



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the Department of
Youth and Community Development's
Awarding of Non-Competitive and
Limited-Competition Contracts

ME20-068A

February 25, 2021

<http://comptroller.nyc.gov>



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

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To the Residents of the City of New York:

My office has audited the New York City Department of Youth and Community Development's (DYCD's) awarding of non-competitive and limited-competition contracts. We conduct audits such as this to ensure that City agencies use appropriate procurement methods and that they thoroughly evaluate vendor performance and integrity before awarding contracts.

The audit found that DYCD's awarding of non-competitive and limited-competition contracts needs improvement. DYCD adequately justified its decisions to use non-competitive and limited-competition procurement methods, ensured that its contract award decisions involving these methods were properly approved, and maintained well-organized contract files. However, DYCD's vendor responsibility determinations often lacked comprehensive overall assessments of the vendors that adequately supported the agency's decisions to award contracts to them. Specifically, in a sample of 25 contract awards, renewals, and extensions, we identified 12 procurement actions in which DYCD did not adequately account for its decisions to contract with vendors that had experienced multiple incidents of client abuse and neglect, workplace violence involving staff, civil litigation, and/or poor performance evaluations on previous DYCD contracts. In addition, DYCD did not consistently maintain evidence demonstrating that the agency had evaluated the performance of its contractors in a timely manner and, in one case, that it had conducted a required pre-solicitation review.

The audit recommends that DYCD should consistently: consider the totality of adverse information available on a vendor when determining whether a vendor is responsible; ensure that it obtains and considers all relevant vendor performance evaluations in its responsibility determinations; ensure that it completes vendor performance evaluations in a timely manner; and prepare a pre-solicitation review report before assigning a contract to another vendor or approving a vendor's assignment of a contract.

The results of the audit have been discussed with DYCD 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 black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the Department of Youth and Community Development's Awarding of Non- Competitive and Limited-Competition Contracts

ME20-068A

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City (City) Department of Youth and Community Development (DYCD) ensures that its decisions to award contracts on a non-competitive or limited-competition basis have been adequately justified, that contractor performance has been properly evaluated, and that contract awards have been properly approved.

DYCD supports City youth and their families by funding a wide range of youth and community development programs, including afterschool, family support, literacy services, youth services, and youth workforce development programs. DYCD contracts with a variety of vendors to provide such programs.

DYCD uses a variety of methods to award the contracts. Some methods are competitive, such as requests for proposals; some are non-competitive, such as contract extensions and renewals; and others involve limited competition, such as negotiated acquisitions. Decisions to use non-competitive or limited-competition methods to award contracts must be properly justified by the agency. In addition, the City's Procurement Policy Board (PPB) Rules require a pre-solicitation review for most of the procurement methods used. Furthermore, contract awards must be based in part on prior evaluations of the vendors' performance.

According to information provided by DYCD, of the 546 contracts that the agency awarded in Fiscal Year 2019, 380 (70 percent) were non-competitive or limited-competition contracts.

Audit Findings and Conclusions

DYCD's awarding of non-competitive and limited-competition contracts needs improvement. DYCD adequately justified its decisions to use non-competitive and limited-competition procurement methods, ensured that its contract award decisions involving these methods were properly approved, and maintained well-organized contract files. However, DYCD's vendor responsibility determinations often lacked comprehensive overall assessments of the vendors that adequately supported the agency's decisions to award such contracts to particular vendors. Specifically, in a sample of 25 contract awards, renewals, and extensions, we identified 12

procurement actions in which DYCD did not adequately account for its decisions to contract with vendors that had experienced multiple incidents of client abuse and neglect, workplace violence involving staff, civil litigation, and/or poor performance evaluations on previous DYCD contracts. In addition, DYCD did not consistently maintain evidence demonstrating that the agency had evaluated the performance of its contractors in a timely manner and, in one case, that it had conducted a required pre-solicitation review.

Audit Recommendations

To address the issues raised by this audit, we made the following four recommendations:

- DYCD should consider the totality of adverse information presented for each vendor when determining whether a vendor is responsible and document its considerations in the contract files.
- DYCD should ensure that it consistently obtains and considers all relevant vendor performance evaluations in its responsibility determinations and that it documents its considerations of these evaluations in the contract files.
- DYCD should ensure that it completes vendor performance evaluations in a timely manner.
- DYCD should prepare a pre-solicitation review report before assigning a contract or approving a vendor's assignment of a contract.

Agency Response

In its response, DYCD agreed with three of the four audit recommendations, but disagreed with the recommendation that it should prepare a pre-solicitation review report before assigning a contract or approving a vendor's assignment of a contract.

AUDIT REPORT

Background

DYCD supports City youth and their families by funding a wide range of youth and community development programs, including afterschool, family support, literacy services, youth services, and youth workforce development programs. DYCD contracts with a variety of vendors to provide such programs.

DYCD uses a variety of methods to award the contracts. Some methods are competitive, such as requests for proposals; some are non-competitive, such as contract extensions and renewals; and others involve limited competition, such as negotiated acquisitions. According to the PPB Rules, “[p]rocurement by competitive sealed proposals ... is the preferred method for awarding contracts for ... client ... services.” A significant portion of DYCD contracts is for the provision of client services.

Contract extensions and renewals, which continue existing contracts for limited periods, are considered non-competitive awards because the contracting agency did not contact other vendors to determine whether they would offer to provide the services at a lower cost. Negotiated acquisitions, which are often time-sensitive purchases in which the agency asks only a few vendors to submit bids, are considered limited-competition purchases because the agency did not publicize the opportunities beyond the few selected vendors contacted.

Decisions to use non-competitive or limited-competition methods to award contracts must be properly justified by the agency. In addition, the PPB Rules require a pre-solicitation review for sole source procurements exceeding \$10,000 for goods and services other than construction-related services and all other procurements above the small purchase limits, except emergency procurements.

Furthermore, contract awards must be based in part on prior evaluations of the vendors’ performance. PPB Rules state that “[t]he agency shall monitor the vendor’s performance against [identified] standards and indicators on an ongoing basis” and that “[a] performance evaluation shall be done no less than once annually.” Performance evaluations help agency officials to determine whether existing contracts should be renewed, extended, allowed to lapse, or terminated, and to decide which vendors should be awarded new contracts.

According to DYCD, the agency awarded 546 contracts in Fiscal Year 2019.¹ Of these contracts, 166 (30 percent) were competitive contracts based on requests for proposals. The remaining 380 (70 percent) were non-competitive or limited-competition contracts: 236 were contract extensions, 138 were contract renewals, 4 were negotiated acquisitions, 1 was an assignment, and 1 was a small purchase from a Minority and Women-Owned Business Enterprise (M/WBE).

Objective

The objective of this audit was to determine whether DYCD ensures that its decisions to award contracts on a non-competitive or limited-competition basis have been adequately justified, that

¹ These contracts did not include contract amendments, line-item appropriations, intergovernmental purchases, requirement contracts, micropurchases, small purchases, construction change orders, and task orders.

contractor performance has been properly evaluated, and that contract awards have been properly approved.

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. 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 this audit was non-competitive and limited-competition contracts awarded by DYCD during Fiscal Year 2019. In order to assess whether DYCD appropriately reviewed vendor performance evaluations as part of the agency's contract awarding process, we reviewed such evaluations in the Procurement and Sourcing Solutions Portal (PASSPort)² for the period from July 1, 2015 to June 30, 2019. Please refer to the Detailed Scope and Methodology at the end of this report for a description of the specific procedures followed and tests conducted during this audit.

Discussion of Audit Results with DYCD

The matters covered in this report were discussed with DYCD officials during and at the conclusion of this audit. A preliminary draft report was sent to DYCD and was discussed at an exit conference held on December 10, 2020. We submitted a draft report to DYCD with a request for comments and received a written response from the agency on January 26, 2021.

In its response, DYCD agreed with three of the four audit recommendations, but disagreed with the recommendation that it should prepare a pre-solicitation review report before assigning a contract or approving a vendor's assignment of a contract. As we discuss in the body of the report, PPB Rules do not provide an exception for contract assignments in the discussion of the need for pre-solicitation reviews.

DYCD also disagreed with our classification of contract renewals and extensions as non-competitive procurements. Specifically, DYCD argued that contract renewals and extensions are based on contracts that had been competitively procured and that, as a result, any renewals or extensions of these contracts are contract management actions rather than new procurements.

In actuality, contract renewals and extensions are both contract management actions and procurement actions. DYCD, in citing the Bureau of Contract Administration's *Annual Summary Contracts Report for the City of New York, Fiscal Year 2019*, which refers to renewals and extensions as contract management actions, fails to note that the report also refers to renewals and extensions as "procurement transactions." When an agency awards a contract renewal or extension, it has decided to continue to procure services from the existing contractor rather than to offer the opportunity to other potential vendors. The fact that the agency renews or extends an existing contract without offering other vendors the opportunity to submit bids or proposals makes these types of procurements non-competitive.

² PASSPort is the City's online procurement portal which allows vendors to submit information required for contracting and allows City agencies to access performance evaluations.

After carefully reviewing DYCD's arguments, we find no basis to alter our audit findings or recommendations. The full text of DYCD's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DYCD's awarding of non-competitive and limited-competition contracts needs improvement. DYCD adequately justified its decisions to use non-competitive and limited-competition procurement methods, ensured that its contract award decisions involving these methods were properly approved, and maintained well-organized contract files. However, DYCD's vendor responsibility determinations often lacked comprehensive overall assessments of the vendors that adequately supported the agency's decisions to award such contracts to particular vendors. As a result, DYCD has an increased risk that these vendors will not adequately perform their contracts.

Specifically, in a sample of 25 contract awards, renewals, and extensions, we identified 12 procurement actions in which DYCD did not adequately account for its decisions to contract with vendors that had experienced multiple incidents of client abuse and neglect, workplace violence involving staff, civil litigation, and/or poor performance evaluations on previous DYCD contracts.

In addition, DYCD did not consistently maintain evidence demonstrating that the agency had evaluated the performance of its contractors in a timely manner and, in one case, that it had conducted a required pre-solicitation review.

The following three sections of this report discuss these issues in further detail.

Many Determinations of Vendor Responsibility Lacked Comprehensive Overall Assessments

According to section 2-08 of the PPB Rules, before awarding a contract, DYCD must determine whether the potential vendor has the capabilities and business integrity necessary to meet its contractual obligations successfully. If adverse information about the vendor is found, DYCD officials should determine whether the issues identified have been satisfactorily resolved. DYCD officials are supposed to document their decision on the Responsibility Determination form in PASSPort.

Based on our review of the contract files pertaining to 25 sampled contracts DYCD awarded in Fiscal Year 2019, we concluded that the vendor responsibility determinations for 12 of the contracts lacked comprehensive overall assessments. For these 12 procurement actions, DYCD did not adequately account for its decisions to contract with vendors that had experienced multiple incidents of client abuse and neglect, workplace violence involving staff, civil litigation, and/or poor performance evaluations on previous DYCD contracts.

The contract files for two contractors, Rising Ground and SCO Family of Services, showed numerous substantiated incidents involving their staff abusing or neglecting the youths receiving services in their facilities.³ Specifically, Rising Ground had 19 such incidents that were substantiated between December 2017 and December 2018, of which 9 involved neglect, 7 involved physical abuse, 1 involved sexual abuse, 1 involved verbal abuse, and 1 involved failure to report an incident of abuse. Similarly, SCO Family of Services had 32 such incidents of client neglect and abuse by staff that were substantiated between April 2018 and April 2019, consisting

³ The New York State (NYS) Justice Center substantiated most of the allegations concerning these incidents. The NYS Office of Children and Family Services and the NYS Education Department substantiated four of the remaining allegations, while the provider itself substantiated three of them.

of 15 involving physical abuse, 13 involving neglect, 2 involving verbal abuse, 1 involving sexual abuse, and 1 involving failure to maintain proper boundaries.

Both contractors addressed each incident individually by firing, disciplining, retraining, or issuing a warning letter to the staff person involved, or by assigning more staff to supervise the clients. The contract files indicated that DYCD reviewed each incident, concluded that each had been satisfactorily resolved, and therefore determined that both contractors were responsible vendors. However, the responsibility determinations for these contracts did not show that DYCD considered whether contractors with so many serious incidents in recent years were suitable providers for these two contracts and whether the contractors had taken sufficient steps to prevent the re-occurrence of such incidents.

DYCD's contract file for Rising Ground also contained little evidence that DYCD carefully considered a federal Occupational Safety and Health Administration (OSHA) letter that identified multiple weaknesses related to the protection of staff from workplace violence at one of the contractor's facilities. OSHA's June 26, 2018 letter to the contractor stated: "While OSHA recognizes that [the contractor] has a policy in place at the school that aims to control these incidents [of workplace violence], *their frequent recurrence, nonetheless, indicates that the policy or program is not effectively addressing this hazard* [emphasis added]." DYCD noted in its responsibility determination that Rising Ground's attorney had responded to the OSHA letter, but the agency did not assess whether the response adequately addressed the particular concerns OSHA raised.

In addition, as discussed later in this section, DYCD's responsibility determination for SCO Family of Services did not discuss the poor overall ratings the contractor received for its work on four other DYCD contracts during the preceding three years.

DYCD officials stated that when determining whether a provider is responsible, the agency ensures that providers have taken corrective measures to address issues that are either disclosed by the provider or uncovered as part of the agency's responsibility determination review. The officials claimed that in these cases the vendors took corrective actions and thereby demonstrated their commitment to being responsible providers.

However, DYCD's responsibility determinations for these two vendors do not show that DYCD evaluated the *totality* of the adverse information that was available to it regarding their performance. By expressly recognizing and reviewing the totality of the adverse information available regarding a vendor, rather than simply noting that individual incidents and concerns had been resolved in some manner, DYCD would be in a better position to assess the risks associated with awarding contracts to such vendors. The agency would also be in a better position to ensure that it establishes effective plans to monitor the performance of such vendors closely if it decided, despite the adverse information, to award them contracts to ensure the continuity of services.

In two other instances, DYCD awarded contracts with insufficient information regarding the vendors. In one instance, the contract file for CAMBA Inc. identified a September 2018 incident of child abuse/neglect involving a staff member, but provided no further information about the incident and simply noted that the employee was terminated. The contract file also refers to 11 civil cases involving the vendor but contains no information concerning the nature of these cases. In addition, as is discussed later in this section, CAMBA's work on two other DYCD contracts during the preceding three years led to overall poor ratings that the responsibility determination did not discuss.

In another instance, the contract file for Imani House Inc. shows that significant performance issues prompted DYCD to terminate the vendor's contract to provide similar (comprehensive afterschool) services in 2017. Although the contract file contained little evidence that the vendor had addressed those performance issues, DYCD, nonetheless, awarded a new contract to it on November 30, 2018. DYCD justified its decision based on its assessment that the vendor was performing satisfactorily in its only other DYCD contract, which also involved the provision of comprehensive afterschool services. When asked about this award, DYCD stated that the issues that had caused the agency to terminate the vendor's prior contract had resulted from a poor relationship between the vendor and the principal of the school where it provided the contract services. However, the responsibility determination section of the contract file noted additional concerns about this vendor: specifically, that it had not provided the expected scope of services, had struggled to hire sufficient program staff, and had experienced "several severe incidents with participants during program hours." Those concerns suggest that before awarding the new contract, DYCD should have determined whether the vendor had addressed the issues at its organizational and managerial levels to minimize the risk that such problems would recur under the new contract.

In these two instances, DYCD did not demonstrate that it had obtained or considered all the information it needed to make sound responsibility determinations concerning the two vendors.

DYCD's process for vendor responsibility determinations includes a review of all vendor performance evaluations that DYCD and other City agencies had prepared during the three preceding years and had posted in the City's PASSPort system. Accordingly, we reviewed PASSPort for any such evaluations of the vendors that received the 25 sampled contracts in Fiscal Year 2019. At the time of our review, PASSPort did not yet include vendor performance evaluations DYCD prepared for Fiscal Year 2018.⁴ Consequently, we also reviewed the agency's DYCD Connect system for relevant evaluations of those vendors' performance during Fiscal Year 2018.⁵ The evaluations we reviewed in DYCD Connect covered: (1) the vendors' performance on the DYCD contracts that preceded the contract renewals and extensions in our sample; and (2) the vendors' performance on other DYCD contracts during Fiscal Year 2018.

Based on our review of PASSPort and DYCD Connect, we found that 9 of the 22 vendors in our sample of 25 contracts,⁶ including SCO Family of Services and CAMBA (as noted above) and 7 other vendors, had received an overall poor rating from DYCD for their performance on a total of 20 other contracts during the preceding 3 years. However, DYCD's responsibility determinations for the contract awards to these vendors in Fiscal Year 2019 do not discuss any of those poor evaluations.⁷ A more thorough review of vendor performance that considers all relevant performance evaluations, as the PPB Rules and DYCD's own process prescribe, would improve DYCD's ability to determine whether a vendor is responsible.

⁴ DYCD officials stated that the agency has been working closely with the Mayor's Office of Contract Services to have its Fiscal Year 2018 evaluations uploaded into PASSPort.

⁵ The DYCD Connect system tracks the agency's program monitoring and evaluation efforts.

⁶ Three (of the 22) vendors each held 2 of the 25 sampled contracts.

⁷ For one vendor (Good Shepherd Services), we are questioning the adequacy of the responsibility determinations that DYCD prepared for both of its contracts in our sample. Therefore, we are questioning a total of 12 of the contracts in our sample (that had been awarded to 11 vendors, one of which was Good Shepherd Services) out of the 25 contracts in our sample (that had been awarded to 22 vendors).

Recommendations

1. DYCD should consider the totality of adverse information presented for each vendor when determining whether a vendor is responsible and document its considerations in the contract files.

DYCD Response: “DYCD does and will continue to consider the totality of adverse information presented for each vendor when determining whether a vendor is responsible and will continue to document its consideration in the contract files. DYCD’s preparation of its Responsibility Determinations are thorough and based on the information available at the time a responsibility determination is conducted.”

Auditor Comment: We continue to encourage DYCD to more consistently consider the totality of adverse information available to it when determining whether a given vendor is responsible and to more thoroughly document its consideration of that information in its contract files. As noted above, DYCD’s vendor responsibility determinations for 12 of the 25 DYCD contracts in our sample lacked comprehensive overall assessments of the vendors. These cases include several examples of vendors with records of multiple instances of inappropriate actions by staff and/or poor performance evaluations with little or no evidence that DYCD took those patterns into account in determining that the vendors were responsible.

2. DYCD should ensure that it consistently obtains and considers all relevant vendor performance evaluations in its responsibility determinations and that it documents its considerations of these evaluations in the contract files.

DYCD Response: “DYCD does and will continue to consider in its responsibility determinations all relevant vendor performance evaluations that are available at the time of completing a responsibility determination and will continue to document its consideration of these evaluations in the contract files.”

Auditor Comment: We continue to encourage DYCD to more consistently review and consider all relevant vendor performance evaluations in its responsibility determinations and to more thoroughly document its considerations in the contract files. As noted above, 9 of the vendors awarded the 25 contracts in our sample had received an overall poor rating from DYCD for their performance on a total of 20 other DYCD contracts during the preceding 3 years, but DYCD’s vendor responsibility determinations on these 9 vendors did not discuss any of these poor evaluations.

Performance Evaluations Were Not Consistently Performed in a Timely Manner

Section 4-01 (b) of the PPB Rules states that “[t]he agency shall monitor the vendor’s performance against [identified] standards and indicators on an ongoing basis” and that “[a] performance evaluation shall be done no less than once annually.”

DYCD tracked vendor performance evaluations in its Electronic Contract Management System (ECMS) prior to Fiscal Year 2018. Beginning in Fiscal Year 2018, DYCD tracked vendor performance evaluations in its DYCD Connect system. We searched these two systems to determine whether DYCD had prepared evaluations of vendor performance during Fiscal Years

2017 and 2018 on the contracts that preceded and led to the 19 contract renewals and extensions in our sample.

DYCD did not prepare an evaluation of one vendor's Fiscal Year 2017 performance before extending its contract during Fiscal Year 2019. In explaining the absence of that performance evaluation, DYCD officials incorrectly stated that none was required because the vendor had not provided a full year of service under the contract in Fiscal Year 2017. Records in the Comptroller's Checkbook NYC application show otherwise, however. DYCD finalized the Fiscal Year 2017 evaluation for this vendor on November 9, 2020, more than three years after the conclusion of that fiscal year.

The agency also did not prepare evaluations of four other vendors' Fiscal Year 2018 performance before renewing or extending their contracts during Fiscal Year 2019. DYCD officials cited the agency's transition from ECMS to DYCD Connect as the reason those four Fiscal Year 2018 evaluations were not prepared timely. They further informed us on September 4, 2020 that the agency was still in the process of finalizing three of the four evaluations in DYCD Connect and that the fourth evaluation had not yet been prepared. At that point, Fiscal Year 2018 had ended more than two years earlier.

Performance evaluations help agency officials determine whether existing contracts should be renewed, extended, allowed to lapse, or terminated. A more timely completion of vendor performance evaluations would not only assist DYCD when it considers awarding new contracts, contract renewals, or contract extensions, but would also help other City agencies when they consider awarding new contracts to DYCD vendors.

Recommendation

3. DYCD should ensure that it completes vendor performance evaluations in a timely manner.

DYCD Response: "DYCD has implemented a new evaluation and monitoring system called DYCDConnect that will assist with DYCD's timeliness with respect to end of the year performance evaluation submissions in PASSPort. DYCD does and will continue to monitor its programs on an on-going basis to ensure contract compliance."

Other Issue

According to section 2-02 (b) of the PPB Rules, "[a]gencies shall perform a pre-solicitation review for: (1) sole source procurements exceeding \$10,000 for goods and services and \$15,000 for construction and construction-related services, and (2) all other procurements exceeding the small purchase limits, except emergency procurements." Small purchase limits are \$100,000 for services other than construction-related services and \$500,000 for procurements from M/WBEs. Section 2-02 (a) defines a pre-solicitation review as "the process by which an agency, after determining the necessity of the procurement and the need to contract out, defines the existing market for the goods, services, or construction required, estimates the expected cost, and determines the most appropriate method of procurement." Section 2-02 (d) requires the agency to incorporate the pre-solicitation review within a report that includes, among other elements, "a statement addressing the anticipated level of competition, based on agency staff knowledge of the market, and any surveys performed, as appropriate."

DYCD did not perform a pre-solicitation review for the only contract assignment in our sample.⁸ In this instance, DYCD allowed its selected vendor, after award, to assign its contract to another vendor without a pre-solicitation review having been conducted. The contract amount of \$940,000 exceeded the limits specified in the PPB Rules mentioned above, and the assignment was not an emergency procurement; hence, this procurement required a pre-solicitation review.

DYCD officials argued that a contract assignment is a contract management action instead of a new procurement and that, therefore, the pre-solicitation review report it had prepared for the original contract award obviated the need for a new one when it approved the contract's assignment to another vendor.

However, the assignment of a City contract, in effect selecting a new vendor by transferring one vendor's contract rights and responsibilities to another, is more than simply a management action. It is also a procurement action, as defined in the PPB Rules, in that the City agency agrees to purchase specific services from a particular vendor for a specified price.⁹ Before agreeing to such a purchase, the agency is supposed to define the *existing* market and estimate the expected cost in that market.

In this instance, DYCD approved the assignment on May 22, 2019, two years and nine months after the approval of the pre-solicitation review report for the original contract. The contract file contains no evidence to indicate that DYCD took steps contemporaneously with the assignment to define or assess the market that existed *at the time of the assignment*.

For the assignment of a contract, as in other decisions to purchase goods or services, the agency needs to decide how many vendors to contact, and how to contact them to inform them of the opportunity to provide the goods or services. These considerations correspond to the content and purpose of the required pre-solicitation review report cited above and to the explicit policy preference for competitive procurement methods that the PPB Rules articulate. In this instance, by approving the assignment of its contract to a new vendor, DYCD in effect decided to purchase services from that vendor for a significant sum—up to \$940,000—without contacting *any* other vendors to determine whether they were interested in providing the services and, if so, at what prices.

Moreover, the PPB Rules do not include the assigning of a contract among the various agency actions discussed in Chapter 4: Contract Administration, which generally involve agencies' management of their contracts. Finally, the PPB Rules do not provide an exception for contract assignments in the discussion of the need for pre-solicitation reviews.

Recommendation

4. DYCD should prepare a pre-solicitation review report before assigning a contract or approving a vendor's assignment of a contract.

DYCD Response: DYCD disagreed with this recommendation, stating: "DYCD follows the Procurement Policy Board Rules in carrying out its procurement and contracting. There is no requirement of a pre-solicitation review (PSR) for an assignment. In addition, assignments are not new procurements and carry over

⁸ It was also the only assignment noted on DYCD's list of Fiscal Year 2019 contract awards.

⁹ PPB Rules' definition of procurement: "Buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction. It also includes all functions that pertain to the obtaining of any good, service, or construction, including planning, description of requirements, solicitation and selection of sources, preparation and award of contract, and all phases of contract administration, including receipt and acceptance, evaluation of performance, and final payment." PPB Rules section 1-01.

the same terms and conditions and are considered part of the PSR that was completed for the underlying contract.”

Auditor Comment: PPB Rules do not provide an exception for contract assignments in the discussion of the need for pre-solicitation reviews. DYCD approved the assignment discussed above on May 22, 2019, two years and nine months after the approval of the pre-solicitation review report for the original contract. The contract file contains no evidence to indicate that DYCD took steps contemporaneously with the assignment to define or assess the market that existed at the time of the assignment. By approving the assignment of the contract to a new vendor, DYCD in effect decided to purchase services from that vendor for a significant sum—up to \$940,000—without contacting *any* other vendors to determine whether they were interested in providing the services and, if so, at what prices. We encourage DYCD to reconsider its position and adopt our recommendation.

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. 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 this audit was non-competitive and limited-competition contracts that DYCD awarded during Fiscal Year 2019. In order to assess whether DYCD appropriately reviewed vendor performance evaluations as part of the agency's contract awarding process, we reviewed such evaluations in PASSPort for the period from July 1, 2015 to June 30, 2019.

To gain an understanding of DYCD's contract awarding process, we interviewed the Agency Chief Contracting Officer, the two Deputy Agency Chief Contracting Officers, and two Assistant Deputy Agency Chief Contracting Officers, and reviewed DYCD procurement policies and procedures. To understand how DYCD uses vendor performance evaluations to determine whether a vendor is responsible, we attended DYCD demonstrations of ECMS and PASSPort.

To assess the adequacy of DYCD's internal controls as they related to our audit objective, we evaluated the information we obtained concerning DYCD's procurement practices from our interviews of agency officials, our review of the agency's policies and procedures, DYCD's demonstrations of ECMS and PASSPort, and our detailed review of a sample of 25 non-competitive and limited-competition contracts that DYCD awarded during Fiscal Year 2019. We used the following as audit criteria:

- PPB Rules;
- DYCD Purchasing Procedures for Fiscal Year 2019;
- The Mayor's Office of Contract Services' delegation memorandums dated July 10, 2017 and February 14, 2019; and
- The Office of Management and Budget's Business and Delegation Rule Summary dated June 23, 2011.

To establish our sample of 25 non-competitive and limited-competition contract awards, we randomly selected, from a DYCD list of 380 such contracts, 14 of the 236 contract extensions and 5 of the 138 contract renewals, judgmentally selected 3 of the 4 negotiated acquisition contracts, and selected the only contract assignment and the only M/WBE small purchase on the list; we also selected 1 M/WBE small purchase made by DYCD that was not on the DYCD list but that we identified in the City's Financial Management System (FMS) as having been registered during Fiscal Year 2019. (To assess the completeness of the DYCD list of contracts awarded in Fiscal Year 2019, we had downloaded a list of Fiscal Year 2019 DYCD contracts from FMS and compared this list to the DYCD list.) We reviewed the contract files pertaining to these 25 contracts to determine whether each contained an adequate justification for the contract award method selected; whether a pre-solicitation review report had been prepared and properly approved; whether an adequate vendor responsibility determination had been prepared; whether each determination included a review of relevant Citywide and DYCD vendor performance evaluations; whether DYCD had prepared the required vendor performance evaluations; and whether each contract award had been properly approved.

To determine whether DYCD assessed vendor performance evaluations in the process of preparing vendor responsibility determinations, we reviewed PASSPort for any performance evaluations prepared by DYCD and other City agencies during the three years preceding DYCD's responsibility determinations on the vendors for the 25 Fiscal Year 2019 contracts in our sample. Because PASSPort did not as yet include vendor performance evaluations prepared by DYCD for Fiscal Year 2018, we reviewed DYCD Connect for evaluations of vendor performance during Fiscal Year 2018 (1) on the predecessor contracts leading up to the contract renewals and extensions in our sample and (2) on any other contracts that the vendors for the 25 contracts in our sample had with DYCD during Fiscal Year 2018.

The results of the sample tests, while not projected to the respective populations, provided us with a reasonable basis, along with the results of our other tests, to assess DYCD's awarding of non-competitive and limited-competition contracts during Fiscal Year 2019.



January 26, 2021

Bill Chong
Commissioner

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Marjorie Landa
Deputy Comptroller for Audit
Office of the Comptroller
One Centre Street, Room 1100 North
New York, New York 10007

**Re: Audit Report on the Department of Youth and Community
Development's Awarding of Non-Competitive and Limited-Competition
Contracts ME20-068A (Draft Report)**

Dear Ms. Landa:

The Department of Youth and Community Development (DYCD) appreciates this opportunity to review and provide the attached response to each Recommendation to the Draft Report. It is respectfully requested that the response be attached as part of the Final Report.

If you have questions regarding the response or wish to discuss the audit further, please do not hesitate to let me know.

Sincerely,

A handwritten signature in black ink that reads "Bill Chong". The signature is written in a cursive, flowing style.

Bill Chong

Attachment

c: James Bradley, Assistant Director, Office of the Comptroller
Florim Ardolli, Associate Director for Audits, Mayor's Office of Operations
John Cirolia, Chief of Staff, DYCD
Dana Cantelmi, Agency Chief Contracting Officer (ACCO), DYCD
Caroline Press, General Counsel, DYCD
William Kamen, Senior Director of Internal Review & Revenue Compliance, DYCD

RESPONSE
TO THE DRAFT AUDIT REPORT ON
THE DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT’S
AWARDING OF NON-COMPETITIVE AND LIMITED-COMPETITION CONTRACTS
ME20-068A

DYCD appreciates that the City Comptroller’s audit report acknowledges that *“DYCD adequately justified its decisions to use non-competitive and limited-competition procurement methods, ensured that its contract award decisions involving these methods were properly approved, and maintained well-organized contract files.”*

As discussed during the Exit Conference, DYCD respectfully disagrees with the Comptroller’s Bureau of Audit classification that some procurement methods are non-competitive, such as contract extensions and renewals; and others involve limited competition, such as negotiated acquisitions. In particular, the DYCD contract extensions, renewals and negotiated acquisition extensions were based on existing contracts that were already competitively procured under requests for proposals; moreover, they are categorized not as new procurements, but as contract management actions consistent with the Comptroller’s Bureau of Contract Administration categorization of contract actions and as described in the Comptroller’s Report that can be accessed electronically at

https://comptroller.nyc.gov/wp-content/uploads/documents/FY19_Annual_Contract_Report.pdf.

Accordingly, DYCD also disagrees with the computation of the number of non-competitive procurements in the Comptroller’s Report and had respectfully requested during the Exit Conference that the Bureau of Audit change how non-competitive and limited procurements are categorized to align with the Bureau of Contract Administration’s approach. These numbers should be adjusted to show only the true non-competitive procurements, with the following edits: DYCD entered into 546 contracts in Fiscal Year 2019.¹ Of these contracts, 166 were competitive contracts based on requests for proposals; 374 were contract management actions (236 contract extensions and 138 contract renewals); 4 were non-competitive or limited competition via a negotiated acquisitions; 1 was an assignment due to an organizational merger; and 1 was a small purchase from a Minority and Women-Owned Business Enterprise (M/WBE). Furthermore, The Pre-Solicitation Review (PSR) for the assigned contract sampled was completed on the underlying contract. There were no changes to the terms when initiating the assignment and the contract agreement language references the underlying contract with no changes.

COMPTROLLER RECOMMENDATIONS:

1. **Recommendation:** DYCD should consider the totality of adverse information presented for each vendor when determining whether a vendor is responsible and document its considerations in the contract files.

DYCD Response: DYCD does and will continue to consider the totality of adverse information presented for each vendor when determining whether a vendor is responsible and will continue to document its consideration in the contract files. DYCD's preparation of its Responsibility Determinations are thorough and based on the information available at the time a responsibility determination is conducted.

2. **Recommendation:** DYCD should ensure that it consistently obtains and considers all relevant vendor performance evaluations in its responsibility determinations and that it documents its considerations of these evaluations in the contract files.

DYCD Response: DYCD does and will continue to consider in its responsibility determinations all relevant vendor performance evaluations that are available at the time of completing a responsibility determination and will continue to document its consideration of these evaluations in the contract files.

3. **Recommendation:** DYCD should ensure that it completes vendor performance evaluations in a timely manner.

DYCD Response: DYCD has implemented a new evaluation and monitoring system called DYCDConnect that will assist with DYCD's timeliness with respect to end of the year performance evaluation submissions in PASSPort. DYCD does and will continue to monitor its programs on an on-going basis to ensure contract compliance.

4. **Recommendation:** DYCD should prepare a pre-solicitation review report before assigning a contract or approving a vendor's assignment of a contract.

DYCD Response: DYCD follows the Procurement Policy Board Rules in carrying out its procurement and contracting. There is no requirement of a pre-solicitation review (PSR) for an assignment. In addition, assignments are not new procurements and carry over the same terms and conditions and are considered part of the PSR that was completed for the underlying contract.