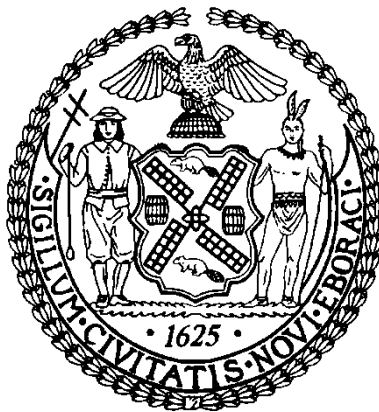


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

MANAGEMENT AUDIT

**Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Human Resources
Administration's Awarding of Non-competitive
and Limited-competition Contracts**

ME11-088A

May 3, 2012

<http://comptroller.nyc.gov>



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

John C. Liu
COMPTROLLER

May 3, 2012

To the Residents of the City of New York

My office has audited the Human Resources Administration (HRA) to determine whether it has adequate controls relating to the awarding of contracts on a non-competitive or limited-competition basis and whether it evaluated contractor performance before awarding such contracts. We audit programs such as this to determine whether City agencies are effectively monitoring their contract awards process.

The audit concluded that HRA has insufficient controls relating to the awarding of contracts on a non-competitive or limited-competition basis and did not always evaluate contractor performance before awarding such contracts. The audit identified several internal control weaknesses relating to the awarding of such contracts that should be addressed. Specifically, HRA did not have an effective central tracking system for monitoring contract expirations to ensure that new Requests for Proposals (RFPs) were issued in a timely manner and that the use of contract extensions was limited. In addition, HRA did not always conduct performance evaluations of vendors prior to contract renewals or extensions.

To address these issues, the audit recommended that, among other things, HRA: develop an effective central tracking system to monitor the expiration of contracts; ensure that the process of completing pre-solicitation reviews, issuing RFPs, and awarding contracts is completed in a timely manner; and ensure that vendor evaluations are conducted prior to contract renewals or extensions.

The results of this audit have been discussed with HRA 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,

A handwritten signature in blue ink that reads "J.C. Liu".

John C. Liu

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

**Audit Report on the Human Resources
Administration's Awarding of Non-competitive
and Limited-competition Contracts**

ME11-088A

AUDIT REPORT IN BRIEF

This audit determined whether the Human Resources Administration (HRA) had adequate controls relating to the awarding of contracts on a non-competitive or limited-competition basis and whether HRA evaluated contractor performance before awarding such contracts. The primary scope of the audit was non-competitive or limited-competition contracts awarded by HRA during Fiscal Year 2010.

HRA assists individuals and families in achieving and sustaining their maximum degree of self-sufficiency. HRA provides cash assistance, public health insurance, employment services, and other support services. HRA uses many vendors to provide these services. Contracts with vendors are awarded based on the procurement method used, which is an indicator of whether the contract was awarded on a competitive, non-competitive, or limited-competition basis. Requests for Proposals (RFPs) are one of the methods used to award contracts on a competitive basis. According to the New York City Procurement Policy Board (PPB) Rules, "procurement by competitive sealed proposals is the preferred method for awarding contracts for ... client ... services." A significant portion of HRA contracts is for the provision of client services.

Renewals and negotiated acquisition extensions are methods used to continue existing contracts for limited periods of time. Renewals and extensions are considered to be awarded on a non-competitive basis. Negotiated acquisitions are used in time-sensitive situations in which vendors must be retained quickly or when there are only a few vendors available to provide the goods and services needed. Since the agency need not negotiate with each qualified vendor, negotiated acquisition contracts are considered to be awarded on a limited-competition basis.

According to the New York City Financial Management System (FMS), 302 HRA-related contracts valued at approximately \$618 million were awarded in Fiscal Year 2010.

Audit Findings and Conclusions

HRA has insufficient controls relating to the awarding of contracts on a non-competitive or limited-competition basis and did not always evaluate contractor performance before awarding such contracts.

For our sampled contracts, HRA obtained the necessary approvals to award the contracts on a non-competitive or limited-competition basis. HRA had the required written justifications, Agency Chief Contracting Officer (ACCO) approvals, and City Chief Procurement Officer (CCPO) authorizations for these contracts. However, HRA had several internal control weaknesses relating to the awarding of these contracts that should be addressed. Specifically, HRA:

- did not have an effective central tracking system for monitoring contract expirations to ensure that new RFPs were issued in a timely manner and that the use of contract extensions was limited;
- did not always conduct performance evaluations of vendors prior to contract renewals or extensions;
- did not publish notices to renew contracts in accordance with PPB Rules; and
- lacked its own written procurement policies and procedures.

Audit Recommendations

To address these issues, the audit recommends, among other things, that HRA:

- Develop an effective central tracking system to monitor the expiration of contracts.
- Ensure that the process of completing pre-solicitation reviews (PSRs), issuing RFPs, and awarding contracts is completed in a timely manner.
- Ensure that vendor evaluations are conducted prior to contract renewals or extensions.
- Ensure that its notices of intent to renew contracts are published in a timely manner.
- Finalize and distribute to appropriate staff a comprehensive set of written policies and procedures detailing the contract procurement process.

Agency Response

In its response, HRA generally agreed to implement or continue to implement the audit's recommendations, but disputed most of the audit's findings. After carefully reviewing HRA's arguments, we found them to be without merit.

INTRODUCTION

Background

HRA assists individuals and families in achieving and sustaining their maximum degree of self-sufficiency. HRA provides cash assistance, public health insurance, employment services, and other support services.

HRA uses many vendors to provide these services. Contracts with vendors are awarded based on the procurement method used, which is an indicator of whether the contract was awarded on a competitive, non-competitive, or limited-competition basis. RFPs are one of the methods used to award contracts on a competitive basis. According to the PPB Rules, “procurement by competitive sealed proposals is the preferred method for awarding contracts for ... client ... services.” A significant portion of HRA contracts is for the provision of client services.

Renewals and negotiated acquisition extensions are methods used to continue existing contracts for limited periods of time. Renewals and extensions are considered to be awarded on a non-competitive basis. Negotiated acquisitions are used in time-sensitive situations in which vendors must be retained quickly or when there are only a few vendors available to provide the goods and services needed. Since the agency need not negotiate with each qualified vendor, negotiated acquisition contracts are considered to be awarded on a limited-competition basis.

According to FMS, 302 HRA-related contracts valued at approximately \$618 million were awarded in Fiscal Year 2010, as shown in Table I.

Table I
HRA-Related Contracts Awarded in Fiscal Year 2010

Award Method	Number of Contracts	Total Value of Contracts	Percent of Total Contract Dollars Awarded
Non-competitive and Limited-competition (HRA-awarded contracts)	68	\$ 381,121,351	62%
Non-competitive and Limited-competition (multi-agency contracts awarded by the Mayor’s Office)	5	\$ 111,824,100	18%
Other Award Methods	229	\$ 125,146,816	20%
Totals	302	\$ 618,092,267	100%

Of the 68 non-competitive or limited-competition contracts awarded by HRA during Fiscal Year 2010, which are the subject of this audit, 31 were contract renewals, 36 were negotiated acquisition extensions, and one was a negotiated acquisition.

According to PPB Rules, contract renewals must be approved by the ACCO. The recommendation for renewal to be approved by the ACCO should include an assessment of the vendor's performance during the prior contract period. In addition, for client services contracts, the recommendation for renewal should include statements that the services are still needed and that the renewals of the contracts are in the best interest of the City.

PPB Rules also state that the ACCO must justify the use of the negotiated acquisition procurement method by making a determination that it is not practicable or advantageous to award a contract by competitive sealed bids or proposals. In addition, for negotiated acquisition extensions, the ACCO must show that there is a compelling need to extend a contract one or more times. Furthermore, the CCPO must authorize the use of the negotiated acquisition method for a particular procurement or type of procurement.

Objectives

The objectives of this audit were to determine whether HRA has adequate controls relating to the awarding of contracts on a non-competitive or limited-competition basis and whether HRA evaluates contractor performance before awarding such contracts.

Scope and Methodology Statement

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

The primary scope of the audit was non-competitive or limited-competition contracts awarded by HRA during Fiscal Year 2010. Please refer to the Detailed Scope and Methodology section at the end of this report for a discussion of the specific procedures followed and the tests conducted on this audit.

Discussion of Audit Results

The matters covered in this report were discussed with HRA officials during and at the conclusion of this audit. A preliminary draft report was sent to HRA officials on January 10, 2012, and discussed at an exit conference held on January 31, 2012. On February 21, 2012, we submitted a draft report to HRA officials with a request for comments. We received a written response from HRA on March 13, 2012. In its response, HRA disputed most of the audit's

findings, but generally agreed to implement or continue to implement the audit's recommendations.

Unfortunately, HRA's response includes numerous misrepresentations and obfuscations, including a gross mischaracterization of the manner in which the auditors considered documentation provided by the agency. HRA claims that none of the information provided by the agency after the exit conference was included in the draft report. This is simply false. Whenever HRA provided *credible* documentation relating to a finding in the audit report, the documentation was carefully reviewed and the finding was adjusted as necessary. For example, HRA provided certain spreadsheets that it claims to have used to track the expiration and re-solicitation of its contracts. As a result, we added a reference to these spreadsheets in the draft report. However, the mere existence of these spreadsheets did not demonstrate that HRA effectively used them to track its contracts to ensure that new contracts were awarded before existing ones expired. Furthermore, and all too often, the "documentation" that HRA provided was merely a variety of assertions, without sufficient, appropriate supporting evidence, that the agency had handled various contracts in a timely and proper manner.

After carefully reviewing HRA's arguments, we found them to be without merit. HRA's written response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

HRA has insufficient controls relating to the awarding of contracts on a non-competitive or limited-competition basis and did not always evaluate contractor performance before awarding such contracts.

For our sampled contracts, HRA obtained the necessary approvals to award the contracts on a non-competitive or limited-competition basis. HRA had the required written justifications, ACCO approvals, and CCPO authorizations for these contracts. However, HRA had several internal control weaknesses relating to the awarding of these contracts that should be addressed. Specifically, HRA:

- did not have an effective central tracking system for monitoring contract expirations to ensure that new RFPs were issued in a timely manner and that the use of contract extensions was limited;
- did not always conduct performance evaluations of vendors prior to contract renewals or extensions;
- did not publish notices to renew contracts in accordance with PPB Rules; and
- lacked its own written procurement policies and procedures.

These deficiencies are discussed in more detail in the following sections of this report.

Ineffective Central Tracking System

HRA officials claim that they use a central tracking system to ensure that its contracts are re-solicited in a timely manner. They provided spreadsheets that identify ongoing contracts and the associated expiration dates and stated that they use such spreadsheets to track the expiration of their contracts. However, there is little evidence that these spreadsheets have been effectively used to track expiring contracts and to issue new RFPs. Without an effective central tracking system to ensure that program areas complete PSRs and that the agency issues RFPs and awards new contracts before existing contracts expire, HRA has often had to extend its contracts many times. As a result, HRA might have missed opportunities to select other qualified vendors to provide the contracted services at more competitive prices. Furthermore, poor planning for the re-solicitation of contracts can disrupt the services provided by the vendors. When contracts lapse and new contracts are not awarded or registered through the City Comptroller on a timely basis, vendors may discontinue the provision of services or may provide the services at a risk of being paid late or of not being paid at all.

HRA Response: “We disagree ... with the conclusion that HRA does not currently have an effective tracking system. Subsequent to the January 12, 2012 exit conference, HRA demonstrated to your auditors that it previously used both the yearly human services plan and various Excel-formatted spreadsheets to track procurement projects. In addition, HRA’s Office of Contracts meets with major program areas at least once monthly. As part of these monthly meetings, the Office of Contracts requests ‘pipeline’ reports of future procurements, including re-procurements of contracts that are nearing separation. Moreover, in January 2012, the Office of Contracts implemented a new electronic

tracking system, Procurement Tracking System, to assist in the tracking of contract and procurement milestones. This new tracking system was also demonstrated to the auditors.”

Auditor Comment: The audit report does not question the existence of a central tracking system at HRA. The audit report simply states that whatever system HRA has been using to track the expiration and re-solicitation of its contracts has been ineffective. Clear evidence of the ineffectiveness of HRA’s central tracking system is presented in the next two sections.

Delays in Processing RFPs and in Awarding Contracts

Delays in initiating and processing new RFPs have led to the awarding of multiple extensions. Each of the 12 negotiated acquisition extension contracts in our sample had multiple extensions. One contract was extended twice and then discontinued. However, of the remaining 11 contracts, eight were extended four times before new contracts were awarded under a new RFP, and two were extended four times and another contract five times without new contracts having been awarded. The excessive use of extensions is a concern because there might have been other qualified vendors willing to provide the services at a lower cost than the existing vendors.

HRA does not consistently complete PSRs and issue RFPs in a timely manner to ensure that new contracts are in place to continue needed services. HRA officials stated that the procurement process, from the PSR, in which the agency determines that a procurement is needed, to the issuance of an RFP and the awarding of a contract, should take on average about 15 months. The vendors for eight of the 23 contracts in our sample were recently awarded new contracts to replace their expired contracts. However, HRA’s procurement process for these eight contracts took an average of about 32 months to complete. Of the remaining 15 contracts, two of them, as of January 31, 2012, were set to expire within five months, but HRA had still not completed new PSRs. Given that HRA stated that the process from the PSR to the contract award should take on average about 15 months, delays in completing PSRs can lead to the issuance of multiple extensions in order to maintain services.

HRA Response: “... the auditor’s sampling contained anomalies that occurred during the procurement process. These anomalies led to the 32 month delay. The reason for the delay was presented to, and reviewed by, the Office of the Comptroller prior to the contracts being registered. The eight contracts in question were with providers who service clients of HRA’s HIV/AIDS Services Administration. Seven [of these] contracts were for scatter-site supportive housing. Due to the overwhelming response to the RFP, as well as the intricacies of the requirements, an inordinate amount of time was required to review and evaluate the proposals. In addition, because the competition resulted in the selection of new providers, additional time was necessary to transition the clients to the new vendors. This transition was necessary, and had to be exact, due to the delicate and sensitive nature of the services provided.

“Moreover, one of the contracts is for congregate supportive housing. For this particular procurement, HRA could not award a contract because of issues regarding ownership of the building. Many vendors who were awarded contracts for congregate supportive housing had existing arrangements for long-term financing. For these it was necessary for HRA to negotiate with the vendors in order to award the contracts for a term that would be consistent with their financing arrangements. Please note that the audit did not take into account delays in the procurement process that were outside of HRA’s control.

“Finally, HRA does not agree that there were contracts in the sample that did not have an ACCO-approved Pre-solicitation Review Report for the re-procurement. All re-procurements for contracts included in the sample are in various stages of the process.”

Auditor Comment: Although we repeatedly requested that HRA provide us with documentation that would support its assertions and explanations concerning these eight contracts, no such documentation was provided. Furthermore, even if these contracts involved as many complexities as HRA asserts, an effective tracking system would have identified those procurements that were especially complex and initiated the contract re-solicitation process earlier for them.

In reference to HRA’s comments on the PSRs, HRA is free, of course, to say that it does not agree with the finding; however, it has not provided any evidence to refute the finding that two contracts in our sample were set to expire in the near future and that new PSRs had not been completed for them.

Accordingly, in the absence of adequate evidence to the contrary, these findings remain.

HRA officials also stated that the process from the issuance of an RFP to the awarding of a contract should take approximately nine to 12 months. Concerning the eight contracts in our sample relative to which HRA has recently awarded new contracts, HRA took an average of about 21 months from the issuance of the RFP to the awarding of a new contract. Of the remaining 15 contracts, one of them, as of January 31, 2012, was set to expire in about two months, but HRA had still not issued a new RFP. As with PSRs, delays in issuing RFPs can lead to the issuance of multiple extensions in order to maintain services.

Delays in Submitting Contracts for Registration

According to PPB Rules, a client services contract is submitted in an untimely manner when an agency submits it to the Comptroller for registration after the start date of the contract. In its Fiscal Year 2010 Agency Procurement Indicators report, the Mayor’s Office of Contract Services (MOCS) states that late submissions for registration may cause cash-flow and service-continuity problems for client services vendors because the City cannot pay the vendors prior to registration even if they continue to provide services. This causes the vendor to be working at risk of being paid late or of not being paid at all if the contract is not registered. In addition to the cash-flow problems it may cause individual vendors, such delays can drive up City costs because vendors sometimes increase prices in anticipation of these delays. City agencies can also be required to pay the interest of any loans that a vendor takes out due to the untimely

registration of the contract. Furthermore, when contracts lapse and new contracts are not awarded or registered in a timely manner, vendors may struggle to continue to provide services to their clients.

Of the 20 client services contracts in our sample, five started before the contracts were submitted to the Comptroller's Office for registration. These five Fiscal Year 2010 contracts started, on average, about three months prior to submission, ranging from one to nine months before submission. HRA should ensure that contracts are submitted for registration in a timely manner to avoid the potential disruption of needed client services.

Two of the 20 client services contracts in our sample lapsed on June 30, 2011. One contract, which arranges for the provision of victim services, was not submitted for registration until January 13, 2012. The other contract, which arranges for the provision of home attendant services to Medicaid-eligible individuals, has still not been submitted for registration. Even though the provision of these home attendant services involves the use of Federal and New York State funds, and not City funds, State regulations require that HRA (as the local social services department) maintain contracts or other written agreements with the vendors providing such services.

HRA Response: "HRA ... disagrees with the statements regarding contract actions registered in Fiscal 2012. First, concerning the contract for the provision of victim services, it was submitted late for registration due to changes within the vendor's organization, which required changes in the vendor's VENDEX questionnaire. This delay was therefore not the result of either an HRA action or inaction. Moreover, as we informed the auditors, the contract for the provision of home attendant services will be registered late. This delay is because the Medicaid Program within the State of New York is being redesigned and the provision of home attendant services is currently being transferred to the State's managed care vendors. These changes have necessitated a long term negotiated acquisition extension for these services. Due to the uncertainty of the transfer process, the City of New York did, in fact discuss this extension with the Comptroller's Office of Contract Administration. The information HRA provided concerning the Medicaid redesign was completely ignored by the auditors."

Auditor Comment: Concerning the victim services contract, HRA once again provided no evidence to support its explanations for the delay in submitting the new contract for registration. Concerning the home attendant services contract, HRA provided no evidence demonstrating that it was acceptable for the contract to expire on June 30, 2011, even though the transfer of this responsibility to the State had not been accomplished by then and still had not been accomplished by March 9, 2012, the date of HRA's response. Accordingly, in the absence of evidence to the contrary, this finding remains.

MOCS, in its Fiscal Year 2010 Agency Procurement Indicators report, identified a similar concern. MOCS reported that of the 81 contract continuations¹ awarded by HRA in Fiscal Year 2010, 53 of them (65 percent) were registered after the start date of the continuation.

¹ Continuations include renewals, extensions, and new RFP awards used to continue existing programs.

The 53 continuations were registered, on average, 34 days late. The 53 continuations represented 91 percent of the dollar value of the 81 continuations.

Missing Contract Files

PPB Rules state that each agency should maintain contract files that contain all documentation pertaining to the solicitation, award, and management of each contract. It further states that these files should be retained for a minimum of seven years after the expiration date of the contract.

For our 23 sampled contracts, HRA was initially only able to locate 20 contract files. HRA officials initially stated that the other three contract files - two renewals and one negotiated acquisition extension - were missing and may have been misplaced. Five months later, the agency stated that the three contract files had been located. However, only the negotiated acquisition extension contract file had information that was relevant to the primary scope period for this audit. Not consistently having complete contract files readily available affects HRA's ability to effectively manage its contracts.

HRA Response: “The three files cited were provided to the Comptroller albeit with delays, due to apparent miscommunication. Pertaining to the auditors’ contention that two contract files did not include the correct information, the Office of Contracts reviewed those files and found them to be complete. The auditors are welcome to review the files again if they so wish.”

Auditor Comment: As we state above, HRA took five months to provide these three contract files. Upon receipt of these three files, the auditors determined that two of the three contract files were incomplete in that they did not include documentation that was pertinent to the primary scope period for this audit. To date, HRA has still not provided us with the relevant documentation for these two contracts.

Recommendations

HRA should:

1. Develop an effective central tracking system to monitor the expiration of its contracts.

HRA Response: “We agree that it is important that contracts are tracked to ensure that projects are re-solicited in a timely manner.”

2. Ensure that the process of completing PSRs, issuing RFPs, and awarding contracts is completed in a timely manner.

HRA Response: “HRA agrees with this recommendation, insofar as it is a priority to use all good efforts to register contracts in a timely manner, as a delay in registration may interfere with a vendor providing services to our clients.”

3. Ensure that it submits contracts to the City Comptroller for registration in a timely manner.

HRA Response: “HRA agrees that contracts should be submitted in a timely manner. In addition, HRA acknowledges the Fiscal Year 2010 retroactivity figures cited in the auditors’ draft report. HRA has made every attempt to reduce retroactivity in contract continuation, and has seen improvement in both Fiscal Year 2011 and the beginning of Fiscal Year 2012.”

Auditor Comment: HRA’s claim that it has reduced retroactivity in contract continuation is contradicted by figures reported in the MOCS indicators reports. MOCS data indicates that the percentage of HRA’s contract continuations that were registered after the contract start date was greater in Fiscal Year 2011 than in Fiscal Year 2010 (72 percent versus 65 percent). Additionally, the average number of days that these contract continuations were registered late was greater in Fiscal Year 2011 than in Fiscal Year 2010 (94 days late versus 34 days late). (We do not have access to Fiscal Year 2012 figures to date.)

4. Properly maintain its contract files.

HRA Response: “HRA agrees with this recommendation, and does properly maintain its contract files. The Office of Contracts strives to keep its file room organized and complete at all times.

“... the Office of Contracts has recently undertaken a reorganization of the file room, and has re-assigned personnel as a continuation of our constant efforts to improve our operations.”

Contractor Performance Evaluations Not Always Conducted Prior to Contract Renewals or Extensions

According to MOCS’s Agency Procurement Indicators report: “Documenting how a vendor performs is critical to agencies in helping determine whether a vendor’s contract should be renewed, extended or terminated, and whether there is a need for a vendor to implement a corrective action plan or otherwise address its problems.” A responsible vendor is one which, among other things, has a satisfactory or better record of performance.

The PPB Rules state that the agency should monitor the vendor’s quality and timeliness of performance and its fiscal administration and accountability on an ongoing basis. Evaluations should be done sufficiently far in advance of the end of the contract term to determine whether an existing contract should be extended, renewed, terminated, or allowed to lapse. The Rules further state that a performance evaluation should be done no less than once a year and that notification to the vendor of deficient performance should be made as soon as practicable and not await the annual evaluation.

According to HRA officials, evaluations of contractor performance should be in the respective contract files. However, we found none in the sampled contract files. HRA officials

subsequently stated that the evaluations of contractor performance will not be in the contract files because they are available on the City's Vendor Information Exchange System (VENDEX). Of the 23 sampled contracts awarded in Fiscal Year 2010, one—a negotiated acquisition—had been newly awarded and did not yet require a contractor performance evaluation at that time. Our review of VENDEX found that evaluations were recorded in the system for 19 (86 percent) of the remaining 22 sampled contracts. These 19 contractors received satisfactory or better performance ratings before these contracts were renewed or extended. Although requested, to date HRA has not provided us with any documentary support for these 19 evaluations.

There were no performance evaluations in VENDEX for the remaining three contracts during the one-year period prior to their having been renewed or extended; two of them were negotiated acquisition extensions and one was a renewal. Contractor performance evaluations should have been done before the two extensions and one renewal were awarded to ensure that the contract services were being performed satisfactorily. The renewal and one of the two extensions related to client services contracts.

HRA Response: "... HRA disagrees that the three contracts cited were awarded and registered without taking into account the vendors' performance. For example, the procurement files of two of the three contracts show that performance evaluations were done during the course of the original contract terms. Since both registrations were negotiated acquisition extensions, these performance evaluations were considered timely, and thus the contracts were successfully registered by the Comptroller's Office of Contract Administration."

Auditor Comment: We disagree with HRA's claim that the performance evaluations for the two contract extensions were completed on a timely basis. In order to ensure that contract renewals or extensions are only awarded to contractors that are performing satisfactorily, a contractor performance evaluation should be prepared prior to each renewal or extension. According to HRA, evaluations for these two contracts "were done during the course of the original contract terms." However, these contracts have been extended at least twice since then, and HRA provided no evidence that it performed timely evaluations prior to the second or subsequent extensions of these two contracts. For one of the contracts, the original contract terms expired 33 months prior to the most-recent extension (which was the fourth extension of the contract). For the other contract, the original contract terms expired one year prior to the most-recent extension (which was the second extension of the contract). In addition, for this contract, there was a six-month period subsequent to the expiration of the first one-year extension and prior to the registration of the second extension during which time, once again, no performance evaluation was prepared.

Regarding the contract renewal in question, HRA provides no argument that a performance evaluation was prepared in a timely manner. The performance evaluation for this renewal was prepared more than one year prior to the date of the renewal.

Accordingly, in the absence of adequate evidence to the contrary, this finding remains.

Recommendation

5. HRA should ensure that vendor evaluations are conducted prior to contract renewals or extensions.

HRA Response: “HRA does agree with the auditors’ statements regarding the need to have timely performance evaluations.”

Notices of Intent to Renew Contracts Not Published in Accordance with PPB Rules

HRA often does not publish its notices of intent to renew contracts in accordance with the time standards specified in PPB Rules.

According to PPB Rules, public notice is the advertisement and announcement of contract actions with the intended purpose of increasing competition, of broadening industry participation, and of enhancing transparency. PPB Rules state that a public notice of the intent to renew a client services contract for three or more years should be published for the purpose of eliciting information concerning the vendor’s performance and other factors relevant to the renewal. Additionally, these notices should be published within the seven calendar days following the ACCO’s approval of the renewal. Although HRA published notices of its intent to renew the seven renewal contracts in our sample that were for three or more years, six of the seven notices were published before the approval of the ACCO. Because the publishing of the notices of intent to renew contracts is an effort to solicit comments from Borough Presidents, Community Boards, clients, and advocates on the advisability of renewing vendor contracts, it is important that only those renewals that have been approved by the ACCO are published.

Recommendation

6. HRA should ensure that its notices of intent to renew contracts are published in a timely manner.

HRA Response: “HRA disagrees with the findings associated with this recommendation. HRA does publish notices of intent to renew contracts in a timely manner and has fully complied with Section 4-04 of the New York City Procurement Policy Board Rules, including the public notice and publication requirements. Every Recommendation for Renewal was signed by the ACCO subsequent to the publishing of the notices of intent to renew.”

Auditor Comment: HRA stated that the ACCO’s approvals were given subsequent to the publishing of the notices of intent to renew. However, PPB Rules Section 4-04(d)(2) states that “within seven calendar days after the approval by the ACCO, the agency shall initiate steps to publish notice of the intent to renew.” This section of the PPB Rules, therefore, makes abundantly clear that the ACCO’s approval should be given *before* the notices are published, not subsequent to the publishing of them. Accordingly, this finding remains.

HRA Lacked Written Procurement Policies and Procedures

HRA officials informed us that the PPB Rules govern their procurement process. However, HRA lacked its own written procedures to supplement these rules and manage its procurement activities.

Comptroller's Directive #1 states: "Internal controls should be documented in management administrative policies or operating manuals." Written procedures provide an agency added assurance that every employee involved in a process clearly understands the tasks that are to be performed and the acceptable methods to be used when performing these tasks.

Written procurement policies and procedures can help HRA address the internal control weaknesses the audit identified relating to the awarding of non-competitive and limited-competition contracts. For example, the procedures can help the agency initiate the RFP process in a more timely manner so that new contracts are awarded through fully competitive methods before existing contracts expire.

In its May 10, 2011, response to Comptroller's Directive #1, Agency Evaluation of Internal Controls, HRA stated that during Calendar Year 2010 it had specific agency contract procedures to ensure compliance with PPB Rules. However, HRA officials acknowledged that there were no written procurement policies or procedures. They stated that they are in the process of developing standard operating procedures. On February 2, 2012, HRA officials provided us with drafts of certain sections of the written procurement procedures they are developing.

HRA Response: "... HRA does not agree with the auditors' assertion that no procedures were in place. The Office of Contracts is in the process of developing traditional standard operating procedures that will combine various guidelines into one catalog. Presently, HRA's Office of Contracts has been utilizing tools such as internal process flowcharts delineating procurement procedures, Job Aids included within the Citywide Procurement Tracking System, and the PPB Rules itself. The three items above were mentioned and shown to auditors."

Auditor Comment: HRA's response to this finding is contradictory. Although the agency states that it disagrees with our finding that no written procedures were in place, it acknowledges that it is still in the process of developing standard operating procedures. As we state in the report, it was not until February 2, 2012 (after the exit conference), that HRA provided us with drafts of certain sections of the written procurement procedures it had been developing. The report simply documents this fact, which HRA confirmed in its response, and recommends that the procedures be finalized.

Recommendation

7. HRA should finalize and distribute to appropriate staff a comprehensive set of written policies and procedures detailing the procurement process.

HRA Response: “HRA agrees that all staff within the Office of Contracts should be provided with guidance, procedures, and policies regarding procurement activities The Office of Contracts is in the process of developing traditional standard operating procedures that will combine various guidelines into one catalog.”

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 primary scope of the audit was non-competitive or limited-competition contracts awarded by HRA during Fiscal Year 2010.

To achieve the audit objectives, we reviewed applicable laws and regulations, including the PPB Rules and Comptroller's Directive #1 (Principles of Internal Controls). We also reviewed HRA's Calendar Year 2010 Directive #1 Financial Integrity Statement Certification. In addition, we reviewed the Agency Procurement Indicators report released by MOCS for Fiscal Year 2010.

To obtain an understanding of the various methods of source selection for procurements used by HRA, we interviewed the ACCO. To obtain a general overview of the awarding of contracts on a non-competitive or limited-competition basis and of program area involvement in the procurement process, we met with the Director of the Office of Contract Services and the Director of Finance of the HIV/AIDS Services Administration (HASA) program. In addition, to obtain an understanding of the contract performance evaluation process, we interviewed contract managers for two program areas, the HASA program and the Begin Education Gain Independence Now program.

From FMS, we obtained a list of 302 contracts (valued at approximately \$618 million) that were awarded by HRA during Fiscal Year 2010. We sorted these contracts by award method and identified 73 contracts (valued at approximately \$493 million) that were considered to be non-competitive and limited-competition contracts. However, because five of these were multi-agency contracts negotiated by the Mayor's office, we excluded them from our population. Of the remaining 68 non-competitive and limited-competition contracts (valued at approximately \$381 million), there were 31 contract renewals, 36 negotiated acquisition extensions, and one negotiated acquisition. For our review, we judgmentally selected the one negotiated acquisition contract, and randomly selected 10 renewal contracts and 12 negotiated acquisition extension contracts, for a total of 23 contracts. The 23 contracts we selected had a total value of approximately \$76 million. Twenty of the 23 contracts in our sample were for human services.

We reviewed HRA's contract files for the sampled contracts to determine whether HRA complied with PPB Rules regarding procurement of non-competitive and limited-competition contracts. We determined whether there were written justifications and approvals by the ACCO of the types of award methods used for these procurements and whether the CCPO had authorized the use of such methods. In addition, we determined whether HRA initiated the RFP process in a timely manner such that new contracts were awarded before the existing contracts

expired. We also determined whether public notices of intent to renew contracts and to hold public hearings were issued in a timely manner.

Furthermore, we determined whether the contractors received annual performance evaluations and whether the evaluations determined the contractors' performance to have been satisfactory or better before their contracts were renewed or extended.

In instances in which HRA's contract files were incomplete, we obtained additional contract information from VENDEX and the Comptroller's Omnibus Automated Image Storage and Information System (OAISIS).

We did not evaluate the reliability and integrity of the data that we obtained from FMS because the City's external auditors review this Citywide system as part of their annual audit of the City's financial statements.

The results of the above tests, while not statistically projected to their respective populations, provide a reasonable basis for us to assess the adequacy of controls over the awarding of contracts on a non-competitive or limited-competition basis.



**Human Resources
Administration**

Department of
Social Services

Office of
Audit Services

Robert Doar
Commissioner

March 9, 2012

James G. Sheehan
Chief Integrity Officer/
Executive Deputy
Commissioner

Jane Corbett
Executive Deputy
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Ms. Tina Kim
Deputy Comptroller for Audits
The City of New York
Office of the Comptroller
1 Centre Street, Room 1100
New York, New York 10007-2341

Re: Audit Report on the Human Resources Administration's
Awarding of Non-competitive and Limited-competition
Contracts

Dear Deputy Comptroller Kim:

We have reviewed the draft report on the Audit of the Human Resources Administration's awarding of "non-competitive and limited-competition" contracts. First, we thank you for allowing HRA the opportunity to present additional information subsequent to the January 10, 2012 exit conference. However, we are disappointed to find that none of this information managed to be included in the draft report. The Agency's responses to the auditors' recommendations below show that HRA provided information that was not considered in the draft report:

Auditor's Recommendation #1:

HRA should develop an effective tracking system to monitor the expiration of contracts.

Agency's Response

We agree that it is important that contracts are tracked to ensure that projects are re-solicited in a timely manner. We disagree, however, with the conclusion that HRA does not currently have an effective tracking system. Subsequent to the January 12, 2012 exit conference, HRA demonstrated to your auditors that it previously used both the yearly human services plan and various Excel-formatted spreadsheets to track procurement projects. In addition, HRA's Office of Contracts meets with major program areas at least once monthly. As part of these monthly meetings, the Office of Contracts requests "pipeline" reports of future procurements, including re-procurements of contracts that are nearing separation. Moreover, in January 2012, the Office of

Contracts implemented a new electronic tracking system, Procurement Tracking System, to assist in the tracking of contract and procurement milestones. This new tracking system was also demonstrated to the auditors.

Recommendation #2

HRA should ensure that the process of completing PSRs, issuing RFPs, and awarding contracts is completed in a timely manner

Agency's Response

HRA agrees with this recommendation, insofar as it is a priority to use all good efforts to register contracts in a timely manner, as a delay in registration may interfere with a vendor providing services to our clients. That being said, however, the auditor's sampling contained anomalies that occurred during the procurement process. These anomalies led to the 32 month delay. The reason for the delay was presented to, and reviewed by, the Office of the Comptroller prior to the contracts being registered. The eight contracts in question were with providers who service clients of HRA's HIV/AIDS Services Administration. Seven contracts were for scatter-site supportive housing. Due to the overwhelming response to the RFP, as well as the intricacies of the requirements, an inordinate amount of time was required to review and evaluate the proposals. In addition, because the competition resulted in the selection of new providers, additional time was necessary to transition the clients to the new vendors. This transition was necessary, and had to be exact, due to the delicate and sensitive nature of the services provided.

Moreover, one of the contracts is for congregate supportive housing. For this particular procurement, HRA could not award a contract because of issues regarding ownership of the building. Many vendors who were awarded contracts for congregate supportive housing had existing arrangements for long-term financing. For these it was necessary for HRA to negotiate with the vendors in order to award the contracts for a term that would be consistent with their financing arrangements. Please note that the audit did not take into account delays in the procurement process that were outside of HRA's control.

Finally, HRA does not agree that there were contracts in the sample that did not have an ACCO-approved Pre-solicitation Review Report for the re-procurement. All re-procurements for contracts included in the sample are in various stages of the process.

Recommendation #3

HRA should ensure that it submits contracts to the City Comptroller for registration in a timely manner

Agency Response

HRA agrees that contracts should be submitted in a timely manner. In addition, HRA acknowledges the Fiscal Year 2010 retroactivity figures cited in the auditors' draft report. HRA has made every attempt to reduce retroactivity in contract continuation, and has seen improvement in both Fiscal Year 2011 and the beginning of Fiscal Year 2012.

HRA, however, disagrees with the statements regarding contract actions registered in Fiscal 2012. First, concerning the contract for the provision of victim services, it was submitted late for

registration due to changes within the vendor's organization, which required changes in the vendor's VENDEX questionnaire. This delay was therefore not the result of either an HRA action or inaction. Moreover, as we informed the auditors, the contract for the provision of home attendant services will be registered late. This delay is because the Medicaid Program within the State of New York is being redesigned and the provision of home attendant services is currently being transferred to the State's managed care vendors. These changes have necessitated a long term negotiated acquisition extension for these services. Due to the uncertainty of the transfer process, the City of New York did, in fact discuss this extension with the Comptroller's Office of Contract Administration. The information HRA provided concerning the Medicaid redesign was completely ignored by the auditors.

Recommendation #4

HRA should properly maintain its contract files.

Agency Response

HRA agrees with this recommendation, and does properly maintain its contract files. The Office of Contracts strives to keep its file room organized and complete at all times. The three files cited were provided to the Comptroller albeit with delays, due to apparent miscommunication. Pertaining to the auditors' contention that two contract files did not include the correct information, the Office of Contracts reviewed those files and found them to be complete. The auditors are welcome to review the files again if they so wish.

Notwithstanding the above, the Office of Contracts has recently undertaken a reorganization of the file room, and has re-assigned personnel as a continuation of our constant efforts to improve our operations.

Recommendation #5

HRA should ensure that vendor evaluations are conducted prior to contract renewals.

Agency Response

HRA disagrees with the auditors' finding upon which this recommendation is based. HRA does agree with the auditors' statements regarding the need to have timely performance evaluations. However, HRA disagrees that the three contracts cited were awarded and registered without taking into account the vendors' performance. For example, the procurement files of two of the three contracts show that performance evaluations were done during the course of the original contract terms. Since both registrations were negotiated acquisition extensions, these performance evaluations were considered timely, and thus the contracts were successfully registered by the Comptroller's Office of Contract Administration.

In addition, HRA takes exception to the auditors' finding that performance evaluations were not located within the contract file. As the auditors were advised, and consistent with the City's effort to reduce the use of paper, there is no need to maintain paper copies of performance evaluations, as they are easily accessed through the VENDEX database.

Recommendation #6

HRA should ensure that its notices of intent to renew contracts are published in a timely manner.

Agency Response

HRA disagrees with the findings associated with this recommendation. HRA does publish notices of intent to renew contracts in a timely manner and has fully complied with Section 4-04 of the New York City Procurement Policy Board Rules, including the public notice and publication requirements. Every Recommendation for Renewal was signed by the ACCO subsequent to the publishing of the notices of intent to renew.

Recommendation #7

HRA should finalize and distribute to appropriate staff a comprehensive set of written policies and procedures detailing the procurement policies.

Agency Response

While HRA agrees that all staff within the Office of Contracts should be provided with guidance, procedures, and policies regarding procurement activities, HRA does not agree with the auditors' assertion that no procedures were in place. The Office of Contracts is in the process of developing traditional standard operating procedures that will combine various guidelines into one catalog. Presently, HRA's Office of Contracts has been utilizing tools such as internal process flowcharts delineating procurement procedures, Job Aids included within the Citywide Procurement Tracking System, and the PPB Rules itself. The three items above were mentioned and shown to auditors.

We are committed to providing services to our clients in a manner consistent with all applicable laws, rules, policies and procedures, and have put controls in place to do so. We trust that our responses, as well as the corrective actions we have already implemented and those we plan to take, have addressed your concerns. Should you have any further questions on this matter, please contact Hope Henderson, Director of the Bureau of Audit Coordination at (212) 331-4660.

Sincerely,



Jane Corbett

c: R. Doar, Commissioner
R. Esnard
V. Pullo