



H. Tina Kim
DEPUTY COMPTROLLER

February 5, 2013

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
JOHN C. LIU

BUREAU OF AUDIT

MUNICIPAL BUILDING
ONE CENTRE STREET, ROOM 1100
NEW YORK, N.Y. 10007-2341

TEL: (212) 669-8459
FAX: (212) 815-8559
TKIM@COMPTROLLER.NYC.GOV

The Honorable Jonathan Mintz
Commissioner
Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Audit of the Department of Consumer Affairs
Contract with Gartner, Inc. relating to the On-Line
Services Enhancement Project
ME12-095A

Dear Commissioner Mintz:

This is to inform you that we are terminating the above-referenced audit based on impediments imposed by the Department of Consumer Affairs (DCA). The audit endeavored to determine the adequacy of DCA's payment and contract management controls over its contract with Gartner, Inc. (Gartner). However, DCA's obstruction of the audit has prevented us from completing our review. This report describes the audit impediments imposed by DCA and outlines the potential findings that we were able to identify despite the impediments.

Background

DCA's contract with Gartner was for the provision of project management and quality assurance services for the On-Line Services Enhancement Project (OSEP). The goal of OSEP is to create a system to allow businesses to apply for, renew, and pay for their licenses on-line. The initial task order for Gartner's work covered a two-year period beginning on July 1, 2007, and was valued at over \$2.7 million. As of December 3, 2012, DCA had issued six task orders (including the initial task order) for Gartner's work and had expended a total of over \$10.4 million, almost four times the amount of the original task order.

Audit Impediments

During the course of the audit, my auditors encountered significant obstruction from DCA. The obstruction by your agency was such that we could not rely on the testimonial or documentary evidence that was provided to us during the audit. DCA's obstruction included conduct such as: providing misleading information; omitting certain requested materials; and insisting that a DCA senior management representative attend all meetings. This obstruction raises serious concerns as to why DCA has endeavored to prevent the auditors from conducting the audit in a manner that would have allowed them to obtain sufficient, appropriate evidence to determine whether DCA

had adequate controls over the Gartner contract. The impediments my auditors encountered are discussed in more detail below.

Misleading and Omitted Information Regarding the Availability of Persons Connected with the Project

It appears that DCA misrepresented the number of consultants working on the project, which resulted in a considerable delay in our ability to interview them. In early April 2012, we informed DCA of our intention to meet with the Gartner consultants regarding certain aspects of the project. In response, DCA informed the audit team that Gartner consultants would be unavailable for interviews for almost a month because the project was in a “Full-Stop” mode to reanalyze the scope of the project. DCA claimed that only one full-time consultant and one part-time consultant were working on the project at that time. At a later date, we reviewed the invoices submitted by Gartner for that period and learned that DCA’s assertion was not correct; on average, four consultants worked between 28 and 40 hours per week and one to two consultants worked between 13 and 24 hours per week during the first four weeks of April 2012. Therefore, persons were available for us to meet with at that time. Accordingly, we question why we were given incorrect information regarding their availability.

Additionally, in a departure from normal audit protocol, DCA failed to provide advance notice to the audit team that the agency’s Chief Information Officer (CIO)—the person with primary responsibility for overseeing the contract—was leaving the agency on April 13, 2012. (We later discovered a March 16, 2012, job posting by DCA for his position.) By failing to disclose such material information to the audit team, DCA significantly undermined the ability of the auditors to obtain critical information concerning the management of the contract.

Omission of Requested Materials

In response to our requests for documentation, DCA omitted certain documents. For example, we requested that DCA produce all of the Gartner invoices on the OSEP project. However, auditors later discovered through an independent source that DCA failed to provide three OSEP invoices totaling more than \$113,000 for CIO training and professional networking services, information technology research, and expert information technology advice. Notably, all three invoices were for services that were unrelated to the OSEP project. Gartner was already required to use its research and provide its expert advice on the OSEP project through its contractual agreement to provide project management and quality assurance services. DCA’s failure to provide these questionable invoices until we specifically requested them raises concerns as to why the agency did not initially provide them.

Requirement That a Representative of DCA Senior Management Be Present at All Meetings with Agency and Contract Personnel

The omissions and misrepresentations by DCA during this audit, such as those noted above, raised the level of risk for this audit. Section 6.05 of the generally accepted government auditing standards (GAGAS), which we are required to comply with under the City Charter, defines audit

risk as “the possibility that the auditors’ findings, conclusions, recommendations, or assurance may be improper or incomplete, as a result of factors such as ... intentional omissions or misleading information due to misrepresentation or fraud.” The level of evidence needed in an audit is directly related to audit risk. Section 6.12 of GAGAS states that “auditors should ... identify sources of audit evidence and determine the amount and type of evidence needed given audit risk and significance.” DCA’s omissions and misrepresentations on this audit led us to the conclusion that we needed a higher level of testimonial evidence to compensate for the increased audit risk. As a result, we requested the opportunity to conduct our follow-up audit interviews without representatives of DCA’s senior management being present. DCA refused our request and insisted that a representative of DCA senior management, namely the Deputy Chief of Staff and/or the Director of Project Management, attend all follow-up interviews. DCA’s insistence that a representative of DCA senior management attend all follow-up interviews is contrary to general audit practice. Additionally, in light of the heightened risk for this audit, DCA’s insistence constitutes an audit impairment under GAGAS.

In an effort to establish a good working relationship between the agency being audited and the audit team, we often do not object when agencies send representatives of senior management to our initial meetings with agency or contract personnel. However, follow-up interviews are generally conducted directly with the agency or contract personnel without representatives of the agency’s senior management in attendance. The intent of this is to allow individuals to speak more freely. Consequently, we believe that an agency’s insistence that it be permitted to have a representative of senior management present at such interviews is contrary to that intent and may compromise evidence obtained under those circumstances. Section 6.61 of GAGAS states that “testimonial evidence obtained under conditions in which persons may speak freely is generally more reliable than evidence obtained under circumstances in which the persons may be intimidated.” We believe that the presence of an agency’s senior management at audit interviews does inhibit agency and contract personnel from fully sharing information and perspectives with the audit team. Due to the potential significance of the control weaknesses the auditors have identified in this audit, we believe that the presence of senior management representatives could have a chilling effect on a person’s willingness to speak freely. We have attempted to resolve this issue with DCA and have even engaged the Mayor’s Office of Operations to assist in this matter. However, DCA is resolute that no further meetings be conducted with agency or contract personnel without a senior management representative being in attendance.

Other Impediments

In addition to the audit impediments described above, two other audit impediments are worthy of mention.

Throughout the audit, there were considerable delays in DCA providing requested documents. For example, on May 7, 2012, we requested all of the Gartner invoices and timesheets from July 2007 to the present. Although these documents should have been readily available, DCA provided them in a piecemeal manner. It was not until July 13, 2012, that we received most of the requested documentation. Additionally, DCA took more than a month to provide a

spreadsheet of Gartner invoice and associated payment information and almost a month to provide the Project Deliverable Quality Assurance Checklists that Gartner prepared as part of its oversight of Accenture's work on the OSEP project. These documents also should have been readily available.

Furthermore, it appears that some documents (timesheets) were not created in the normal course of business and were instead created at the time of our request. DCA provided four timesheets (each timesheet represents the work performed by an individual Gartner consultant during the month) that did not have the required signatures of the Gartner consultant, the Gartner project manager, or the DCA CIO. One timesheet related to the January 2011 work period and the remaining three related to the February 2012 work period. (All 15 of the other timesheets we received for these two months had three signatures.)

The unsigned timesheets also had other irregularities. The Gartner project manager identified on the unsigned January 2011 timesheet differed from the Gartner project manager identified on the other January 2011 timesheets we were provided. In fact, the manager identified on the unsigned January 2011 timesheet was not even assigned to the OSEP project at DCA until February 2012. Additionally, none of the four unsigned timesheets identified the correct work weeks. In fact, all four timesheets incorrectly presented March work weeks even though these were January and February timesheets. (All 15 of the other timesheets we received for these two months correctly identified the relevant work weeks.) Furthermore, the one January 2011 and three February 2012 timesheets all showed the *same* work weeks (starting on February 26 and finishing on March 31) even though they were supposedly created in different years and would, therefore, have had different start and end dates for their work weeks. The similarities between these timesheets strongly suggest that these four documents were all created at the same time and specifically for our benefit.

Potential Findings

To date, in addition to the audit impediments noted above, the audit has identified a number of potential findings concerning DCA's monitoring of the Gartner OSEP contract. It is possible that DCA might have been able to explain or partly explain some of these issues. However, DCA's audit obstruction eliminated the opportunity for us to have a constructive exchange of views with DCA on these matters. The following issues represent the potential findings:

Inordinate Amount of Authority Given to DCA CIO

The DCA CIO appeared to have too much authority within the agency concerning the OSEP project. Based on our interviews with DCA finance and procurement personnel, we found that they largely deferred to the CIO's decisions concerning OSEP. If the CIO determined that another task order was needed for Gartner or that a Gartner invoice should be paid, DCA finance and procurement personnel told us that they generally performed a very limited review of the CIO's recommendations. In addition, as OSEP project manager, the DCA CIO delegated few, if any, OSEP responsibilities to his staff. The CIO created the task orders, oversaw Gartner's work, signed the consultants' timesheets, and approved Gartner's invoices. As a result, there

was an inadequate separation of duties within DCA concerning the OSEP project. There appeared to be little effort at DCA to ensure that there was effective oversight of the CIO's OSEP activities. There also appeared to be little effort at DCA to ensure that there was some sharing of OSEP responsibilities within the agency.

More Than \$113,000 in Information Technology Services Unrelated to OSEP Were Inappropriately Charged to Contract

As previously mentioned, DCA paid three OSEP invoices totaling over \$113,000 for CIO training and professional networking services, information technology research, and expert information technology advice—services that had no discernable connection to the OSEP project. Gartner was already required to use its research and provide its expert advice on the OSEP project through its contractual agreement to provide project management and quality assurance services. Two of the invoices totaling more than \$80,000 were approved by the DCA CIO monitoring the contract. Our concern about this expense is increased by the fact that there was little apparent oversight of the CIO's OSEP work at DCA.

More Than \$65,000 in Required Discounts Not Taken by DCA

Gartner was required by the terms of Task Order F to provide a total of \$250,000 in discounts to DCA. A review of the invoices shows that the actual discounts received by DCA fell short of this amount by over \$65,000.

DCA Paid over \$326,000 for Work Purportedly Performed for the Department of Buildings

According to DCA's contract with Gartner, the contractor was to provide program management and quality assurance services for DCA and the Department of Health and Mental Hygiene (DOHMH) for OSEP. The contract does not refer to the Department of Buildings (DOB). Nevertheless, a review of invoices and the documentation supporting them indicates that DCA paid more than \$326,000 under this contract for work that Gartner purportedly performed for DOB during Calendar Year 2011, despite the fact that DOB was reportedly not yet involved in the OSEP project during that time. A Gartner report dated January 30, 2012, stated that "only 2 agencies [DCA and DOHMH] are currently involved" with this project and that there was a "potential" for other agencies, such as DOB, "to be added." Moreover, two of the timesheets associated with the invoice for the September 2011 performance period were signed by the consultants and the Gartner and DOB project managers more than five months after the invoice was paid.

Other Weaknesses

Many Gartner Timesheets Not Properly Signed and Reviewed

Of 500 Gartner timesheets associated with work performed between July of 2007 and August of 2012,¹ 160 (32 percent) of them were not signed by the individual consultants. Moreover, the project managers did not review the timesheets in a timely manner. The timesheets were approved by the Gartner project managers an average of 46 days (approximately 1½ months) after the end of the performance period² and by the DCA, DOHMH, or DOB project managers an average of 60 days (approximately two months) after the end of the performance period.³ Most of the timesheets were signed by the Gartner project manager for the period between July 2007 and August 2012 and by the City agency project managers for the period between July 2007 and June 2011. However, for Fiscal Year 2012, the DCA CIO, up until the time of his departure from the agency on April 13, 2012, and the new Deputy CIO, thereafter, did not sign a total of 38 (26 percent) of the 146 timesheets that were processed for payment. Although the former CIO had at least signed and “Approved for Payment” the invoices associated with the timesheets that he did not sign, the Deputy CIO only digitally signed the invoices associated with the timesheets that she did not sign and did not specifically indicate that she was approving the invoices for payment. In addition, the invoices processed by DCA for the January 2012 and the March through June 2012 performance periods did not indicate the project identification code, which is a code that agencies use to help ensure that projects remain within the approved capital budget amounts.

Inadequate Review of Gartner Invoices Resulted in Overpayment of More Than \$22,500

DCA paid Gartner over \$22,500 for 104 hours that the contractor’s October 2011 and February 2012 internal timekeeping data identified as “Non Billable.” (Non-billable time includes periods during which a consultant is in travel status or is at the DCA location but not working on the project.) For example, the invoice submitted by Gartner for the February 2012 work period showed that the total number of work hours was 1,195.5. However, the line-item entries on the invoice—showing the number of hours each consultant worked during the month—actually added up to 1,247.5 hours (i.e., 52 additional hours). Although this total of 1,247.5 hours does not appear on the invoice, it was the number of hours for which DCA paid Gartner. According to Gartner’s internal timekeeping data, there were a total of 52 “Non Billable” hours for that month that should neither have been billed for nor paid. This is an indication that DCA is not adequately reviewing Gartner’s invoices and that it is not requesting sufficient timekeeping information from Gartner to ensure that the agency does not pay the contractor for non-billable activity.

¹ Gartner submitted invoices that needed a total of 503 timesheets for support; however, three of the timesheets could not be located by DCA or Gartner.

² This information is based on the 494 timesheets that were signed and dated by the Gartner project managers.

³ This information is based on the 456 timesheets that were signed and dated by the DCA, DOHMH, or DOB project managers.

Commissioner Mintz
February 5, 2013
Page 7 of 7

The potential findings noted in this letter represent concerns about DCA's oversight of the Gartner contract that we were able to identify despite your agency's extensive obstruction of the audit. Had we not encountered such obstruction and been able to complete the audit, we might have identified additional concerns about the adequacy of DCA's oversight.

We commence an audit with the expectation of good faith and cooperation on the part of the auditee. DCA's actions undermine the integrity of the audit process and do a disservice to the citizens of New York City, who have a right to know whether the City's resources are being used efficiently.

The potential findings to date—in conjunction with the audit obstruction noted above—raise serious concerns about the internal control environment at DCA and the potential for undetected fraudulent activity. For that reason, we are providing information about our potential findings and DCA's audit obstruction to the Department of Investigation for its review.

Sincerely,



Tina Kim

c: George Pape, Chief of Staff and Deputy Commissioner, Department of Consumer Affairs
Caswell Holloway, Deputy Mayor for Operations
Elizabeth Weinstein, Director, Mayor's Office of Operations
George Davis III, Deputy Director, Mayor's Office of Operations
Rose Gill Hearn, Commissioner, Department of Investigation