance requirements be in writing**

This procedure will be changed to require written approval of changes.