

AUDIT REPORT

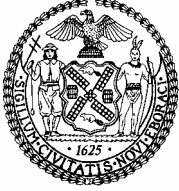


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit of Department of Design and Construction Monitoring of Payments to Cultural Institutions for Pass-Through City-Funded Capital Construction Projects

MD04-083A

June 27, 2005



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has conducted an audit to determine whether payments to cultural institutions monitored by the New York City Department of Design and Construction were accurate, documented, and legitimate.

The results of our audit, which are presented in this report, have been discussed with officials of the Department of Design and Construction, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that City funds are used effectively, efficiently, in the best interest of the public, and as intended.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

Report: MD04-083A
Filed: June 27, 2005

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*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit of Department of Design and Construction
Monitoring of Payments to
Cultural Institutions for Pass-Through
City-Funded Capital Construction Projects**

MD04-083A

AUDIT REPORT IN BRIEF

This audit determined whether payments to cultural institutions for pass-through New York City-funded (City) capital construction projects monitored by the New York City Department of Design and Construction (DDC) were accurate, documented, and legitimate.

Audit Findings and Conclusions

Payments to cultural institutions for pass-through City capital construction projects monitored by DDC were generally accurate, documented, and legitimate. In addition:

- Payment Requisitions, Contractor Routing and Signature Sheets, and Payment Audit Reports were approved, signed, and dated by appropriate DDC officials.
- For all sampled Payment Requisition packages, DDC's Project Manager (PM) attested that the amounts on the Payment Requisitions were legitimate and that all work had been inspected. The Payment Audit Reports for the most part did not disclose any material deductions by the Engineering Audit Office (EAO)—indicating that the PM's signature and approval of the payments were upheld.
- Payments were made to the cultural institutions within the 30-day time period mandated by the prompt payment provisions of the Procurement Policy Board Rules.
- The review process of the Payment Requisition packages by DDC's Pass-Through Program Unit, Engineering Audit Office, and Chief Financial Office was completed in a timely manner and according to DDC's formal procedures.

Our examination disclosed some weaknesses. However, we note that these concerns were not of a material or monetary nature and did not affect our opinion that payments to cultural

institutions for pass-through City capital construction projects monitored by DDC were generally accurate, documented, and legitimate. Specifically:

- 15 (94 percent) of the 16 Payment Requisition packages in our sample were approved by DDC officials, although they lacked one or more required documents.
- Five (31 percent) of the 16 Payment Requisition packages in our sample contained five instances, totaling \$54,565, in which cultural institutions included costs in the Payment Requisitions for the use of their own personnel to perform capital construction services without DDC's prior written approval. These costs were authorized to be paid by DDC.
- For two (13 percent) of the 16 Payment Requisition packages in our sample, the amounts requested by the cultural institutions on the Payment Requisitions for the payments to subcontractors did not match the amounts requested by the subcontractors on the Subcontractor Payment forms. The Payment Audit Reports prepared by the EAO did not indicate why the amounts differed.
- Payments, totaling approximately \$38 million, were made to 46 (33 percent) of the 141 subcontractors in our sample, even though the competitive bidding process was not followed.

Audit Recommendations

To address these issues, we make the following four recommendations:

- DDC should ensure that Payment Requisition packages contain required documentation prior to authorizing payments to cultural institutions.
- DDC should ensure that cultural institutions and their construction managers do not use their own personnel to perform capital construction services without DDC's prior written approval.
- DDC should ensure that Audit Reports are adequately filled out with detailed results of the desk audits to provide an adequate audit trail.
- DDC should ensure that cultural institutions select subcontractors according to required competitive bidding procedures.

INTRODUCTION

Background

DDC was created in October 1995 to assume responsibility for certain City capital construction projects. Such projects include those for City agencies, correctional and court facilities, and cultural institutions. Annually, DDC manages approximately \$4 billion for City capital construction projects.

DDC can enter into either a pass-through capital construction contract or a non-pass-through capital construction contract with a cultural institution (contractor).¹ For non-pass-through capital construction contracts, DDC directly handles the design and construction aspects of the projects. For pass-through capital construction contracts, DDC monitors the funding for the projects to the cultural institutions that are then responsible either for managing the design and construction of the projects themselves or for hiring a construction manager with the required experience to manage the projects.

Pass-through capital construction contracts are intended for projects costing \$1 million or more. To be eligible for a pass-through capital construction contract, a cultural institution must demonstrate that it possesses the expertise for the successful management, supervision, and completion of the project and that the project presents complicated scheduling issues that can best be resolved by the cultural institution having control over the performance of the work. A cultural institution agrees to complete a guaranteed scope of work for a fixed financial contribution by the City and to bear the responsibility to pay cost overruns.

Further, under a pass-through capital construction contract a cultural institution agrees to select all subcontractors—such as plumbers, painters, electricians, carpenters, or demolitionists—through a competitive bidding process that provides for obtaining at least three bids and that results in the selection of the lowest bidder, unless the cultural institution has obtained a waiver from DDC. The bidding process is monitored by DDC’s PM, a representative from DDC’s Pass-Through Program Unit, and DDC’s Agency Chief Contracting Officer (ACCO). The PM, at the work site of a capital construction project, is DDC’s representative to ensure that the work is performed in conformity to plans and specifications, is within budget, and is at a high level of quality.

Pass-through capital construction contract costs are paid to cultural institutions on a reimbursement basis through periodic (partial) payments. Cultural institutions submit a Payment Requisition describing the work performed and amount requested for payment. The Payment Requisition package can include invoices (or Application and Certificate for Payments) from the subcontractors, payroll records, a Certificate of Contractor/Subcontractor to the Comptroller form (Comptroller form), a Contractor/Subcontractor’s Certificate of Compliance form

¹ This audit focused on pass-through capital construction contracts with cultural institutions.

(Compliance form), and a Subcontractor Payment form.² For a substantial or final payment or for a payment of a retained amount—percentage held by DDC with each partial payment as security for faithful performance—a Certificate of Substantial/Final Completion form or a Retainage Release form must be submitted, respectively.

The PM ensures that a cultural institution has provided all the supporting documentation in each Payment Requisition package submitted to DDC. The PM attests that the amounts on the Payment Requisition are legitimate and that all work and materials included in the amount have been inspected by the PM. The PM signs the Payment Requisition, and then prepares, signs, and dates a DDC Contractor Routing and Signature Sheet (Routing Sheet)—an internal form used by DDC to track the dates that individual DDC units start and complete a review of a Payment Requisition package.

After being approved by the PM, the Payment Requisition package is submitted to the EAO. The EAO ensures that the payment request is mathematically accurate and that costs are supported and legitimate. The EAO also reviews payroll records submitted to ensure that the wage rates of the trades of workers are in conformance with the prevailing wage rates of their respective trades by the State Labor Law; and performs a site visit (or desk audit) to verify the amount of work that has been completed (percentage of completion), the appropriate use of staff and materials, and the conformance of work to approved drawings and specifications. After its review, the EAO signs and dates the Routing Sheet, and then prepares and signs a Payment Audit Report (Audit Report)—a report that details the results of the site audit (or desk audit) and indicates the amount the EAO has approved.

The Chief Financial Office (CFO) performs the final review of each Payment Requisition package. The CFO recalculates amounts on the Payment Requisition to check for mathematical accuracy and checks the City's Financial Management System (FMS) to verify that funding is available for payment. If funds are available, a payment voucher is prepared through FMS. The CFO signs and dates the Routing Sheet, and the payment information is entered in DDC's Paylog—a database that shows all payment information for each pass-through capital construction contract.

From Fiscal Year 2002 through Fiscal Year 2003, DDC monitored the funding of a total of 138 City capital construction payments to 12 cultural institutions that totaled \$125,233,890.

² A Comptroller form is a certification of the subcontractor used and its work and affirms that all provisions of §220 of the New York State (State) Labor Law have been followed; a Compliance form is a certification that §6-108 of the City's Administrative Code and the non-discrimination provision of the State Labor Law have been followed; a Subcontractor Payment form is a certification of the subcontractor, the value of the subcontract, the amounts previously paid to the subcontractor in prior Payment Requisitions, and the amount the subcontractor is requesting to be paid in the present Payment Requisition.

Objective

The objective of the audit was to determine whether payments to cultural institutions for pass-through City capital construction projects monitored by DDC were accurate, documented, and legitimate.

Scope and Methodology

The audit scope period was Fiscal Year 2002 through Fiscal Year 2003.

To obtain an understanding of the monitoring of pass-through capital construction contracts for cultural institutions, we spoke with DDC officials, including the Program Director of the Structures Division of the Cultural Program Unit; the Assistant Commissioner of the Structures Division of the Libraries, Cultural Institutions, and Pass-Through Program Units; the Director of the Pass-Through Program Unit; the Internal Audit Office Director; and the ACCO. We also spoke with several PMs from DDC's Pass-Through Program Unit, the Engineering Audit Officer and his staff; and the Chief Financial Officer of Budget and Finance and his staff. We visited two cultural institutions (the Brooklyn Museum of Art and Carnegie Hall) that had active City capital construction projects during our audit scope period and met with their officials to discuss how the bidding process for the selection of their subcontractors was conducted.

To understand the procedures for monitoring pass-through capital construction contracts, we reviewed DCA's *Criteria and Requirements for Pass-through Contracts*; *Client Manual*; *Engineering Audit Office Procedures*; and *Construction Project Manager Responsibilities*. We also reviewed the Procurement Policy Board (PPB) Rules, Comptroller's Directive #2, *Procedures for the Audit of Vouchers Submitted Under Cost Reimbursable Contractual Agreements*, and Directive #7, *Audit of Payment Vouchers Issued Under Contracts for Construction, Equipment, and Related Consultant Services*. In addition, we examined a standard pass-through capital construction contract between DDC and a cultural institution to obtain an understanding of what is expected of cultural institutions.

We obtained data from FMS pertaining to the 138 capital construction payments, totaling \$125,233,890, made to cultural institutions for Fiscal Year 2002 through Fiscal Year 2003. For our sample testing, we randomly selected 16 payments (corresponding to 11 cultural institutions and their 11 capital construction contracts) totaling \$8,521,288.³

For each of the 16 sampled payments, we determined whether there was a completed Document Checklist for all documents required by DDC and submitted in the Payment Requisition package. We determined whether all documents listed on the Document Checklist were in the Payment Requisition package. In addition, we ascertained whether a Check Register, invoices (or Application and Certificate for Payments) from the subcontractors, and canceled checks were reviewed by DDC personnel as part of the audit procedures of Comptroller's Directive #7. We reviewed the Payment Requisition packages for the required Routing Sheets

³ Thirteen of the 16 payments in our sample were partial payments. The remaining three payments were substantial or retainage release payments.

and Audit Reports and determined whether Payment Requisitions, Routing Sheets, and Audit Reports received the approvals and dated signatures of appropriate DDC personnel.

We reviewed all of the costs on the Payment Requisitions and invoices (or Application and Certificate for Payments) for each of the sampled payments and checked their mathematical accuracy and appropriateness. We also determined whether the amounts requested by the cultural institutions for subcontractors on the Payment Requisitions matched the amounts requested by the subcontractors on the Subcontractor Payment forms.

We reviewed the EAO Audit Reports for all sampled payments to determine whether they provided an adequate audit trail of the EAO review of the Payment Requisition packages. In addition, we ascertained whether there was adequate justification for any amounts requested by the cultural institutions that were either withheld or rejected by the EAO.

For all 16 payments, we compared the dates that the payments were made to the dates that the cultural institutions submitted the Payment Requisition packages to DDC and determined whether payments were made to the cultural institutions within the 30-day time period mandated by the prompt payment provisions of the PPB Rules. We reviewed the Routing Sheets and calculated the number of days between the start and completion dates of the review process for the PM, EAO, and CFO, to determine which of these DDC units, if any, caused any delays and the reason. We also ensured that the number of days for the review process for each of these DDC units was consistent with DDC's formal procedures.

We determined whether subcontractors used by the cultural institutions in our sample were selected through a competitive bidding process—in which the lowest bidder was chosen from a selection of at least three bids received—unless a waiver was granted by DDC. To do so, we reviewed Subcontractor Payment forms and Payment Requisitions for the 16 sampled payments and determined the number of subcontractors that were approved by DDC for various types of work at the cultural institutions. We were informed by DDC officials that the bidding documentation pertaining to the selection of these subcontractors should be obtained directly from the 11 cultural institutions. Therefore, we sent letters to each cultural institution requesting this documentation.

We determined whether DDC approved in writing the selection of the subcontractors in our sample and reviewed records concerning the subcontractors in the City Vendor Information Exchange System (Vendex). We ensured for each of the subcontractors in our sample that the PM and ACCO signed and dated the Request for Approval of Subcontractor forms (RFAS)—forms that are to be certified by both the PM and ACCO that the subcontractor chosen was the lowest and responsible bidder and that the subcontractor was checked and cleared through Vendex. For any files reviewed that had no RFAS forms, we checked whether there was some kind of written authorization from DDC officials in its place. We then obtained access to Vendex for those subcontractors that were approved by DDC to determine whether Vendex records showed any caution, warrant, or lien information, or any unsatisfactory performance evaluations that should have precluded DDC approval of the subcontractors, unless DDC granted waivers.

The results of the above tests, which were not projected to all payments, provided us a reasonable basis to determine whether payments to cultural institutions for pass-through City capital construction projects monitored by DDC were accurate, documented, and legitimate.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with DDC officials during and at the conclusion of this audit. A preliminary draft report was sent to DDC officials and was discussed at an exit conference held on May 27, 2005. On June 2, 2005, we submitted a draft report to DDC officials with a request for comments. We received a written response from DDC officials on June 16, 2005.

In their response, DDC officials generally agreed with the audit's findings and recommendations. They stated that it is their current policy to ensure that cultural institutions and their construction managers do not use their own personnel to perform capital construction services without DDC's prior written approval and that they have begun to tighten their policy on maintaining bidding documentation relating to the selection of subcontractors. They further stated:

“DDC is pleased with the audit's overall finding that ‘Payments to cultural institutions for pass-through City capital construction projects monitored by DDC were generally accurate, documented, and legitimate.’ The audit also recognized that DDC's internal review process works well.”

The full text of the response from DDC officials is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Payments to cultural institutions for pass-through City capital construction projects monitored by DDC were generally accurate, documented, and legitimate. In addition:

- Payment Requisitions, Routing Sheets, and Audit Reports were approved, signed, and dated by appropriate DDC officials.
- For all sampled Payment Requisition packages, the PM attested that the amounts on the Payment Requisitions were legitimate and that all work had been inspected. The Audit Reports for the most part did not disclose any material deductions by the EAO—indicating that the PM’s signature and approval of the payments were upheld.
- Payments were made to the cultural institutions within the 30-day time period mandated by the prompt payment provisions of the PPB Rules.
- The review process of the Payment Requisition packages by the PM, EAO, and CFO was completed in a timely manner and according to DDC’s formal procedures.

Our examination disclosed some weaknesses. However, we note that these concerns were not of a material or monetary nature and did not affect our opinion that payments to cultural institutions for pass-through City capital construction projects monitored by DDC were generally accurate, documented, and legitimate. Specifically:

- 15 (94 percent) of the 16 Payment Requisition packages in our sample were approved by DDC officials, although they lacked one or more required documents.
- Five (31 percent) of the 16 Payment Requisition packages in our sample contained five instances, totaling \$54,565, in which cultural institutions included costs in the Payment Requisitions for the use of their own personnel to perform capital construction services without DDC’s prior written approval. These costs were authorized to be paid by DDC.
- For two (13 percent) of the 16 Payment Requisition packages in our sample, the amounts requested by the cultural institutions on the Payment Requisitions for the payments to subcontractors did not match the amounts requested by the subcontractors on the Subcontractor Payment forms. The Audit Reports prepared by the EAO did not indicate why the amounts differed.

- Payments, totaling approximately \$38 million, were made to 46 (33 percent) of the 141 subcontractors in our sample, even though the competitive bidding process was not followed.⁴ Specifically, the files for these 46 subcontractors had one or more of the following deficiencies: lack of bid documents; bids, when received, did not total at least three bids; the lowest bidder was not selected; and lack of written approvals of subcontractors, including Vendex clearances, indicated either by RFAS forms or some other kind of documentation.

The issues cited above are discussed in greater detail in the following sections of the report.

Inadequate Documentation in Payment Requisition Packages

Of the 16 Payment Requisition packages in our sample, 15 (94 percent) were approved by DDC officials, although they lacked one or more required documents, as shown in the following Table I.

⁴ Our original sample consisted of 170 subcontractors that were approved by DDC for work at the cultural institutions. However, we received a letter from one of the cultural institutions stating that the files for its 29 subcontractors would have to be obtained from its Construction Manager and that the cost associated with organizing and collating the files would be a financial burden to the cultural institution. Thus, we eliminated the 29 subcontractors from our sample. The sample was then reduced to 141 subcontractors.

Table I

Summary of Lacking Documents in the 16 Sampled Payment Requisition Packages

Lacking Document	Purpose of Document	Number of Payment Requisition Packages Lacking Document	Percentage of Total Payment Requisition Packages
Document Checklist	Listing of all documents required by DDC and actually submitted by a cultural institution in the Payment Requisition package.	7	44 %
Comptroller form for contractor	Required by DDC's Document Checklist and is a certification by a cultural institution of the subcontractors used and their work and that all provisions of §220 of the State Labor Law have been followed.	3	19 %
Comptroller form for subcontractor	Required by DDC's Document Checklist and is a certification by each subcontractor that all provisions of §220 of the State Labor Law have been followed.	3	19 %
Compliance form for contractor	Required by DDC's Document Checklist and is a certification by a cultural institution that §6-108 of the City's Administrative Code and the non-discrimination provision of the State Labor Law have been followed.	2	13 %
Compliance form for subcontractor	Required by DDC's Document Checklist and is a certification by each subcontractor that §6-108 of the City's Administrative Code and the non-discrimination provision of the State Labor Law have been followed.	3	19 %
Retainage Release form	Required by DDC's Document Checklist and is a certification by DDC's PM that a cultural institution has satisfactorily performed its obligations under its contract with DDC and recommends that the retained amount—percentage held by DDC with each partial payment as security for faithful performance—be released.	2	67 %*
Payroll records for contractor	Required by DDC's Document Checklist and is a certification by a cultural institution of the hours worked and rates of wages of its employees and that the provisions of the Labor Law have been followed.	13	81 %
Payroll records for subcontractors	Required by DDC's Document Checklist and is a certification by each subcontractor of the hours worked and rates of wages of its employees and that the provisions of the Labor Law have been followed.	5	31 %
Check Register and Cancelled Checks	Listing of all checks paid (along with the cancelled checks) to subcontractors for goods or services provided and is an indication to DDC that the subcontractors have been paid. Comptroller's Directive #7 indicates that these documents should be reviewed by personnel as part of the audit procedures.	12	75 %
Invoices (or Application and Certificate for Payments) from subcontractors	Written records of goods or services provided by subcontractors and the amount charged for them sent to a cultural institution as a request for payment. Comptroller's Directive #7 indicates that these documents should be reviewed by personnel as part of the audit procedures.	7	44 %

*This represents two out of three Payment Requisition packages that were retainage release payments.

As shown above, seven of the sampled Payment Requisition packages lacked invoices (or Application and Certificate for Payments) from the subcontractors totaling \$138,202. For example, the file for a total payment of \$172,014 to New York Botanical Garden lacked invoices totaling \$80,858. In addition, the file lacked Compliance and Comptroller forms for each of the subcontractors and payroll records for the contractor and each of the subcontractors. In another example, the file of a total payment of \$1,435,384 made to the Brooklyn Museum of Art lacked invoices totaling \$1,348. In addition, the file lacked Compliance and Comptroller forms for the contractor, payroll records for each of the subcontractors and the contractor, a Check Register, and cancelled checks.

Thirteen of the sampled Payment Requisition packages lacked payroll records for the contractor, and five Payment Requisition packages lacked payroll records for each of the subcontractors. The Director of the EAO stated that since he started his tenure as Director, in 2002, he has ensured that with each Payment Requisition package, payroll records are submitted for contractors and each of the subcontractors.

In total, one of the Payment Requisition packages lacked six documents; three of the Payment Requisition packages lacked five documents; four of the Payment Requisition packages lacked four documents; six of the Payment Requisition packages lacked three documents; and one of the Payment Requisition packages lacked two documents. Although each of the 15 Payment Requisition packages lacked one or more required documents, these packages contained Routing Sheets and Audit Reports approved, signed, and dated by appropriate DDC officials. However, the lack of required documents indicates that the approval process of the payments was incomplete.

According to §3.23 of Directive #7, “audit procedures must include as appropriate the examination of original source documents, including invoices, paid bills, time sheets, payroll journals, expense accounts, checks and other City records.” Furthermore, according to the EAO’s formal procedures, Payment Requisition packages should contain payroll records; Document Checklists; Comptroller and Compliance forms; and Retainage Release forms.

We spoke to the auditors of the EAO about the lacking documents of our sampled Payment Requisition packages; they checked the packages and agreed that these documents were absent. Some of the auditors of the EAO have contacted the cultural institutions to try to obtain the lacking invoices (or Application and Certificate for Payments). While we agree that it is possible that these documents could be obtained at this point from the cultural institutions or from the subcontractors, the documents should have been in the Payment Requisition packages since payments have already been made by DDC to the cultural institutions. Without all the required documents, the EAO cannot be assured that costs are supported and legitimate; the wage rates of the workers are in conformance with the prevailing wage rates of their trades by State Labor Law; and the work is being done according to specified drawings and specifications.

At the exit conference, DDC officials stated that certain documents were not included in Payment Requisition packages because they were not required. This assertion is contrary to DDC’s formal procedures. For example, officials stated that Document Checklists were internal documents not required to be included in Payment Requisition packages. However, according to §4 (Key Payment Documents) of DDC’s *Engineering Audit Office Procedures*, Document

Checklists “must be completed and submitted with each payment package. Every document submitted must be checked off on the Document Checklist.” The procedures further state that a brief explanation must be indicated for any required documents, such as Comptroller forms for the contractors and subcontractors, Compliance forms for the contractors and subcontractors, and Retainage Release forms, that are not submitted.

Furthermore, at the exit conference, DDC’s Internal Audit Office Director stated that if no money is due to laborers in a Payment Requisition package submitted by a cultural institution, then Comptroller and Compliance forms for the contractors and subcontractors, and payroll records for the contractors and subcontractors would not have to be submitted. Regarding the Comptroller and Compliance forms for the contractors and subcontractors, the forms specifically state that they are to be “attached to each application for Partial, Substantial Completion, or Final Payment.” The forms further state that “if no money is due to any laborers, state ‘None due to laborers.’ If no money is due to other persons for material and/or supplies delivered for use on the work, state ‘None due to material men and supply men.’”

Regarding the payroll records for the contractors and subcontractors, §3 (Prevailing Wage Enforcement) of DDC’s *Engineering Audit Office Procedures* state, “Contractors must attach weekly payroll reports together with the payroll reports of their subcontractors with each requisition for payment. Contractors are held accountable for the accuracy and authenticity of payroll reports submitted by their subcontractors.” Further, Article 12, § 12.5, of the contract between DDC and the cultural institution states, “Contractors are to furnish and shall use all reasonable efforts to cause each subcontractor to furnish to DDC a verified copy of its payroll to satisfy DDC that the provisions of the Labor Law as to the hours of employment and rates of wages are being observed.”

Recommendation

1. DDC should ensure that Payment Requisition packages contain required documentation prior to authorizing payments to cultural institutions.

DDC Response: “DDC fully agrees that a Payment Requisition package must contain all required documentation. However, DDC believes that the . . . auditors misunderstood the purpose and meaning of some of the documents they listed as a ‘lacking document.’

“There is no requirement that all ‘invoices from subcontractors’ or ‘check register and cancelled checks’ be attached to the Payment Requisition package. . . . DDC maintains the right to examine this documentation if it deems necessary. . . . Invoices from subcontractors are inconsequential if the payment is for a lump sum contract where the amount is determined by the percentage of work completed. DDC’s internal forms . . . are not required by the Comptroller’s Office or any other regulatory authority and are only required by DDC to make the payment process easier.

“DDC’s current protocol requires payrolls be attached to the Payment Requisition. However, during the audit period, the practice was for EAO to examine the payroll records in the field where they were maintained.”

Auditor Comment: Most of the documents listed as lacking in Table I were required by DDC’s *Engineering Audit Office Procedures*. Although DDC’s procedures do not require invoices from subcontractors to be attached to the Payment Requisition packages, Comptroller’s Directives as well as PPB Rules require that these documents be reviewed by personnel as part of the audit procedures and be filed as part of the permanent payment file.

While DDC officials state that it may not be practical for cultural institutions to submit check registers and cancelled checks, they maintain the right to examine this documentation. However, we found no evidence in the files that these documents had been reviewed.

DDC officials also stated that “invoices from subcontractors are inconsequential if the payment is for a lump sum contract where the amount is determined by the percentage of work completed.” The invoices we cited as lacking were not for payments of percentage of work completed. These invoices were for furnishings, supplies, insurance, and printing. Moreover, even if the invoices we cited had been for payments of percentage of work completed, DDC still needs to have written documentation in the payment files from the subcontractors detailing the calculation of the percentage of work completed.

DDC officials contend that during the audit period the practice was for EAO to examine the payroll records in the field where they were maintained. However, we note that §3 of DDC’s *Engineering Audit Office Procedures*—procedures in existence since November 1, 1997—states, “Contractors must attach weekly payroll reports together with the payroll reports of their subcontractors with each requisition for payment.”

**Cultural Institutions Included Costs in Payment Requisitions
For the Use of Their own Personnel to Perform
Capital Construction Services without the Prior Written Approval of DDC**

Five (31 percent) of the 16 Payment Requisition packages in our sample contained five instances, totaling \$54,565, in which cultural institutions included costs in the Payment Requisitions for the use of their own personnel to perform capital construction services without DDC’s prior written approval. These costs were authorized to be paid by DDC.

Article 2, §2.1, of the contract between DDC and the cultural institutions states, “The Contractor shall enter into subcontracts for all construction work to be done including separate contracts for electrical, plumbing and mechanical work; provided, however, that the Contractor, may with the Commissioner of DDC’s prior written approval, utilize its employees to perform work.”

Table II, following, summarizes the five Payment Requisition packages, totaling \$54,565, for which costs relating to the cultural institutions use of their own personnel to perform capital construction services were approved to be paid by DDC despite not having prior written approval.

Table II

Summary of the Five Payment Requisition Packages with
Costs Relating to the Cultural Institutions Use of Their Own Personnel to Perform Capital Construction
Services

Cultural Institution	Payment Amount Authorized by DDC to Cultural Institution	Amount of Costs Relating to the Use of Own Personnel Included in Payment Authorized by DDC (from Payment Requisition)	Description of Costs Relating to the Use of Own Personnel Authorized by DDC (from Payment Requisition)
New York Botanical Garden	\$ 172,014	\$14,652	Temp Staging, NYBG Force
New York Botanical Garden	\$ 236,136	\$17,272	Temp Staging, NYBG Force
Brooklyn Museum of Art	\$1,127,018	\$12,767	Mobilization, Museum Security
Brooklyn Museum of Art	\$1,435,384	\$ 9,115	Mobilization, Museum Security
Brooklyn Academy of Music	\$ 480,623	\$ 759	Museum Labor, Stagehands
Total	\$3,451,175	\$54,565	

The payments identified in Table II should not have been allowed. The total amount of these types of costs for all payments made under our sampled contracts to the New York Botanical Garden, Brooklyn Museum of Art, and Brooklyn Academy of Music was \$70,000, \$126,357, and \$2,239, respectively.

The Director of the EAO stated that cultural institutions and their construction managers cannot use their own employees to perform capital construction work. He added that the only circumstance permitting such payment would be if a cultural institution (or its construction manager) competitively bid the use of its own labor, and its bid was the lowest.

Recommendation

2. DDC should ensure that cultural institutions and their construction managers do not use their own personnel to perform capital construction services without DDC's prior written approval.

DDC Response: “DDC fully agrees with this recommendation and it is the current DDC policy.”

**Discrepancies between Subcontractor Payment Forms
And Payment Requisitions Not Adequately Explained**

For two (16 percent) of the 16 Payment Requisition packages in our sample, the amounts requested by the cultural institutions on the Payment Requisitions for paying the subcontractors were greater than the amounts requested by the subcontractors on the Subcontractor Payment forms. The Audit Reports prepared by the EAO did not indicate why the amounts differed.

For one cited case, the Museum of Jewish Heritage had requested payment for 10 subcontractors, totaling \$1,734,894, on its Payment Requisition. However, the total requested for payment by the subcontractors was \$1,673,282—\$61,612 less. For one of its 10 subcontractors, the amount requested on the Payment Requisition was \$870,695; however, the amount requested by the subcontractor on the Subcontractor Payment form was less than that—\$827,160. The Audit Report prepared by the EAO indicated that a desk audit was conducted and that the amounts for each of the subcontractors listed on the Payment Requisition were verified—there was no explanation as to why the amounts requested by the subcontractors on the Subcontractor Payment forms did not match the amounts submitted by the cultural institution on the Payment Requisition.

In the second cited case, the New York Botanical Garden had requested payment for 11 subcontractors, totaling \$655,780, on its Payment Requisition. However, the total requested for payment by the subcontractors was \$638,821—\$16,959 less. For one of its 11 subcontractors, the amount requested on the Payment Requisition was \$69,450; however, the subcontractor did not request any amount on the Subcontractor Payment form. Again, the Audit Report prepared by the EAO indicated that a desk audit was conducted and that the amounts for each of the subcontractors listed on the Payment Requisition were verified—there was no explanation as to why the amounts requested by the subcontractors on the Subcontractor Payment forms did not match the amounts submitted by the cultural institution on the Payment Requisition.

EAO auditors stated that there can be many reasons why amounts for the same item shown on a Subcontractor Payment form and a Payment Requisition can differ. The EAO auditors stated the differences could be due to subcontractors making mistakes in their requests that the cultural institutions would catch; the cultural institutions would then request the correct amounts from DDC. EAO auditors also stated that sometimes they have to withhold a certain amount of moneys from a cultural institution’s Payment Requisition package because of lacking documents. Once the lacking documents are produced, the cultural institution in its next Payment Requisition package would request the amount of moneys withheld in addition to the requested amount for that period, and this would cause the amount requested by the cultural institution for the subcontractors to be more than the amount requested by the subcontractors.

Although the EAO explanations are reasonable, they are not noted on the EAO Audit Reports. The EAO auditors did agree that the Audit Reports should have been more detailed

regarding the verification of items on the Payment Requisitions and the reasons for discrepancies.

During the exit conference, DDC officials stated that the EAO Audit Reports need not be detailed and should only note any deficiencies and adjustments to the payment amounts requested. However, according to §5 of Directive #7, the EAO must retain all notes, documents, reports, and recommendations. This documentation must be sufficiently thorough to support the audit findings, payment certifications, disputed payments, or any other action taken.

Recommendation

3. DDC should ensure that Audit Reports are adequately filled out with detailed results of the desk audits to provide an adequate audit trail.

DDC Response: “DDC fully agrees that the accounting behind the EAO Audit Report and Payment Requisition should clearly supply an adequate audit trail and believes it is in compliance.

“The amount requested by a subcontractor relates to the total work performed by that contractor. However, the amount requested for reimbursement by the institution may only represent a portion of the subcontractor’s total work. Funding for subcontractor work can come from numerous sources . . . and reimbursement can occur at various time intervals. . . . Thus it is illogical to assume that . . . EAO should reconcile any differences.

“EAO does verify that the percentage of work completed is correct and that the institution’s request for subcontractor reimbursement correlates to the correct work completed to date and previous payments paid resulting in a valid amount owed.”

Auditor Comment: In their response, DDC officials stated that the amount requested by a subcontractor on the Subcontractor Payment form relates to the total work performed by that contractor. This is not accurate; the Subcontractor Payment form is a certification by the subcontractor and includes various amounts, such as the value of the subcontract, the amounts previously paid to the subcontractor in prior Payment Requisitions, and the amount the subcontractor is requesting to be paid in the present Payment Requisition. Our analysis compared the amounts requested by the cultural institutions on the Payment Requisitions for paying the subcontractors to the amounts requested by the subcontractors on the Subcontractor Payment forms to be paid.

We note in the report that there can be many reasons why amounts for the same item shown on a Subcontractor Payment form and a Payment Requisition can differ. Although the EAO’s general explanations for differences are reasonable, the reasons for the differences in the cited cases are not noted in the EAO Audit Reports for the payments. Any differences between essential documents such as Subcontractor Payment forms and Payment Requisitions should be detailed in the EAO Audit Reports.

Incomplete Bid Documentation

Payments totaling approximately \$38 million were made to 46 (33 percent) of the 141 subcontractors in our sample, totaling approximately \$124 million, even though the competitive bidding process was not followed, as discussed below.

- For 10 subcontractors, there was no evidence that bids for capital construction services were received; the value of these 10 subcontracts totaled approximately \$23 million. For 9 of these subcontractors, there was no evidence in the files that proposals were sent out to prospective subcontractors. For example, the Museum of Jewish Heritage entered into a \$287,672 contract with a subcontractor to provide structural steel. We found no evidence that proposals were sent out for this work or that bids were received.
- For the contracts of 21 subcontractors, bids for the awarded subcontractors were received, but the minimum of three bids was not obtained as required. The value of these 21 subcontracts totaled approximately \$7.7 million.
- For the contracts of eight subcontractors, at least three bids were received but the lowest bidder was not selected. The value of these eight subcontracts totaled approximately \$2.2 million. There was no written documentation from DDC granting a waiver allowing the lowest bidder not to be chosen.
- For 15 subcontractor contracts, there was no evidence of either approved RFAS forms or other DDC written approvals permitting use of the selected subcontractors. When we questioned a Brooklyn Academy of Music official about three of his files that lacked DDC written approvals, he stated that he sent letters to DDC asking for approvals to use the subcontractors but never received responses. Thus, he assumed he could use the subcontractors since DDC never stated otherwise.

Article 5, §5.1, of the contract between DDC and the cultural institutions states that work is to be subcontracted only after obtaining at least three responsible competitive bids in writing, after which the lowest bidder is selected, unless a waiver is obtained from DDC.

According to DDC's procedures, each cultural institution must submit a RFAS form for each subcontractor selected to DDC's PM. After the PM determines that the subcontractor was selected in accordance with the terms of the pass-through capital construction project and has the technical experience and skills for the work, the subcontractor must be checked in Vendex by the ACCO. The PM then is to sign the RFAS form and return it to the cultural institution as a written notification that the subcontractor has been approved by DDC.

To ensure that the cultural institutions are receiving competitive prices from qualified subcontractors, the competitive bidding process must be followed.

Recommendation

4. DDC should ensure that cultural institutions select subcontractors according to required competitive bidding procedures.

DDC Response: “DDC fully agrees with this recommendation and has tightened our policy on maintaining bidding documentation relating to the selection of subcontractors. . . . During the audit period bidding documentation (although examined by DDC’s Cultural Unit) was maintained and stored at the cultural institutions. DDC’s current policy requires that bid documentation be submitted with the appropriate Payment Requisition to EAO; in addition, bid copies are also filed and maintained within DDC’s permanent project files.”

Auditor Comment: DDC officials stated that during our audit period, bidding documentation for the selection of subcontractors while maintained at cultural institutions was reviewed by the Cultural Unit. However, for the subcontractors cited in our report, we found no evidence that all necessary bidding documentation was examined by DDC.

Regardless of whether the cultural institutions or DDC maintain bidding documentation, the competitive bidding process for all subcontractors needs to be followed, and documentation of this process needs to be maintained.



NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION

DAVID J. BURNEY, AIA
Commissioner

June 16, 2005

Mr. Greg Brooks
Deputy Comptroller
NYC Office of the Comptroller
1 Centre Street
New York, NY 10007

Re: NYC Comptroller's Draft Audit Report on
The Department of Design and Construction
Monitoring of Payments to Cultural
Institutions for Pass-Through City-Funded
Capital Construction Projects
MD04-083A

Dear Mr. Brooks:

Thank you for the opportunity to respond to the draft audit on the Department of Design and Construction Monitoring of Payments to Cultural Institutions for Pass-Through City-Funded Capital Construction Projects before its public release. DDC is pleased with the audit's overall finding that "Payments to cultural institutions for pass-through City capital construction projects monitored by DDC were generally accurate, documented, and legitimate." The audit also recognized that DDC's internal review process works well.

Audit Recommendation # 1: "DDC should ensure that the Payment Requisition packages contain required documentation prior to authorizing payments to cultural institutions."

DDC's Response: DDC fully agrees that a payment requisition package must contain all required documentation. However, DDC believes that the NYC Comptroller's auditors misunderstood the purpose and meaning of some of the documents they listed as a "lacking document" in their report. For example, there is no requirement that all "invoices from subcontractors" or "check register and cancelled checks" be attached to the payment requisition package as indicated in Table 1 of the draft audit report. DDC maintains the right to examine this



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documentation if it deems necessary, but it is not practical to require a contractor to wait three to four months for cancelled checks before requesting reimbursement. Invoices from subcontractors are inconsequential if the payment is for a lump sum contract where the amount is determined by the percentage of work completed.

In addition, among the missing documentation are DDC's internal forms, such as a document checklist and a retainage release form. These forms are not required by the Comptroller's Office or any other regulatory authority and are only required by DDC to make the payment process easier.

In reference to missing payroll records, DDC's current protocol requires payrolls be attached to the payment requisition. However, during the audit period, the practice was for EAO to examine the payroll records in the field where they were maintained. EAO verified that the payrolls correlated to work completed and that the appropriate prevailing wages were paid. DDC's Internal Audit Director was misquoted in the draft audit report relating to periods of no payroll, DDC contends that for such periods certified payrolls are not required to be submitted by subcontractors.

Audit Recommendation # 2: " DDC should ensure that cultural institutions and their construction managers do not use their own personnel to perform capital construction services without DDC's prior written approval."

DDC's Response: DDC fully agrees with this recommendation and it is the current DDC policy. However, it should be noted that the magnitude of this infraction is insignificant since:

- The total amount of \$54,000 in personnel costs was a small subset to the audit sample of \$8.5 million in payments (approximately ½ of 1%)
- All personnel work was for contractual agreed to work and within the project scope
- All workers were paid prevailing wage rates
- It is often more efficient for cultural institutions to direct their own work force to perform ancillary work due to the nature of fragile and valuable items within the institution.

Audit Recommendation # 3: "DDC should ensure that Audit Reports are adequately filled out with detailed results of the desk audits to provide an adequate audit trail."



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DDC's Response: DDC fully agrees that the accounting behind the EAO audit report and payment requisition should clearly supply an adequate audit trail and believes it is in compliance. It is DDC's position that the NYC Comptroller's auditors did not fully comprehend the complex nature of and the accounting relating to payment requisitions for pass-through cultural institutions.

The draft audit report cited two examples in which the amounts requested by subcontractors did not agree with the amount requested by the institution for that work. The NYC Comptroller's auditors failed to understand that the amount requested by a subcontractor relates to the total work performed by that contractor. However, the amount requested for reimbursement by the institution may only represent a portion of the subcontractor's total work. Funding for subcontractor work can come from numerous sources (City funding representing only one source) and reimbursement can occur at various time intervals (creating timing differences) from these different funding sources. Thus it is illogical to assume that both (institution's & subcontractor's request) should agree or that EAO should reconcile any differences. In addition, EAO is not privy to funding issues, amounts, deductions or the timing of payments by other funding sources – thus making it impossible to determine the nature of any differences. Furthermore, the amount of the City reimbursement for a subcontractor is limited to a contractual agreed to amount (as reflected in the institution's detailed payment requisition), thus avoiding the possibility of overpayment to the institution or subcontractor.

EAO does verify that the percentage of work completed is correct and that the institution's request for subcontractor reimbursement correlates to the correct work completed to date and previous payments paid resulting in a valid amount owed. It should be noted that in both cases cited in the draft audit report reimbursement was valid and as per contractual agreement.

Audit Recommendation # 4: "DDC should ensure that cultural institutions select subcontractors according to required competitive bidding procedures."

DDC's Response: DDC fully agrees with this recommendation and has tightened our policy on maintaining bidding documentation relating to the selection of subcontractors. It should be noted that during the audit period bidding documentation (although examined by DDC's Cultural Unit) was maintained and stored at the cultural institutions. DDC's current policy requires that bid documentation be submitted with the appropriate payment requisition to EAO; in



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addition, bid copies are also filed and maintained within DDC's permanent project files.

DDC has been able to examine some files from some institutions in which the draft audit report claims were missing bidding documentation. Our examination revealed that some of this missing documentation was indeed present in the files. However, due to the short period of time allowed for DDC's response to the draft audit findings we have been unable to obtain all files from all institutions with alleged missing bidding documents. Please note, the draft audit report was issued on June 2, 2005 and our response is due by June 16, 2005.

DDC strongly instills in our staff that compliance must take place with all competitive bidding rules and regulations and believes that this draft audit finding has more to do with poor record maintenance (by the cultural institutions - going back to 1998) than with non-compliance of the rules by DDC staff.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David Burney". The signature is written in a cursive, somewhat stylized font.

David J. Burney, AIA