



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 Sanitation's Awarding and Monitoring of Its Contract with Cariati Developers Inc. to Provide Emergency Adult Food Access Program Services

ME21-063A

June 4, 2021

<http://comptroller.nyc.gov>



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To the Residents of the City of New York:

My office has audited the New York City Department of Sanitation's (DSNY's) awarding and monitoring of its contract with Cariati Developers Inc. (CDI) to provide Emergency Adult Food Access Program services. We conduct audits such as this to ensure that City agencies award emergency contracts with due diligence and that they adequately monitor the implementation of such contracts.

The audit found that DSNY did not display sufficient due diligence in its decision to award an Emergency Adult Food Access Program contract to CDI. DSNY did not discover that the owner of CDI had been convicted of a federal felony more than a month before the agency awarded the contract. In addition, DSNY awarded the contract to CDI without any evidence that the vendor had prior food sourcing, packaging, and/or delivery experience. DSNY also did not maintain sufficient controls over its vendor payments. In particular, it did not obtain independent confirmations that the number of food boxes the vendor billed for had actually been received before DSNY made most of its payments to CDI. However, DSNY did monitor CDI's performance and terminated the contract within three weeks of the vendor's first day of deliveries due in part to the vendor's poor performance. DSNY also terminated the contract because the agency had become aware of the owner's conviction.

The audit recommends, among other things, that DSNY: routinely include a Google search of a vendor when conducting a vendor responsibility review; enforce its bid booklet requirement for potential vendors to file PASSPort disclosure statements or, at a minimum, require the submission of disclosure statements outside of PASSPort that cover certain basic topics, such as the criminal history of the potential vendors' principals; consistently document the search results of its vendor responsibility reviews at the time those reviews are conducted; consider a potential vendor's directly relevant experience when determining whether the vendor has the capabilities to provide a particular type of service; consistently obtain independent confirmations of the amounts of food received from the vendors before making payments; and recoup from CDI a double payment of \$15,644.

The results of the audit have been discussed with DSNY 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 Sanitation's Awarding and Monitoring of Its Contract with Cariati Developers Inc. to Provide Emergency Adult Food Access Program Services

ME21-063A

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City Department of Sanitation (DSNY) awarded a contract to Cariati Developers Inc. (CDI) in accordance with New York City (City) procurement standards and with due diligence; and whether it effectively monitored the implementation of the contract.

The COVID-19 crisis has exacerbated food insecurity in the City. In an attempt to assist affected residents during the crisis, the City, through the New York City Emergency Management Department (NYCEM) and DSNY, has provided meals and groceries (food pantry boxes) to vulnerable adult New Yorkers through the Emergency Adult Food Access Program.

On April 2, 2020, DSNY awarded CDI a \$14 million emergency contract to provide food delivery services for the program for a three-month period commencing on April 13, 2020. According to the contract, CDI would provide pantry boxes each containing a three-day food supply equivalent to nine meals per box. According to the Notice of Award, the initial quantity of boxes to be delivered each day was between 5,000 and 10,000 boxes, with the possibility of increasing this amount later in the contract period. The unit price to be paid to CDI was set at \$29.35 per box.

DSNY terminated its contract with CDI on May 3, 2020, just three weeks after the vendor's first day of deliveries, due to poor performance and due to DSNY having become aware that more than a month prior to CDI having been awarded the contract, the owner had been convicted of obstructing the Internal Revenue Service. CDI was paid \$1,428,406 for its three weeks of work under the contract.

Audit Findings and Conclusions

DSNY did not adequately follow the City's procurement guidance and displayed insufficient due diligence in its decision to award an Emergency Adult Food Access Program contract to CDI. Among other things, DSNY did not discover that the owner had been convicted of a federal felony; more than a month before it awarded the contract to the vendor, the owner had pleaded guilty to

obstructing the Internal Revenue Service. In addition, DSNY awarded the contract to CDI without any evidence that the vendor had prior food sourcing, packaging, and/or delivery experience, even though the bid booklet called for the vendor to have had at least three years of such experience in the preceding five years. According to the company's website, CDI's business scope includes new home construction, excavation, snow removal, and the removal and hauling of debris. CDI previously had contracts with DSNY to remove snow and to remove debris after Superstorm Sandy. DSNY also did not maintain sufficient controls over its vendor payments. Before DSNY made most of its payments to CDI, the agency did not obtain independent confirmation that the number of food boxes the vendor billed for had actually been received. However, DSNY did monitor CDI's performance and terminated the contract within three weeks of the vendor's first day of deliveries due in part to the vendor's poor performance. DSNY also terminated the contract because the agency had become aware that more than a month before it awarded the contract, the owner had been convicted of a federal felony.

Audit Recommendations

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

- DSNY should routinely include a Google search of a vendor when conducting a vendor responsibility review.
- DSNY should enforce its bid booklet requirement for potential vendors to file PASSPort disclosure statements or, at a minimum, require the submission of disclosure statements outside of PASSPort that cover certain basic topics, such as the criminal history of the potential vendors' principals.
- DSNY should consistently document the search results of its vendor responsibility reviews at the time those reviews are conducted, even when they do not show any adverse information.
- DSNY should consider a potential vendor's directly relevant experience when determining whether the vendor has the capabilities to provide a particular type of service and should document that consideration in its bid evaluation.
- DSNY should consistently obtain independent confirmations of the amounts of food received from the vendors before making payments.
- DSNY should establish a tracking system to record vendor food delivery, billing and payment information, and consistently review the information in this system prior to paying invoices in an effort to prevent double payments.
- DSNY should recoup from CDI the double payment of \$15,644.

Agency Response

In its response, DSNY generally disagreed with the audit findings, agreed with three of the audit recommendations (recommendations #1, #3, and #7), and failed to directly respond to four of them (recommendations #2, #4, #5, and #6) in that either it did not address the specific recommendations offered or it simply restated its disagreements with the findings upon which the recommendations were based.

AUDIT REPORT

Background

The COVID-19 crisis has exacerbated food insecurity in the City. In an attempt to assist affected residents during the crisis, the City, through NYCEM and DSNY, has provided meals and groceries (food pantry boxes) to vulnerable adult New Yorkers through the Emergency Adult Food Access Program.

To help facilitate COVID-19-related procurements, the Mayor issued Emergency Executive Order 101 (EEO 101) dated March 17, 2020, which suspended City procurement laws and rules for COVID-19-related purchases. Among other requirements, EEO 101 suspended rules requiring competitive bidding and the submission of the contracts for registration by the City Comptroller before the contracts are “implemented” or, in the case of emergency procurements, within 30 days of award. Shortly thereafter and over a period of weeks, the Mayor’s Office of Contract Services (MOCS) issued a series of emails in which MOCS officials provided “guidance” on how to implement procurements in accordance with EEO 101. MOCS provided DSNY a summary of some of that guidance in the form of a memo on March 27, 2020.

On March 27, 2020, NYCEM and DSNY released a bid booklet to solicit vendors to deliver food to vulnerable adults through the Emergency Adult Food Access Program. DSNY received bids from 123 vendors and awarded contracts to 35 of them. On April 2, 2020, DSNY awarded CDI one such contract (valued at \$14 million) to provide food delivery services for a three-month period commencing on April 13, 2020. According to the contract, CDI would provide pantry boxes each containing a three-day food supply equivalent to nine meals per box. According to the Notice of Award, the initial quantity of boxes to be delivered each day was between 5,000 and 10,000 boxes, with the possibility of increasing this amount later in the contract period. The unit price to be paid to CDI was set at \$29.35 per box.

To implement the CDI contract, NYCEM would first place a food delivery order with DSNY that included food quantity and delivery location information. DSNY would then notify CDI of the number of food boxes it needed to deliver the next day to each specified location. CDI was required to confirm that it would deliver the ordered food to the indicated locations the next day.¹ Staff at the distribution centers and housing locations were required to check the quantity and condition of the food boxes delivered, to photograph the food boxes, and to sign the packing slips. NYCEM was required to send photographs both of the signed packing slips and of the food boxes to DSNY. On a weekly basis, CDI was required to submit invoices and digital copies of the signed packing slips to DSNY for payment.

DSNY terminated its contract with CDI on May 3, 2020, just three weeks after the vendor’s first day of deliveries, due to poor performance and to DSNY having become aware that more than a month prior to CDI having been awarded the contract, the owner had been convicted of obstructing the Internal Revenue Service. CDI was paid \$1,428,406 for its work under the contract.

¹ These locations were food distribution centers and residential buildings. NYCEM arranged for Taxi and Limousine Commission drivers to deliver food boxes from the food distribution centers to the program recipients. The housing locations included buildings managed by the New York City Housing Authority (NYCHA) and the City Department of Housing Preservation and Development (HPD). NYCEM arranged for NYCHA and HPD staff to distribute the food to program recipients residing at those locations.

Objective

The objective of this audit was to determine whether DSNY: (1) awarded the contract to CDI in accordance with City procurement standards and with due diligence; and (2) effectively monitored the implementation of the contract.

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 scope of this audit was from March 27, 2020 through June 22, 2020. 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 DSNY

The matters covered in this report were discussed with DSNY officials during and at the conclusion of this audit. A preliminary draft report was sent to DSNY and was discussed at an exit conference held on April 8, 2021. On April 23, 2021, we submitted a draft report to DSNY with a request for written comments. We received a written response from DSNY on May 7, 2021.

In its response, DSNY generally disagreed with the audit findings, agreed with three of the audit recommendations (recommendations #1, #3, and #7), and failed to directly respond to four of them (recommendations #2, #4, #5, and #6) in that either it did not address the specific recommendations offered or it simply restated its disagreements with the findings upon which the recommendations were based.

Specifically, DSNY disagreed with the audit findings that it had: exercised insufficient due diligence in awarding an Emergency Adult Food Access Program contract to CDI; conducted an inadequate review of vendor integrity; improperly assessed the vendor's prior experience in sourcing, packaging, and/or delivering food; and maintained insufficient controls over its vendor payments process. DSNY argues that, to the contrary, it followed all applicable rules and guidance and otherwise acted prudently. After a careful review of DSNY's arguments, we concluded that DSNY's arguments do not alter any of the findings in our report.

With regard to the finding that DSNY failed to exercise due diligence in awarding this contract to CDI, DSNY argues that it "adhered to or exceeded all City procurement guidance that was in effect for emergency procurements." However, according to MOCS' March 27, 2020 *Guidance on COVID-19 Related Emergency Contracts*, an agency still needed to prepare a "vendor responsibility determination" before awarding an emergency contract and, although EEO 101 suspended the Procurement Policy Board (PPB) Rules for such contracts, those rules provide guidance to agencies for the preparation of such a determination. Section 2-08 of the PPB Rules states that an agency can conclude that a vendor is responsible if the vendor has "the business integrity to justify the award of public tax dollars" and "the capability in all respects to perform fully

the contract requirements.” In awarding an Emergency Adult Food Access Program contract to CDI, however, DSNY did not ensure that the vendor had either of these two prerequisites for a City contract. More than a month prior to CDI having been awarded the contract, the owner had been convicted of obstructing the Internal Revenue Service.

In addition, although the bid booklet required a vendor to have gained at least three years of experience sourcing, packaging, and/or delivering food, or to have awarded a subcontract to a “partner” with such experience, CDI did not provide any evidence in its bid that it had any such experience or that it had awarded any such subcontract. DSNY indicated in its written response that it believed that CDI would compensate for those deficiencies by obtaining the food from organizations that had been in the food business for many years. However, as was evident from CDI’s poor performance, the prior experience of the organizations from which CDI obtained the food was irrelevant to CDI’s ability to deliver it. DSNY also stated in its written response that “CDI utilized a global transportation and supply chain logistics company with significant experience in the food and beverage industry to assist with trucking and food supply operations.” However, CDI did not inform DSNY of its decision to use this logistics company until *after* the vendor had begun to deliver food. Further, it did not lead to a resolution of the vendor’s persistent performance issues.

The bottom line is that whatever process DSNY followed did not protect it or the City from awarding a contract to a vendor with a recent criminal conviction for obstructing the Internal Revenue Service and with no relevant experience. DSNY should take steps to ensure that it does not make the same mistakes again when awarding emergency contracts in the future.

In arguing against the audit’s findings, DSNY failed to directly respond to four of our seven recommendations, insisting that it handled its responsibilities properly despite clear evidence to the contrary. For example, DSNY did not directly respond to our recommendation that it consider requiring that vendors submit a limited disclosure statement outside of PASSPort in those emergency situations in which requiring the filing of a full PASSPort disclosure statement might cause unacceptable delays. CDI’s poor performance shows that contracting with an unreliable vendor can also create unacceptable delays in addressing an emergency situation. Our recommendation was that DSNY consider the use of a limited disclosure statement in emergency situations in an effort to prevent either type of unacceptable delay. A limited disclosure statement could cover certain basic topics, such as the criminal history of the potential vendors’ principals. Rather than consider a way in which it might avoid repeating the mistake of awarding a contract to a vendor whose owner had a criminal conviction of which the agency was unaware, DSNY preferred to insist that it “has, and will continue to, adhere to the PPB Rules in effect and relevant MOCS guidance with regard to PASSPort disclosure statement requirements.”

In arguing that it was reasonable to obtain the receiving staff’s confirmations of the receipt of food (i.e., the signed packing slips) from the vendor itself rather than from the receiving staff, DSNY displays an undue level of trust in the vendor to consistently transmit valid confirmations of receipt. In addition, although DSNY indicates that it knew all of the receiving staff that signed the packing slips sufficiently well enough to recognize their signatures, it offers no evidence to support this implausible claim. These individuals included City staff (including Department of Parks and Recreation staff) at 11 food distribution sites and non-DSNY receiving staff at 250 New York City Housing Authority and City-supported housing locations. Further, DSNY argues that in making payments, it relied on the fact that there were ongoing communications between DSNY and the staff at the receiving sites and housing locations whenever there was a problem delivery. However, an effective payments control is not simply that there are communications when there is a problem delivery, but that there are independent confirmations of *all* receipts, whether the delivery is problematic or routine. DSNY also argues in its response that the audit report itself

cites “many” emails among NYCEM, DSNY, and CDI on problematic and successful deliveries. Unfortunately for DSNY’s argument, such emails only provided independent confirmations of receipt for 23 (16 percent) of CDI’s 140 deliveries.

We further address DSNY’s written response to this report in the Findings and Recommendations section of this report. The full text of DSNY’s response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DSNY did not adequately follow the City's procurement guidelines and displayed insufficient due diligence in its decision to award an Emergency Adult Food Access Program contract to CDI. Among other things, DSNY did not discover that the owner had been convicted of a federal felony; more than a month before it awarded the contract to the vendor, the owner had pleaded guilty to obstructing the Internal Revenue Service. In addition, DSNY awarded the contract to CDI without any evidence that the vendor had prior food sourcing, packaging, and/or delivery experience, even though the bid booklet called for the vendor to have had at least three years of such experience in the preceding five years.

DSNY also did not maintain sufficient controls over its vendor payments. In particular, it did not obtain independent confirmation that the number of food boxes the vendor billed for had actually been received before DSNY made most of its payments to CDI. However, DSNY did monitor CDI's performance and terminated the contract within three weeks of the vendor's first day of deliveries due in part to the vendor's poor performance. DSNY also terminated the contract because the agency had become aware that more than a month before it awarded the contract, the owner had been convicted of a federal felony.

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

Insufficient Due Diligence in DSNY's Award of an Emergency Adult Food Access Program Contract to CDI

According to MOCS' March 27, 2020 *Guidance on COVID-19 Related Emergency Contracts*, an agency should prepare a "vendor responsibility determination" before awarding an emergency contract. Moreover, although EEO 101 suspended the PPB Rules for such contracts, those rules still provide guidance to agencies for the preparation of such a determination. Section 2-08 of the PPB Rules states that an agency can conclude that a vendor is responsible if the vendor has "the business integrity to justify the award of public tax dollars" and "the capability in all respects to perform fully the contract requirements." In awarding an Emergency Adult Food Access Program contract to CDI, however, DSNY did not ensure that the vendor had either of these two prerequisites for a City contract.

Inadequate Review of Vendor Integrity

More than a month before DSNY's April 2, 2020 awarding of a contract to CDI, the United States Attorney for the District of Connecticut issued a press release (on February 28, 2020) stating that the owner of CDI had pleaded guilty to obstructing the Internal Revenue Service, an offense that carries a maximum term of three years imprisonment. DSNY officials told us that they reviewed the responsibility of the vendor on March 31, 2020, two days before awarding the contract to CDI, by reviewing information on the vendor in Dun & Bradstreet, Thomson Reuters CLEAR, and the City's PASSPort databases.² However, DSNY officials stated that these searches did not provide information about the owner's criminal conviction in this case.

² Dun and Bradstreet produces reports on companies' creditworthiness. Thomson Reuters CLEAR is an online investigative platform that, among other things, provides access to public records, proprietary data, and publicly available information, including criminal and arrest records. PASSPort (Procurement and Sourcing Solutions Portal) is

One possible reason that information about the criminal conviction was not in PASSPort was that DSNY did not enforce the bid booklet provision that required a bidder to file a PASSPort disclosure statement. Such a disclosure statement, if completed truthfully, would have included information about the owner's conviction. DSNY officials stated that subsequent to the issuance of the bid booklet, they decided that requiring potential vendors to complete lengthy PASSPort disclosure statements would have led to unacceptable delays in the start of the program to provide food to food-insecure New Yorkers. However, rather than disregard this bid booklet requirement in its entirety, DSNY could have asked the vendors to submit a shorter disclosure statement outside of PASSPort that addressed certain basic topics, such as the criminal history of the vendors' principals. In addition, DSNY acknowledged that the agency had not supplemented its database searches with a Google search. Although such a search was not required, it likely would have provided information about the conviction. DSNY officials told us that they began requiring Google searches for all procurements in May 2020. They also stated that had the agency known about this conviction, it would not have awarded the contract to CDI.

DSNY asserts that it conducted a responsibility review of CDI on March 31, 2020, just prior to awarding it the contract. However, the agency did not provide any evidence showing that it actually conducted such a review on that day. DSNY officials stated that the agency did not preserve screenshots from the various databases they reviewed for information about the vendor on the day the search was conducted. Consequently, we are unable to confirm DSNY's assertion. DSNY officials stated that they did not preserve screenshots of its searches because the databases checked did not reveal adverse information on the vendor. However, DSNY did provide us with screenshots that were dated May 1, 2020, which was just prior to the agency's termination of its contract with CDI. These screenshots also provided no information about the vendor owner's February 28, 2020 conviction.

Even though not required by regulation, it is important for agencies to preserve the results of their vendor responsibility reviews, even when no adverse results are found, in order for the agency to be assured that a vendor responsibility review was actually performed *before* the awarding of a contract, and to help justify an agency's decision to award a contract to a particular vendor. DSNY officials told us that starting in May 2020, the agency began preserving screenshots and records for all of its vendor responsibility reviews, including those done for its emergency contracts.

Failure to Properly Assess the Vendor's Prior Experience and Ability

CDI did not meet the food delivery experience requirement specified in NYCEM's and DSNY's bid booklet for the Emergency Adult Food Access Program. The bid booklet stated that a vendor should have had a minimum of three years of food sourcing, packaging, and/or delivery experience during the preceding five years. However, CDI's bid did not present any information showing that it had any such experience. According to the company's website, CDI's business scope includes new home construction, excavation, snow removal, and the removal and hauling of debris.

DSNY stated that CDI having no food delivery experience was compensated for by its proposal that it would obtain the food from organizations that had been in the food business for many years. Under the contract, CDI was expected to obtain the food from these organizations and deliver it

the City's online procurement portal where, among other things, vendors submit information required for contracting and City agencies are able to access vendor performance evaluations prepared by other City agencies. DSNY officials also assessed the responsibility of the vendor by searching information available on the vendor in the New York State (NYS) Tax Warrant System and the NYS Department of State Division of Corporations.

to various locations around the City. However, as was evident from CDI's failure to properly perform the contract, the prior experience of the organizations from which CDI would obtain the food was irrelevant to CDI's ability to perform the food delivery services required. DSNY also argued that CDI had performed well on two previous contracts—one in 2011 to remove snow caused by a major snowstorm and one in 2012 to remove debris caused by Superstorm Sandy. However, as clearly evidenced by CDI's poor performance on the Emergency Adult Food Access Program contract, and as is discussed in more detail below, a different set of skills is required to deliver the correct amount of food on time and in good condition than the set of skills required to efficiently haul snow and debris.

CDI's lack of experience in handling food deliveries was very likely a major contributing factor in the failure of the vendor to meet its contractual obligations to DSNY. Under the contract, CDI was required to deliver the ordered amount of food in a timely manner. However, as documented in DSNY's contract termination letter, the vendor often delivered food late and/or in insufficient amounts. CDI was also required under the contract to deliver the food in appropriate packaging. If the food organization from which CDI obtained the food did not package the food properly, it was CDI's responsibility to repackage the food in a proper manner. It was also CDI's responsibility to load the food on the truck so that it would be secure during transit. However, the contract termination letter also documented that the delivered food was often packaged improperly and/or damaged. For example, on April 13, 2020, the first day of contract implementation, CDI attempted to deliver food to the Hunts Point distribution center. However, according to the termination letter, staff at the center observed that the food in the truck had been packed in different-sized and broken boxes that had tipped over and were falling apart. Much of the food was unusable. In addition, CDI refused to unload the small amount of food that was still usable, even though its contract required that it do so. In another example, on April 28, 2020, CDI attempted to deliver 1,296 food boxes to the Al Oerter food distribution center in Flushing, Queens. However, according to the termination letter, staff at the center observed that the food boxes had been crushed and that the food was unusable. Later, when CDI attempted to deliver another 1,296 food boxes to the center, the replacement food boxes were similarly damaged.

Had DSNY considered CDI's lack of food delivery experience and awarded the contract to a vendor with the required experience, the agency would have decreased the likelihood of these serious vendor performance issues having occurred. DSNY also could have avoided one possible result of CDI's poor performance—some program participants not receiving the food on which they had relied, as stated in DSNY's termination letter to CDI.

Recommendations

1. DSNY should routinely include a Google search of a vendor when conducting a vendor responsibility review.

DSNY Response: "DSNY began conducting Google searches (which is not required by the PPB Rules, when applicable, or MOCS's guidance) even for emergency contracts in May 2020."

Auditor Comment: We are pleased that DSNY is now conducting Google searches and encourage the agency to consistently do so when conducting a vendor responsibility review. Although such a search is not required, it will help to supplement the information available in various databases on a vendor and its principals.

2. DSNY should enforce its bid booklet requirement for potential vendors to file PASSPort disclosure statements or, at a minimum, require the submission of

disclosure statements outside of PASSPort that cover certain basic topics, such as the criminal history of the potential vendors' principals.

DSNY Response: "MOCS suspended PASSPort filing requirements for emergency procurements, but DSNY left the requirement in the bid booklet so it could run a Vendor Name Check for each contractor after the commencement of contract services and the initial stabilization of the Get Food Program, which it did. DSNY has, and will continue to, adhere to the PPB Rules in effect and relevant MOCS guidance with regard to PASSPort disclosure statement requirements."

Auditor Comment: DSNY argues that it "left the [PASSPort filing] requirement in the bid booklet so that it could run a Vendor Name Check for each contractor after the commencement of contract services." However, DSNY stated in the bid booklet that "[b]efore NYCEM & DSNY can award the Contract, the Successful Bidder *must* additionally submit [a] PASSPort disclosure submission." [Emphasis added.] Therefore, the requirement was not "left" in the bid booklet. Rather, DSNY decided not to enforce it at some point *after* the bid booklet was issued. Although DSNY asserts that it performed Vendor Name Checks after the contracts were awarded, it admits that it took no alternative steps *before* the contracts were awarded to ask potential vendors to disclose certain basic information, such as the criminal history of the potential vendors' principals. As a lesson learned from this experience, we reiterate our recommendation that DSNY should seriously consider requiring the submission of a shorter disclosure statement outside of PASSPort that addresses certain basic topics, such as the criminal history of a potential vendor's principals, when the agency decides not to obtain a PASSPort filing for an emergency contract.

3. DSNY should consistently document the search results of its vendor responsibility reviews at the time those reviews are conducted, even when they do not show any adverse information.

DSNY Response: "DSNY began taking and preserving screenshots of its responsibility reviews (which is not required by the PPB Rules, when applicable, or MOCS's guidance) in May 2020."

Auditor Comment: We are pleased that DSNY is now doing this and encourage DSNY to continue documenting the search results of its vendor responsibility reviews at the time those reviews are conducted, even when they do not show any adverse information. Although this step is not required, it is important for DSNY to preserve the results of its vendor responsibility reviews in order for it to be assured that such a review was actually performed *before* the awarding of a contract, and to help justify the agency's decision to award the contract to a particular vendor.

4. DSNY should consider a potential vendor's directly relevant experience when determining whether the vendor has the capabilities to provide a particular type of service and should document that consideration in its bid evaluation.

DSNY Response: "DSNY did consider relevant experience with respect to all vendors, including CDI."

Auditor Comment: DSNY stated in its written response that CDI having no food delivery experience was compensated for by CDI's plan to obtain the food from organizations that had been in the food business for many years. However, as was evident from CDI's failure to properly perform the contract, the prior

experience of the organizations from which CDI would obtain the food was irrelevant to CDI's ability to perform the food delivery services required. DSNY also stated in its written response that "CDI utilized a global transportation and supply chain logistics company with significant experience in the food and beverage industry to assist with trucking and food supply operations." However, CDI did not inform DSNY of its decision to use this logistics company until *after* the vendor had begun to deliver food. Further, it did not lead to a resolution of the vendor's persistent performance issues.

Insufficient Controls in DSNY's Vendor Payment Practices

According to DSNY's *Contract Management and Invoicing Procedures for COVID-19 Food Distribution*, receiving staff are required to check the quantity and condition of the food boxes delivered, to photograph the food boxes, and to sign the packing slips. NYCEM is then required to send photographs of the food boxes and the signed packing slips to DSNY daily so that DSNY, the agency responsible for payment, but not the recipient of the food, is assured of proper delivery. On a weekly basis, vendors are required to submit invoices (along with digital copies of the signed packing slips) to DSNY requesting payment for the vendor's food deliveries during the prior week.

Before making payment, DSNY personnel are required to review the invoices and packing slips submitted by the vendors and compare them to the delivery verification documents received from NYCEM. This procedure is consistent with Comptroller's Directive #24, Section 6.0, which states that those approving vendor payments "must ensure that goods or services have been received, and the receipt has been signed or approved by an authorized person."

However, DSNY paid CDI for most of its deliveries without comparing the vendor's billing information to signed packing slips transmitted to the agency by NYCEM, as required by DSNY's invoicing procedures. Between April 13, 2020 and May 2, 2020, CDI made 140 deliveries of a total of 48,135 food boxes to distribution sites and housing locations. Although CDI submitted invoices and signed packing slips to DSNY for all 140 deliveries, DSNY did not obtain signed packing slips from NYCEM for 117 (84 percent) of them. As a result, DSNY processed the invoices and made payments to CDI for the 117 deliveries without the packing slips from NYCEM verifying that the quantities billed by the vendor were the quantities accepted by the food distribution sites and housing locations.

DSNY officials stated that high volume and rapid distribution at the food distribution sites, plus the deliveries to 250 housing locations throughout the City, made it impractical for DSNY to continue to require photographs of the signed packing slips and the deliveries from NYCEM before issuing payments. Additionally, DSNY officials claimed that the agency's review of the signed packing slips submitted by CDI and the agency's comparison of the amounts delivered (as indicated on the signed packing slip) to the amounts that DSNY had ordered the vendor to deliver, made the requirement of NYCEM transmitting photographs of the signed packing slips to DSNY unnecessary.

However, the reason that DSNY's invoicing procedures required photographs of the signed packing slips from NYCEM was to obtain independent confirmation of the receipt of the food that the vendor claimed to have delivered. In the absence of a photograph of a signed packing slip, DSNY did not have such an independent confirmation to ensure that payment was appropriate. DSNY could have requested an alternative form of confirmation, such as an email from NYCEM confirming the receipt of a certain number of food boxes from a vendor at a particular location on a particular date and time. Without confirmations of receipt, DSNY had to rely on the veracity of

the invoices and packing slips submitted by the vendors. As stated in Comptroller's Directive #24, Section 6.0, it is important for DSNY to receive independent confirmation from "an authorized person" of the receipt of goods and services before making a vendor payment.

DSNY officials also argued that its communications with NYCEM, food distribution site, and housing location staff on problem deliveries served as independent confirmation of deliveries. However, effective independent confirmation requires such communication on all deliveries, not just those where someone on site thought it necessary to communicate that a problem had arisen.

In addition, DSNY did not have a tracking system in place to detect double billing by the vendors. CDI submitted to DSNY an invoice with five signed packing slips for food deliveries to five housing locations on April 28, 2020. However, CDI had already included these same five packing slips in another invoice for deliveries made on April 28, 2020. DSNY made full payments to CDI for both invoices even though these payments included a double payment of \$15,644 for the same five deliveries. Had DSNY established a tracking system to record vendor food delivery, billing and payment information, and had it reviewed such information before making the second payment, DSNY could have avoided this double-payment error. DSNY officials argued that the agency addressed this issue by assigning each vendor to a particular invoice processor. However, since the invoice processors would also be handling all of the invoices received from the other vendors that were assigned to them, a tracking system record of all payments that had already been made to these vendors would help these employees avoid double payments. DSNY did acknowledge the double payment and stated that it has taken steps to recoup the overpayment.

Although DSNY established insufficient controls over its vendor payment practices and thereby increased the risk of it overpaying the vendor, we found no evidence (based on the packing slips provided by the vendor) that DSNY paid for undelivered food or for damaged food, with the exception of the one double payment noted above. However, like DSNY, we did not have (for most of the deliveries) the benefit of an independent confirmation of full performance that would have been provided had NYCEM transmitted photographs of the packing slips to DSNY. In addition, although DSNY exhibited insufficient due diligence in its awarding of a food delivery contract to CDI, DSNY did monitor CDI's performance in that there was email correspondence from DSNY to CDI during the three weeks that the contract was in effect in which DSNY identified performance deficiencies and an email on April 28, 2020 in which DSNY threatened contract termination for poor performance. On May 3, 2020, DSNY terminated the three-month contract after three weeks of deliveries.

Recommendations

5. DSNY should consistently obtain independent confirmations of the amounts of food received from the vendors before making payments.

DSNY Response: "DSNY did independently confirm with NYCEM, the City staff at the FDSs, and the POCs at the City-supported housing buildings the amount of product received before it made payment on the invoices."

Auditor Comment: DSNY provided insufficient evidence that it independently confirmed the amount of food received from the vendor before making most of its payments. Our audit found that DSNY did not receive signed packing slips directly from an independent source for 117 (84 percent) of the 140 deliveries made by CDI. For these 117 deliveries, DSNY inappropriately relied on signed packing slips it received from the vendor itself. We, therefore, continue to encourage DSNY to

consistently obtain independent confirmations of the amounts of food received from the vendors before making payment.

On a related matter, in its written response, DSNY states that the *Contract Management and Invoicing Procedures for COVID-19 Food Distribution* it provided us was a “draft document” and that the procedures were subsequently revised. However, this is the document that DSNY provided us on September 30, 2020 in response to our request for the monitoring procedures that were in place when the CDI contract was in effect (April 2, 2020 to May 3, 2020). DSNY did not refer to this document as being a draft document at that time. The document provided to us on September 30, 2020 required that DSNY receive independent confirmations of receipt directly from NYCEM before it paid the vendor. It was not until the April 8, 2021 exit conference that DSNY told us that the *Contract Management and Invoicing Procedures for COVID-19 Food Distribution* was only a draft document. DSNY has not provided us with any update or revision of this document or with a final version of this document. Indeed, in its written response, DSNY refers to a “final protocol,” but never even asserts a time period when it was applicable.

6. DSNY should establish a tracking system to record vendor food delivery, billing and payment information, and consistently review the information in this system prior to paying invoices in an effort to prevent double payments.

DSNY Response: “DSNY did have a comprehensive tracking system for orders and payments. DSNY also improved this system by restricting vendors submission of invoices to once a week and permitting only one invoice for each single date of delivery.”

Auditor Comment: Restricting vendor submissions to once a week, permitting only one invoice for each single date of delivery, and—as DSNY stated earlier in its response—assigning the same invoicing staff to a vendor, is not a “comprehensive tracking system”. We continue to encourage DSNY to enhance its tracking system by consistently recording vendor food delivery, billing, and payment information, and by consistently reviewing the information in the tracking system prior to paying invoices in an effort to prevent double payments. As noted above, the Emergency Adult Food Access Program involved deliveries by many vendors to 11 food distribution sites and 250 City-supported housing locations throughout the City. Without a systematic and comprehensive tracking system, the risk of undetected double billing is increased.

7. DSNY should recoup from CDI the double payment of \$15,644.

DSNY Response: “DSNY consulted with the Law Department. DSNY will recoup the double payment of \$15,644.”

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 scope of this audit was from March 27, 2020 through June 22, 2020.

To obtain an overview of the Emergency Adult Food Access Program, we interviewed the Deputy Commissioner of the Bureau of Recycling and Sustainability (BRS). To gain an understanding of DSNY's COVID-19 related emergency contract awarding process, we interviewed the Agency Chief Contracting Officer and the Deputy Agency Chief Contracting Officer of the Bureau of Legal Affairs. To understand how the program operates and how vendor performance is monitored, we interviewed BRS' Deputy Director and its Manager of Vendor Logistics. To understand DSNY's vendor payment process, we interviewed BRS's Director of Administration and Finance and its Manager of Vendor Administration. To obtain an understanding of CDI's responsibilities relating to the Emergency Adult Food Access Program, we reviewed the contract between DSNY and CDI.

For our various audit tests, we reviewed and used the following criteria:

- Emergency Executive Order 101;
- *MOCS Guidance on COVID-19 Related Emergency Contracts*;
- PPB Rules;
- Comptroller's Directive #24, *Agency Purchasing Procedures and Controls*;
- NYCEM's and DSNY's bid booklet for the Emergency Adult Food Access Program;
- *DSNY Contract Management and Invoicing Procedures for COVID-19 Food Distribution*; and
- DSNY invoicing guidelines to vendors.

To determine whether DSNY awarded the contract to CDI with due diligence, we reviewed the bid that CDI submitted in response to NYCEM's and DSNY's bid booklet for the Emergency Adult Food Access Program, as well as documents relating to DSNY's assessment of the vendor's responsibility.

To determine whether DSNY appropriately reimbursed CDI for the services rendered, we compared the invoices and packing slips submitted by CDI to the orders placed by DSNY, the packing slip and food box photos submitted by NYCEM to DSNY, the vendor payments made by DSNY, and email correspondence among NYCEM, DSNY, and CDI on the deliveries. To determine whether DSNY provided us with records relating to all of its payments to CDI, we compared the payments identified by DSNY to the payments noted in Checkbook NYC.

To determine whether DSNY properly addressed and documented the vendor's performance issues, we reviewed email correspondence among NYCEM, DSNY and CDI on the deliveries,

NYCEM's photos of the food boxes delivered, and DSNY's termination letter to CDI. To determine whether DSNY paid for damaged and unusable food, we reconciled DSNY's payments to CDI to the performance issues noted in email correspondence among NYCEM, DSNY, and CDI on CDI's deliveries and in DSNY's termination letter to CDI.

The above testing provided us with a reasonable basis to assess the adequacy of DSNY's awarding of the emergency COVID-19 related contract to CDI, the adequacy of the agency's monitoring of the implementation of the contract, and the appropriateness of DSNY's payments to CDI.



sanitation

Edward Grayson Commissioner

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Commissioner

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May 7, 2021

Marjorie Landa
Deputy Comptroller for Audit, Bureau of Audit
Office of NYC Comptroller, Scott M. Stringer
1 Centre Street, 11th Floor
New York, NY 10007

Dear Deputy Comptroller Landa:

Thank you for the opportunity to respond to the Draft Audit Report on the Department of Sanitation's Awarding and Monitoring of Its Contract with Cariati Developers Inc. to Provide Emergency Adult Food Access Program Services (Report # ME21-063A dated April 23, 2021).

As the Draft Audit Report describes, the New York City Department of Sanitation ("DSNY"), in partnership with the New York City Emergency Management Department ("NYCEM"), was tasked with immediately soliciting and managing food vendor contracts, as well as working with NYCEM to respond immediately to the rapid need for emergency food in the City. By the end of May 2020, DSNY was overseeing a program that was delivering one million meals a day to the City's most vulnerable residents. Confronted with an unprecedented emergency that demanded swift and decisive action, DSNY is proud of the program that it established, managed, and continually improved.

In awarding a contract to Cariati Developers, Inc. ("CDI"), which submitted one of the earliest bids to participate in the emergency feeding program, DSNY adhered to and exceeded all City procurement guidance that was in effect for emergency procurements. In addition, DSNY established an invoicing system in which it tracked vendor deliveries and obtained independent confirmations that it had received each vendor's food before issuing payments.

As detailed in the attached comments, DSNY disputes the Draft Audit Report's conclusions and descriptions of its procedures, but we agree with some of the Audit Report's recommendations, most of which DSNY had implemented prior to the audit.

DSNY's detailed response to the Draft Audit Report is appended to this letter. I appreciate your consideration of this response as you finalize the Draft Audit Report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Grayson". The signature is fluid and cursive, with the first name "Ed" and last name "Grayson" clearly distinguishable.

Edward Grayson

Attachment:

DSNY RESPONSES TO AUDIT FINDINGS AND RECOMMENDATIONS:

Following the onset of the COVID-19 global pandemic and the declaration of a state of emergency in New York, the New York City Department of Sanitation (“DSNY”) partnered with the New York City Emergency Management Department (“NYCEM”) on developing the Emergency Home Food Delivery program. On March 21, 2020, then-DSNY Commissioner Kathryn Garcia was named COVID-19 Food Czar by Mayor de Blasio. In order to secure a supply of meals for newly homebound and food-insecure New Yorkers, DSNY was tasked with immediately soliciting and managing food vendor contracts, as well as working with NYCEM to respond immediately to the growing and evolving need for emergency food in the City.

Less than one week after Commissioner Garcia was appointed COVID-19 Food Czar, DSNY released the Emergency Adult Food Access Program bid solicitation on March 27, 2020, and the first four vendors under DSNY contracts started delivering food on April 9, 2020. By the end of April 2020, DSNY was overseeing a program that delivered over 2.5 million weekly meals to food-insecure New Yorkers, and, by the end of May 2020, 7.25 million meals were being delivered each week under the Emergency Food Program.

The number of food distribution sites (“FDSs”), where vendors supplied product that was loaded into Taxi & Limousine Commission (“TLC”) vehicles for direct delivery to homebound New Yorkers, doubled during the first month of the program, and the number of City-supported housing buildings receiving bulk deliveries from vendors eventually topped 250 locations, adding complexity and scope to the logistics of vendor management. Under emergency conditions, with food insecurity in the City rising rapidly, DSNY provided careful oversight of vendor performance and food quality issues, responded to public demand and the operational needs of NYCEM, ensured that invoicing and billing were accurately completed, and continually improved program controls to ensure that food was delivered to where it was most needed.

Cariati Developers, Inc. (“CDI”) submitted one of the first bids to participate in the Emergency Adult Food Access Program, at a time when the City’s need for food was most acute. Prior to awarding a contract to CDI, DSNY conducted a vendor responsibility review and determined that CDI could supply a limited amount of pantry boxes to help the City meet the surging demand. As the Comptroller’s Draft Audit Report (the “Audit Report”) acknowledges, DSNY carefully monitored CDI’s performance after awarding it a contract, and it terminated that contract within three weeks. The Audit Report, however, incorrectly describes and mischaracterizes DSNY’s processes prior to awarding a contract to CDI as well as the payment and invoicing controls established by DSNY.

In awarding a contract to CDI, DSNY adhered to or exceeded all City procurement guidance that was in effect for emergency procurements, including, for example, consulting five separate databases (two more than recommended) as part of its background check. In addition, DSNY established an invoicing system in which it tracked vendor deliveries and obtained independent confirmations that it had received each vendor’s food before issuing payments. With the exception of a single double-payment of approximately \$15,000, which DSNY will recoup, DSNY only paid CDI for meals that it actually provided to food-insecure New Yorkers.

Confronted with an unprecedented emergency that demanded swift and decisive action, DSNY is proud of the program that it established, managed, and continually improved. As set forth below, while DSNY agrees with some of the Audit Report’s recommendations – most of which DSNY had implemented prior to the Office of the Comptroller’s audit – DSNY disputes the Audit Report’s findings and conclusions. Additionally, the Audit Report does not cite any instances where DSNY violated City rules or guidance, and it does not show that DSNY’s payment practice controls were insufficient.

Audit Findings:

Finding # 1- Insufficient Due Diligence in DSNY's Award of an Emergency Adult Food Access Program Contract to CDI.

Agency Response: Disagree

DSNY Used Sufficient Due Diligence Prior to Awarding a Contract to CDI

Throughout its assessment of DSNY's onboarding processes, the Audit Report alternately cites inapplicable Procurement Policy Board ("PPB") Rules and states that DSNY should have adopted practices that are not required by guidance issued by the Mayor's Office of Contract Services ("MOCS") in even non-emergency circumstances. As described more fully below, DSNY, in compliance with the MOCS guidance and using sufficient due diligence, made a vendor responsibility determination before awarding a contract to any of its vendors, including CDI.

Finding # 2 - Inadequate Review of Vendor Integrity

Agency Response: Disagree

DSNY Conducted a Thorough Vendor Integrity Review that Complied with All Relevant City Rules and Guidance

The Audit Report states that DSNY performed an inadequate vendor integrity review of CDI because it did not discover that CDI's founder had pleaded guilty to obstructing the Internal Revenue Service shortly before CDI was awarded an emergency food contract. While DSNY did not learn of the guilty plea until late April 2020, this does not signify that DSNY performed an inadequate review of CDI. To the contrary, DSNY fully complied with the emergency procurement guidance in effect and went beyond the best practices recommended by MOCS, even for non-emergency procurements.

Prior to awarding a contract to CDI to participate in the Emergency Adult Food Access Program, DSNY conducted a vendor integrity review, which, consistent with guidance issued by MOCS, included conducting a background check by using approved databases. As part of the diligence that DSNY conducted for CDI, it consulted five databases for background checks – two more sources than recommended by the guidance issued by MOCS for non-emergency contracts. One of the sources used by DSNY included Thomson Reuters CLEAR, which is an online investigative tool specifically designed for conducting thorough searches. This database provides access to public records and other publicly available information, including criminal and arrest records. Unfortunately, neither Thomson Reuters CLEAR nor any of the other databases checked by DSNY contained any information related to the guilty plea entered into by CDI's founder.

Because the five sources consulted by DSNY on March 31, 2020 did not reveal any negative information about CDI, DSNY did not preserve screenshots of the databases' findings. Though not a requirement of the PPB Rules – which were suspended – or a recommended best practice from MOCS, the Audit Report nevertheless states that DSNY should have preserved screenshots even though it is not required for even non-emergency contracts. As DSNY has informed the Office of the Comptroller, it adopted the practice of preserving screenshots for all of its vendor searches beginning in May of 2020, prior to the beginning of the audit. As noted in the Audit Report, when DSNY duplicated the database searches of CDI on May 1, 2020, prior to the audit, screenshots from those searches similarly revealed no information regarding the guilty plea.

The Audit Report also states that DSNY should have conducted a Google search of CDI in addition to consulting the five investigative databases it utilized. As with the preservation of vendor responsibility screenshots, conducting a Google search is not required by the PPB Rules (when they are in effect) or recommended by any of the guidance issued by MOCS. Moreover, DSNY has required Google searches and the preservation of screenshots, even for emergency contracts, since May 2020.

The Audit Report further states that DSNY did not enforce its bid booklet requirement regarding PASSPort disclosure statements. Specifically, the Audit Report states that “subsequent to the issuance of the bid booklet,” DSNY decided to “disregard this bid booklet requirement in its entirety.” This is a mischaracterization of DSNY’s actions.

Notwithstanding that MOCS had suspended PASSPort filing requirements for emergency contracts, DSNY did include a provision in its bid booklet requiring vendors to make a PASSPort disclosure submission. As explained to the Office of the Comptroller, requiring a vendor to file and complete a PASSPort disclosure document prior to the award of a contract would have delayed the City’s response to the food insecurity crisis by weeks. Rather than “disregard” this PASSPort requirement, DSNY retained the provision so that it could run a Vendor Name Check for each vendor after the Emergency Adult Food Access Program was up and running. Through PASSPort, vendors provide specific information about the company and the company’s principals so that the New York City Department of Investigation (“DOI”) can review this information and perform what is called a Vendor Name Check. Beginning in May of 2020, at DSNY’s request, DOI provided completed Vendor Name Checks for all active and existing contractors.

The Audit Report omits DSNY’s purpose for including the PASSPort disclosure language in its bid booklet, which was explained to the Office of the Comptroller. Instead, it suggests that DSNY should have required vendors to file “a shorter disclosure statement outside of PASSPort.” In addition to the PPB Rules regarding PASSPort being suspended, the emergency procurement guidance issued by MOCS does not require a bidder to file either the standard PASSPort disclosure statement or a “shorter disclosure statement.” This recommendation is also not practical. In the midst of responding to an emerging crisis, it is not viable to suggest that DSNY unilaterally decide to develop, for the first time ever, its own alternative disclosure statement outside of PASSPort that is not required by the PPB Rules, when in effect, or MOCS guidance. Moreover, developing this alternative disclosure statement and having vendors complete it would also have led to a delay in getting food to food-insecure New Yorkers.

Finding # 3 - Failure to Properly Assess the Vendor’s Prior Experience and Ability

Agency Response: Disagree

DSNY Conducted an Assessment of CDI’s Experience Before Awarding It a Contract

The Audit Report further alleges that DSNY did not properly assess CDI’s experience and ability before awarding it a contract. Despite the fact that New York’s feeding crisis demanded that DSNY quickly assess and onboard vendors from a limited pool of bidders, DSNY disputes the Audit Report’s conclusion that it was deficient in its review of CDI’s experience.

After DSNY released the Emergency Adult Food Access Program bid solicitation on March 27, 2020, it received only four bids by March 30, 2020, one of which was CDI’s bid. With food insecurity in the City rising rapidly, DSNY determined that CDI met the bid booklet’s experience requirement, which required that a vendor or its subcontractors have three or more years of experience with sourcing, preparing, or

delivering food. CDI represented that it was working with four companies that met this experience requirement and had years of experience in the food industry. Additionally, CDI utilized a global transportation and supply chain logistics company with significant experience in the food and beverage industry to assist with trucking and food supply operations.

Notwithstanding CDI's positive performance of past City contracts, its partnership with experienced vendors, its significant trucking ability, and its representations that it could provide up to 100,000 boxes per week of desperately needed product, DSNY started CDI off slowly so that it could assess CDI's ability to deliver pantry boxes on a larger scale. In its first two weeks of performance under the contract, DSNY kept CDI's deliveries at or below 1,500 boxes per day. Though CDI ultimately delivered 48,135 boxes of needed food, DSNY terminated the contract with CDI within three weeks, primarily because CDI's inability to consistently make timely and compliant deliveries to the FDSs and bulk sites had created unnecessary burdens for the City's emergency feeding operations.

Although CDI's contractual failures put administrative strain on the emergency food program, DSNY and NYCEM were always able to utilize their stockpile of shelf-stable meals or redirect deliveries from other vendors if CDI's deliveries were late or damaged. Accordingly, any program participants who did not receive their food from CDI were promptly provided replacement meals by DSNY and NYCEM.

Finding # 4 - Insufficient Controls in DSNY's Vendor Payment Practices

Agency Response: Disagree

DSNY Established Sufficient Controls for Vendor Payment

The Audit Report presents an inaccurate account of DSNY's and NYCEM's protocol for the acceptance of deliveries and vendor payments. DSNY did establish sufficient controls for vendor payment. In fact, DSNY and NYCEM set up an emergency feeding program that allowed DSNY to independently confirm deliveries daily at multiple locations spread throughout the city. The final delivery protocol relied on City staff and authorized points of contact ("POC") at City-supported buildings to count, accept, and sign for the food product. Vendors were required to get signed "packing slips" or bills of lading ("BOL") from the City's authorized personnel or risk non-payment. This system was supported by extensive minute-by-minute email communications among NYCEM, DSNY, the vendors, and the City staff at FDSs and the POCs at City-supported housing buildings. These email communications ensured DSNY knew daily if deliveries were successful, shorted, or rejected.

Contrary to the findings in the Audit Report, DSNY and NYCEM established an invoicing and billing system that provided effective payment controls.

A. DSNY's and NYCEM's Established Protocol Provided Effective Payment Controls

The Audit Report inaccurately refers to a draft document (DSNY's Contract Management and Invoicing Procedures for COVID-19 Food Distribution), as DSNY's final invoicing procedure. DSNY proposed this protocol on April 7, 2020 before any DSNY vendor delivered food under this program. At that time, DSNY anticipated relying on only 5 FDSs. This protocol was quickly modified based on the rapid expansion of this emergency food program to approximately 260 different sites.

Under the final protocol, as explained to the Office of the Comptroller, vendors were directed to deliver to 11 FDSs and ultimately approximately 250 different housing locations run by City agencies like NYCHA and HRA. The day before each delivery, NYCEM sent DSNY a complete set of orders for all vendors

that DSNY then required the vendors to confirm. DSNY used NYCEM's final order list to cross-check invoices that it later received from vendors.

For each delivery date, NYCEM and DSNY authorized the same known City staff from DSNY and the NYC Department of Parks & Recreation at its 11 FDSs to verify deliveries. For bulk deliveries to City-supported housing buildings, the City agencies managing the buildings worked with NYCEM to authorize the POCs at each building to verify deliveries. These authorized personnel signed the BOLs, confirming that the product count matched NYCEM's order and that its quality was acceptable. Vendors were required to obtain BOLs signed by authorized staff to submit with their invoices or they would not be paid. During the audit, DSNY provided the Comptroller multiple BOLs from CDI that show the same authorized person's signature for multiple delivery dates at a particular FDS or bulk housing location.

Each day, notice of any problem – shorted, damaged, late, or rejected product – was immediate. Personnel at the FDSs and the POCs at the housing buildings notified NYCEM, and NYCEM immediately notified DSNY via email. This system allowed DSNY to troubleshoot with the vendor (e.g., obtain truck locations and estimated time of arrival or potentially order redelivery when necessary) while also providing DSNY a paper-trail of which deliveries were insufficient or problematic. This immediate outreach by NYCEM often resulted in a successful delivery in which NYCEM kept an FDS open for a late delivery or rerouted the late delivery to an FDS still running the TLC cab routes. DSNY preserved the emails flagging problems in a file that DSNY used for verifying invoices and payments.

Overall, NYCEM and DSNY had a comprehensive system in place under which independent confirmation of deliveries by the City's staff and the City's authorized personnel was provided to DSNY. No invoice was paid without a signed BOL corresponding to that delivery. In fact, for all 117 CDI deliveries that the Audit Report states did not have independent verification, DSNY has, and provided the Office of the Comptroller with, a corresponding BOL signed by known DSNY staff, City staff, or authorized POCs at City-supported buildings.

The Audit Report also suggests that DSNY should have required a daily email confirmation system from NYCEM that allowed DSNY to know each day if a delivery was successful, short or problematic. This ignores the fact that *DSNY and NYCEM did implement this system*. The Comptroller cites in the audit to many of the emails among NYCEM, DSNY, and CDI discussing problematic and successful deliveries. NYCEM's and DSNY's communication system provided immediate notice of a problem, allowed troubleshooting, and provided daily knowledge of deliveries – both successful and problematic, even though NYCEM could not have conceivably had personnel at each delivery location. To be clear, if a delivery did not arrive or was shorted, *DSNY knew on that date*.

B. DSNY's Invoice and Payment System Provided Independent Confirmation

When DSNY received the invoice package from the vendor via email, including the BOLs signed by the authorized City representative, it reviewed the invoice package against the anticipated orders set by NYCEM and the emails to DSNY on the delivery date that raised delivery issues. If the invoice package or the email history raised an issue with payment, DSNY discussed these discrepancies with NYCEM and the authorized City staff at the FDSs and the City-authorized POCs at the housing sites, who signed the BOLs.

Contrary to the Audit Report's finding, DSNY had controls in place to prevent double billing. DSNY assigned the same invoicing staff to a vendor, allowing staff to develop an expertise with that vendor's invoices and delivery schedule and to establish a comprehensive system for that vendor's invoice review. Initially in the early days of the lockdown, food supply chains were under severe strain and many vendors

needed access to capital to secure product in the market. At that time, DSNY permitted vendors to bill for deliveries on a daily basis to allow them to secure needed food supply. As the program evolved and the number of vendors increased from four to 36, DSNY limited vendors to submitting invoices once per week and required that an invoice correspond to all deliveries on a single date of delivery. Apart from a single double-payment, which DSNY will recoup, DSNY only paid CDI for meals that it provided to food-insecure New Yorkers.

Audit Recommendations:

Recommendation # 1

DSNY should routinely include a Google search of a vendor when conducting a vendor responsibility review.

Agency Response:

As noted above, DSNY began conducting Google searches (which is not required by the PPB Rules, when applicable, or MOCS's guidance) even for emergency contracts in May 2020.

Recommendation # 2

DSNY should enforce its bid booklet requirement for potential vendors to file PASSPort disclosure statements or, at a minimum, require the submission of disclosure statements outside of PASSPort that cover certain basic topics, such as the criminal history of the potential vendors' principals.

Agency Response:

As noted above, MOCS suspended PASSPort filing requirements for emergency procurements, but DSNY left the requirement in the bid booklet so it could run a Vendor Name Check for each contractor after the commencement of contract services and the initial stabilization of the Get Food Program, which it did. DSNY has, and will continue to, adhere to the PPB Rules in effect and relevant MOCS guidance with regard to PASSPort disclosure statement requirements.

Recommendation # 3

DSNY should consistently document the search results of its vendor responsibility reviews at the time those reviews are conducted, even when they do not show any adverse information.

Agency Response:

As noted above, DSNY began taking and preserving screenshots of its responsibility reviews (which is not required by the PPB Rules, when applicable, or MOCS's guidance) in May 2020.

Recommendation # 4

DSNY should consider a potential vendor's directly relevant experience when determining whether the vendor has the capabilities to provide a particular type of service and should document that consideration in its bid evaluation.

Agency Response:

DSNY did consider relevant experience with respect to all vendors, including CDI.

Recommendation # 5

DSNY should consistently obtain independent confirmations of the amounts of food received from the vendors before making payments.

Agency Response:

DSNY did independently confirm with NYCEM, the City staff at the FDSs, and the POCs at the City-supported housing buildings the amount of product received before it made payment on the invoices.

Recommendation # 6

DSNY should establish a tracking system to record vendor food delivery, billing and payment information, and consistently review the information in this system prior to paying invoices in an effort to prevent double payments.

Agency Response:

DSNY did have a comprehensive tracking system for orders and payments. DSNY also improved this system by restricting vendors submission of invoices to once a week and permitting only one invoice for each single date of delivery.

Recommendation # 7

DSNY should recoup from CDI the double payment of \$15,644.

Agency Response:

DSNY consulted with the Law Department. DSNY will recoup the double payment of \$15,644.