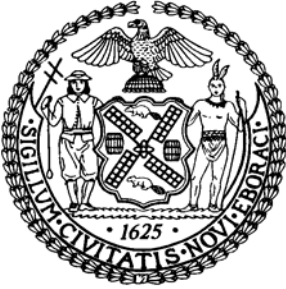


AUDIT REPORT

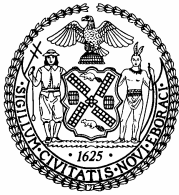


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Procurement Practices of the New York County District Attorney's Office

MJ08-074A

June 30, 2008



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has examined the procurement practices of the New York County District Attorney's Office (NYDA Office). The audit covered Fiscal Year 2007.

The NYDA Office investigates and prosecutes more than 100,000 criminal cases annually in Manhattan. Its Fiscal Department is responsible for overseeing the Office's budget; purchasing expenditures; authorizing and preparing disbursements; and reimbursing staff for approved out-of-pocket expenditures. We conduct audits such as these to ensure that City funds are spent in compliance with established guidelines.

The results of the audit, which are presented in this report, have been discussed with officials of the NYDA Office, and their comments were considered in the preparation of this report. Audits such as this provide a means of ensuring that agencies maintain adequate financial controls and comply with City rules and regulations governing procurement practices.

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

Very truly yours,

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

William C. Thompson, Jr.

Report: MJ08-074A
Filed: June 30, 2008

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ADDENDUM Response of New York County District Attorney’s Office

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

**Audit Report on the
Procurement Practices of the
New York County District Attorney's Office**

MJ08-074A

AUDIT REPORT IN BRIEF

This audit determined whether the New York County District Attorney's Office (NYDA Office) maintained adequate financial controls over procurement practices as required by Procurement Policy Board (PPB) rules and Comptroller's Directives.

The NYDA Office investigates and prosecutes more than 100,000 criminal cases annually in Manhattan. The NYDA Office's Fiscal Department is responsible for preparing and monitoring the Office's budget; purchasing expenditures; authorizing and preparing disbursements for requested services, equipment, and material; and reimbursing staff for approved out-of-pocket expenditures. During Fiscal Year 2007, the NYDA Office's Other Than Personal Expenditures (OTPS) totaled \$8.5 million.¹ OTPS expenditures covered the procurement of supplies, materials, and services necessary to support agency operations.

Audit Findings

The audit determined that the NYDA Office maintains adequate financial controls over its procurement practices and generally complies with many aspects of Comptroller's Directives and PPB rules. However, the NYDA Office uses an inordinate number of miscellaneous payment vouchers. During Fiscal Year 2007, the NYDA Office expended more than \$4 million (48%) of its \$8.5 million Other Than Personal Service budget on PVM vouchers, including \$1.9 million to various vendors and another \$2.1 million to fund or reimburse the NYDA Office demand account for monies disbursed from the account. The audit identified \$1.3 million of the \$1.9 million paid to vendors using PVM vouchers for goods and services that would have been more appropriately processed through FMS procedures requiring purchase documents or contract documents.

While the NYDA Office maintains adequate safeguards over cash on hand, and its control and reporting procedures generally comply with Comptroller's Directive #3, our review

¹ According to the Comptroller's *Comprehensive Annual Financial Report* for Fiscal Year 2007.

disclosed certain weaknesses, including the lack of: (1) surprise cash counts; (2) a cash-on-hand total (limit); and (3) segregation of duties.

Audit Recommendations

To address disclosed weaknesses, the audit made nine recommendations. Some of the major recommendations include that the NYDA Office should:

- Limit the use of miscellaneous vouchers, in accordance with Comptroller's Directive #24, to those purchases in which the estimated or actual expenditures cannot be determined.
- Obtain bids for purchases over \$5,000 and enter into contracts with those vendors for which estimated purchases for similar goods and services throughout the Fiscal Year will exceed \$10,000, in accordance with PPB rules.
- Budget for various routine, recurring, ordinary expenses; prepare purchase documents and draw down from these encumbrances as goods or services are paid.
- Conduct periodic surprise counts of petty cash funds and review the supporting records and reconciliations.
- Establish a control limit for petty cash reserves against which expenditures and reimbursements should be periodically reconciled.
- Ensure that conflicting duties of petty cash fund responsibilities and monthly reconciliations of the NYDA Office demand account bank currently assigned to one Fiscal employee be appropriately segregated and assigned to different employees.

NYDA Office Response

Of the nine recommendations made in this audit, NYDA Office officials agreed with seven and partially agreed with two.

INTRODUCTION

Background

Pursuant to the New York State Constitution, the City's five District Attorneys are elected every four years to investigate and prosecute crimes in their respective boroughs. The New York County District Attorney's Office (NYDA Office) investigates and prosecutes more than 100,000 criminal cases annually in Manhattan. Its principal activities include screening new cases, preparing information, gathering resources for hearings, and presenting cases in court for trial or appeal. The NYDA Office employs nearly 500 Assistant District Attorneys and approximately 700 support staff.

The NYDA Office's Fiscal Department is responsible for preparing and monitoring the Office's budget; purchasing expenditures, authorizing and preparing disbursements for requested services, equipment, and material; and reimbursing staff for approved out-of-pocket expenditures. During Fiscal Year 2007, the NYDA Office's Other Than Personal Expenditures (OTPS) totaled \$8.5 million.² OTPS expenditures covered the procurement of supplies, materials, and services necessary to support agency operations.

In accordance with the City Charter, Administrative Code, and Rules of the City of New York, the Mayor, the Comptroller, and various oversight agencies have established rules and regulations to standardize administrative, financial, and management procedures across all City agencies. The City's Procurement Policy Board promulgates rules governing City procurement and contracts. The Comptroller's Internal Control and Accountability Directives (Comptroller's Directives) contain rules and regulations that cover a broad array of management issues, internal controls, and procedures important to the efficient and effective operation of City agencies. All City agencies and elected officials are expected to comply with these rules and regulations.

Objective

The objective of this audit was to determine whether the NYDA Office maintained adequate financial controls over procurement practices as required by Procurement Policy Board (PPB) rules and Comptroller's Directives.

Scope and Methodology

The audit scope covered Fiscal Year 2007 (July 1, 2006, through June 30, 2007). To accomplish our objective we carried out the following procedures.

To obtain an understanding of the operations of the NYDA Office, we reviewed: the Executive Budget for Fiscal Years 2006 and 2007; the Comptroller's *Comprehensive Annual Financial Report* for Fiscal Year 2006 and 2007; and relevant information obtained from the NYDA Office Web site and other sources.

² According to the Comptroller's *Comprehensive Annual Financial Report* for Fiscal Year 2007.

Evaluation of Controls

To gain an understanding of the internal controls over procurement transactions, we reviewed the NYDA Office's self-assessment of its internal controls covering calendar year 2006, performed in compliance with New York City Comptroller's Directive #1 and submitted to the Comptroller's Office. We also reviewed the NYDA Office policies and procedures, interviewed NYDA Office officials and staff, conducted a walk-through of procurement and expenditure functions and reviewed organization charts and flow diagrams of transaction processes. We ascertained whether there was sufficient segregation of duties over the approval, recording, and payment functions. We also reviewed the NYDA Office chart of accounts and budget (object) codes and list of authorized signatories for invoices and checks. Further, we reviewed a previous audit of the NYDA Office conducted by the Comptroller's Office and noted findings and conditions in that audit that addressed matters relevant to this audit.³

We evaluated the adequacy of the NYDA Office's policies and procedures for procurements and related expenditures and determined whether they generally conformed with applicable criteria, including:

- PPB rules §1-04, "Contract Information"; §3-08, "Small Purchases"; and §4-06, "Prompt Payment";
- Comptroller's Directive #1, "Principles of Internal Controls"; Directive #3, "Procedures for the Administration of Imprest Funds"; Directive #6, "Travel, Meals, Lodging and Miscellaneous Agency Expenses"; Directive #11, Cash Controls, and Directive #24, "Purchasing Function—Internal Controls."

Tests of Purchase Transactions and Procedures

From the City's Financial Management System (FMS) we obtained a listing of 4,635 payment vouchers, totaling \$8.5 million, issued by the NYDA Office for general fund expenditures in Fiscal Year 2007. Using this file, we stratified the payment vouchers by type and dollar amount and analyzed the results.

To test for compliance with stated criteria (discussed below), we targeted vouchers for payments expended on vouchers for which funds were encumbered through purchase and contract documents (PVE vouchers) and on miscellaneous vouchers (PVM vouchers) as they represented \$7.5 million (88%) of all expenditures for Fiscal Year 2007. We further targeted PVE and PVM vouchers of \$1,000 or more since they represented \$4.9 million (57%) of total expenditures.

We randomly selected a sample of 50 payment vouchers. Specifically, from the resulting population of 503 PVE vouchers of \$1,000 or more, totaling \$3.1 million, we randomly selected 20 PVE vouchers with a value of \$78,954 for audit testing. From the population of 330 PVM vouchers valued at \$1,000 or more, totaling \$1.8 million, we randomly selected 30 PVM

³ *Audit Report on Expenditures for Other Than Personal Services by the New York County District Attorney's Office* (Audit #MJ05-132A), issued December 22, 2005.

vouchers for testing. Of these 30 sampled PVM vouchers, 20 vouchers represented payments totaling \$61,809 made to vendors and 10 vouchers represented payments to reimburse the NYDA demand account for petty cash and other expenses paid out of the demand account, totaling \$53,517.

For each of the 50 (20 PVE and 30 PVM) sampled vouchers, we examined each voucher package (e.g., vouchers, invoices, delivery receipts, reimbursement requests, and authorizations) to determine whether the NYDA Office complied with stated audit criteria and to obtain reasonable assurance that:

- adequate documentation was maintained to support payments;
- required purchase documents were appropriately prepared, approved, and coded (for PVE vouchers);
- goods or services were received as ordered;
- receiving documents matched the quantity and description of goods or services ordered and invoiced;
- payments were appropriately authorized, made promptly to the correct vendor in the proper amount, on the appropriate voucher, and charged to the proper fiscal year;
- sales and excise taxes were properly excluded from payments;
- competitive bids were obtained when required;
- expenditures were for legitimate and necessary business purposes; and
- documentation was duly canceled (marked “vouchered” or “paid”) upon payment.

For the 30 sampled PVM payment vouchers, we also determined whether the vouchers were appropriately used and were issued only for allowable purposes.

The sampled payment vouchers were not selected in a manner to enable them to be projected to the population of vouchers processed during the audit scope period. Nevertheless, the results of the above tests provided a reasonable basis for us to assess the adequacy of the NYDA Office’s financial controls over procurement transactions and its compliance with Comptroller’ Directives and PPB rules.

In addition, using the FMS procurement data, we analyzed the classification or uses of funds paid out on PVM vouchers and those paid out of the NYDA Office demand account, as recorded in FMS. We computed total expenses by general categories, identified vendors that were paid \$5,000 or more during Fiscal Year 2007, and determined whether bids were solicited and vendors that were paid more than \$10,000 were under contract with the NYDA Office, in accordance with PPB rules.

The reliability and integrity of the NYDA Office computer-processed expenditure data was not evaluated, since all purchasing functions are processed through the City’s FMS information technology system, which is reviewed by the City’s external auditors as part of their annual audit of the City’s financial statements.

Test of Controls over the NYDA Office Demand Account

We reviewed the bank statements for the NYDA Office demand account for the seven months June 1, 2007, through December 31, 2007. These months were judgmentally selected as they represented current, continuous months covering the end of Fiscal Year 2007 through the first half of Fiscal Year 2008. We determined whether the bank account was reconciled on a monthly basis and calculated the average daily balance maintained in the account. We examined support documentation for petty cash expenditures associated with 8 of the 30 sampled PVM vouchers (discussed above) to determine whether the expenditures were authorized, permissible, adequately supported, and within allowed amounts. These eight PVM vouchers represented monies reimbursed to the NYDA demand account. Also, using the data of NYDA Office Fiscal Year 2007 expenditures, we analyzed demand account expenditures to determine whether they were allowable and appropriately handled.

Tests of Controls over Cash on Hand

On February 20, 2008, the audit team observed the close-out and reconciliation of petty cash transactions for the day and counted the cash on hand. We also determined whether adequate controls and segregation of duties were maintained over the custody, handling, and reconciliation of cash transactions.

Scope Limitation

NYDA Office officials asserted that the office uses some funds from its demand account to pay for expenses of a confidential nature, such as the protection of witnesses, paid informants, and surveillance operations. Based on our analysis of NYDA Office procurement data, during Fiscal Year 2007, the NYDA Office expended \$20,572 on such confidential expenditures. We accepted NYDA officials' assertions that our audit of confidential expenditures might jeopardize current or future investigations and related criminal justice activities. Therefore, we did not review transactions deemed confidential during this audit.

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

Discussion of Audit Results

The matters covered in this report were discussed with NYDA Office officials during and at the conclusion of this audit. A preliminary draft report was sent to NYDA Office officials and discussed at an exit conference held on May 27, 2008. On June 9, 2008, we submitted a draft report to NYDA Office officials with a request for comments. We received a written response from the officials on June 23, 2008. Of the nine recommendations made in this audit, NYDA Office officials agreed with seven and partially agreed with two that address the NYDA Office's overuse of miscellaneous payment vouchers and the use of miscellaneous vouchers to pay certain vendors without following City competition and contracting requirements.

NYDA Office officials stated: “We accept the Comptroller’s overall findings that The New York County District Attorney’s Office (NYDA) ‘maintains adequate financial controls over its procurement practices and generally complies with many aspects of Comptroller’s Directives and PPB rules.’”

The full text of the NYDA Office’s response appears as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The NYDA Office maintains adequate financial controls over its procurement practices and generally complies with many aspects of Comptroller's Directives and PPB rules: our review of 50 sampled payment vouchers determined that adequate documentation was maintained to support payments; goods and services were certified as received; payments were appropriately authorized and charged to the correct fiscal year and for legitimate business purposes. In addition, the NYDA Office also maintains proper controls that provide for adequate segregation of duties for the request, approval, recording, receipt, and payment of procurement transactions.

However, the NYDA Office uses an inordinate number of miscellaneous payment vouchers. During Fiscal Year 2007, the NYDA Office expended more than \$4 million (48%) of its \$8.5 million OTPS budget on PVM vouchers, including \$1.9 million to various vendors and another \$2.1 million used to fund or reimburse the NYDA Office demand account for monies disbursed from the account. We identified \$1.3 million of the \$1.9 million paid to vendors using PVM vouchers for goods and services that would have been more appropriately processed through FMS procedures requiring purchase documents or contract documents.

While the NYDA Office maintains adequate safeguards over cash on hand, and its control and reporting procedures generally comply with Directive #3, our review disclosed certain weaknesses, including the lack of: (1) surprise cash counts; (2) a cash-on-hand total (limit); and (3) segregation of duties. These weaknesses increase the risk that errors or fraud could go undetected.

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

General Compliance with Procurement Requirements

With some minor exceptions, the results of tests involving 50 sampled payment vouchers, including 20 PVE vouchers totaling \$78,954, and 30 PVM vouchers valued at \$115,326, determined that the NYDA Office generally complied with many aspects of Comptroller's Directive #24.

All 20 of the sampled PVE vouchers were supported by purchase documents (i.e., purchase orders), receipt of goods certification, and vendor invoices. Purchase documents were appropriately prepared and approved, and goods and services were appropriately certified as being received. Corresponding payments were properly approved, coded, calculated, and paid to the correct vendor in the proper amount on the appropriate payment voucher. Also, all 20 voucher packages were cancelled and marked "vouchered."

However, we noted some minor instances of noncompliance. Specifically, two of the sampled PVE vouchers totaling \$2,838 were not paid promptly. The NYDA Office paid Konica-Minolta \$1,136 for a service contract 153 days the invoice due date and paid Office Depot an invoice of \$1,702 that was 73 days after the due date. According to PPB rules' prompt payment

standards, an invoice payment due date is generally 30 days after which goods are actually received or service is actually performed.

While PVM vouchers do not require a purchase document to encumber funds, for the 30 sampled PVM vouchers, we determined that the expenditures were also appropriately supported, approved, and for legitimate business purposes. Further, the transactions were generally encoded with the appropriate budget codes in FMS to allow the accumulation total of expense classifications throughout the year.

However, as discussed later in this report, PVM vouchers were used inappropriately to pay for expenses that should have been paid on other voucher types (i.e., PVE or PVR), and were used to pay for other routine and estimable expenses that would have been more appropriately processed using purchase documents or contract documents.

Recommendation

The NYDA Office should ensure that:

1. All payments are made promptly in accordance with PPB rules.

NYDA Office Response: The NYDA Office generally agreed, stating that “only 2 of the 50 vouchers examined were handled with undue delay. Our adherence to PPB rules, and MOC’s [Mayor’s Office of Contracts] timetables, however, does slow our administrative processing. We pledge to redouble our efforts to pay all vendors in a timely fashion.”

Inappropriate Use of Miscellaneous Payment Vouchers

During Fiscal Year 2007, the NYDA Office expended more than \$4 million (48%) of its \$8.5 million OTPS budget using 3,133 miscellaneous payment vouchers. Of these PVM vouchers 1,893 vouchers represented \$1.9 million paid to vendors, and 1,240 vouchers represented \$2.1 million paid to the NYDA demand account for reimbursement of funds expended through the account, including petty cash expenses.

According to Comptroller’s Directive #24, miscellaneous vouchers are for limited use purposes. “Miscellaneous payment vouchers may be used only when estimated or actual future liability is not determinable, or a contract or a Purchase Document is not required or applicable.” Examples of inappropriate uses of miscellaneous vouchers include payments for the purchase of supplies, equipment, postage, telephone service, monthly rent payment on lease or license agreements or other uses for real property.

Our analysis of the NYDA Office’s Fiscal Year 2007 PVM vouchers paid to vendors for the procurement of goods and services disclosed that many of the related procurement transactions were for routine, ordinary expenses with estimable or measurable amounts that would have been more appropriately processed through the use of purchase documents and standard FMS procedures, detailed in Comptroller’s Directive #24.

PVM Vouchers Paid to Vendors

As reflected in Table I below, our analysis of NYDA Office Fiscal Year 2007 procurement transaction data determined that approximately \$1.3 million (68%) of the \$1.9 million paid to vendors on PVM vouchers either should have been or would have been more appropriately processed using purchase documents or contracts.

Table I

NYDA Miscellaneous Payments to Vendors by General Expense Category
Fiscal Year 2007

General Expense Category	Total Expended on PVM Vouchers	Should Have Used Purchase Orders and FMS Documents to Encumber Funds and Pay
Library Books & Subscriptions	\$280,089.99	\$280,089.99
Stenographers	\$296,895.01	*
Translation and Interpreter Services	\$154,476.31	*
Courier Services	\$145,423.72	\$145,423.72
Postage	\$80,725.00	\$80,725.00
Local Travel (Car Service)	\$87,777.93	\$87,777.93
Hotel Accommodations for Out-of-Town Witnesses	\$18,142.50	\$18,142.50
Temporary Staffing Services	\$266,916.19	\$266,916.19
Grand Jury	\$69,935.00	0
Telephone	\$25,655.79	\$25,655.79
Police Athletic League Truancy Program	\$410,742.00	\$410,742.00
Professional Services (e.g., Psychiatrists, Forensics, Consultant Services)	\$102,036.81	*
Domestic Violence Program	\$1,550.00	0
Computer Related Goods or Services	\$8,942.65	\$8,942.65
Total	\$1,949,308.90	\$1,324,415.77

* Investigative and court-related expenses were not considered in this analysis even though such expenses are routine in nature for the NYDA Office.

As reflected above, the NYDA Office inappropriately paid postage and telephone charges on PVM vouchers. Other expenses such as library subscriptions, courier services, local travel, hotel accommodations, and temporary staffing, are routine and recurring for the NYDA Office and therefore estimable based on prior year's experiences. Consequently, such procurement transactions should have been processed using either purchase documents or contracts.

The NYDA Office inappropriately used a PVM voucher to pay an annual amount of \$410,742 to the Police Athletic League (PAL) for a Truancy Prevention Program for Manhattan. In addition, the payment transaction was erroneously classified in FMS as "supplies and materials" (object code #1000). According to NYDA Office documentation, the PAL Truancy

Program for Manhattan was initiated in approximately 2001 through “the cooperative efforts of New York City Police Department, the Division of School Safety, the Board of Education, the District Attorney’s Offices, and the Mayor’s Office.”

On December 5, 2000, the NYDA Office submitted a funding proposal to the Criminal Justice Coordinator’s (CJC) Office reflecting funds the NYDA Office would provide for the start up of approximately three PAL sites in Manhattan. In response to our request for clarification about the funding structure for the PAL transaction, NYDA officials explained that the funds were allocated to the NYDA “tax levy budget by [the] Office of Management and Budget [(OMB)] to pass on to PAL. They were not discretionary. They were to go to PAL for the truancy program. PAL needed the funds to start and continue the program.” In addition, NYDA officials noted that the CJC, in cooperation with OMB and the Mayor’s Office coordinated the same or similar agreements with the District Attorney Offices of other boroughs.

As part of the annual funding agreement, the NYDA Office paid the same amount of \$410,742 each Fiscal Year for which PAL is to provide qualified staff and services to the Truancy Program and submit quarterly expense reports to the NYDA Office for audit. Based on the known amount of the expenditure and ongoing funding agreement, there should be a formal agreement or contract between the NYDA Office and the PAL detailing the particulars of the services to be provided and obligations of both parties. Consequently, the annual payments should be processed on PVE vouchers in accordance with PPB rules and Comptroller’s Directive #24. This same condition was disclosed in the Comptroller’s 2005 audit of the NYDA Office.

NYDA Office Response: NYDA Office officials argued that \$700,000 of the \$1.3 million paid on miscellaneous vouchers (shown in Table I above) was properly handled, including the \$410,742 “transfer of funds at the City’s request” to the PAL; funds paid for hotel accommodations for out of town witnesses (totaling \$18,143); and expenses for computer-related goods and services and temporary staffing (totaling more than \$275,000). The officials also argued that the expenses for hotel accommodations for witnesses, computer-related goods and services, and temporary staffing “are not ‘ordinary expenses with estimable or measurable amounts . . .’ and thus are not amenable to purchase documents and FMS procedures.”

Auditor Comment: We disagree with these arguments. We maintain that annual PAL payments, hotel accommodations, and temporary staffing are indeed routine operating expenses for the agency. They are incurred year to year, thereby providing available historical information upon which future outlays can be estimated and budgeted. Therefore, contrary to NYDA Office’s argument, these expenses are quite amenable to purchase documents and FMS procedures.

Our review of PVM vouchers also showed that the NYDA Office inappropriately used PVM vouchers to pay vendors and did not follow City competition and contracting rules. As shown in Table II below, the NYDA Office paid at least 13 vendors each in excess of \$5,000, a total of \$773,858 for the provision of the same goods or services throughout the year without soliciting competition.

Table II

Vendors Paid in Excess of \$5,000 for Ongoing Goods or Services Fiscal Year 2007

Vendor	Amount	General Expense Category
Earlybird Delivery Systems	\$127,809	Local Transportation Services
Essex Temporary Services	\$38,689	Temporary Staffing
Hotel **** (Name Undisclosed)	\$16,040	Accommodations for Out of Town Witnesses
Looseleaf Law Publications	\$21,018	Publications & Library Subscriptions
Matthew Bender & Co., Inc.	\$27,158	Publications & Library Subscriptions
Metrogroup Corp	\$9,771	Publication & Library Subscriptions
New York Law Publishing Co.	\$29,178	Publications & Library Subscriptions
New York Staffing, Inc.	\$143,359	Temporary Staffing
Pitney Bowes Bank, Inc.	\$77,000	Postage
Skyline Credit Ride, Inc	\$87,778	Local Travel/Transportation Services
Sprint PCS	\$8,064	Telephone Service
Staff One Inc.	\$18,400	Temporary Staffing
West Publishing Corp.	\$169,594	Publications & Library Subscriptions
Total	\$773,858	

According to NYDA Office officials, the NYDA Office does not have contracts with any of the listed vendors. Since the vouchers for each of these vendors represents the provision of similar goods or services throughout the year and the total amount paid to each vendor exceeds \$5,000, the NYDA Office should have solicited competition in accordance with PPB rules. Further, the NYDA office should have contracted with 11 of the 13 vendors reflected above, since each were paid more than \$10,000 for the same or similar goods or services in Fiscal Year 2007.

While all purchases paid on PVM vouchers may not require a contract, certain expenditures are routine to the NYDA Office and therefore estimable, based on historical information. Consequently, such transactions would have been more appropriately processed using FMS documents to encumber funds from which payment would be drawn over the year. The inappropriate use of miscellaneous vouchers contributes to the distortion of City books of account by understating the City's outstanding obligations.

NYDA Office Response: "The Audit Report lists purchases in Table II, and asserts that as to those items the NYDA should submit to a bidding process. However, several items on the list, including Looseleaf Law Publications; Matthew Bender & Co., Inc.; New York Law Publishing Co.; and West Publishing Corp. are sole source vendors providing legal research materials and other law publications which are available only from those individual vendors. These sole source vendors amount to nearly \$247,000, or nearly one third of the amount in Table II."

Auditor Comments: While the NYDA Office contends that the many of the expenditures detailed in Table II were for sole source vendors, it provided no documentation during the audit to justify this sole source classification. Even if such documentation were provided there remains more than \$530,000 in purchases for which City competition and

contracting rules were not followed. Notwithstanding, §3-05 of the PPB rules details the requirements for the determination, justification, and documentation of sole-source procurement transactions. In the event that the NYDA Office plans to purchase goods or services from a sole source vendor, it should comply with the PPB rules.

When miscellaneous vouchers are used, the purchase is not requisitioned in FMS to encumber funds from the budget. By not encumbering funds, the NYDA Office is not following budgetary controls and Comptroller's Directive #24. Directive #24 requires that a purchase document be entered in FMS before an order is placed with a vendor. It further states that requisitions entered in FMS make it possible to track estimated liabilities in order to ensure that the City's financial records reflect planned expenditures, provide cash control and accountability, and facilitate management of City's financial resources.

NYDA Office officials asserted that since the previous audit, the Office has started to use purchase orders for telephone service and rent payments. However, they reiterated the general sentiment made in the previous audit that miscellaneous vouchers are used because it is too cumbersome and time-consuming to use purchase orders each time the Office purchases particular goods or services. NYDA Office officials asserted that the quality and timing of services in the areas such as hotel service, car service, library books, and temporary services, etc, are important to the timely operation of the NYDA's Office. However, while they added that for all other purchased services it will try to use purchase orders in the next fiscal year, we still believe that the NYDA Office is required to follow state and local statutes regarding competition.

Recommendations

The NYDA Office should:

2. Limit the use of miscellaneous vouchers, in accordance with Comptroller's Directive #24, to those purchases in which the estimated or actual expenditures cannot be determined.

NYDA Office Response: The NYDA Office partially agreed, stating: "NYDA pledges to better limit the use of miscellaneous vouchers to expenditures that cannot be determined advance. NYDA contends that only a small percentage of PVM use conflicted with this principle."

3. Obtain bids for purchases over \$5,000 and enter into contracts with those vendors for which estimated purchases for similar goods and services throughout the Fiscal Year will exceed \$10,000, in accordance with PPB rules.

NYDA Office Response: The NYDA Office generally agreed, stating: "The audit significantly overstates the frequency with which the bidding process was not properly adhered to. This office nonetheless pledges to improve its use of bidding processes in accordance with PPB rules."

4. Budget for various routine, recurring, ordinary expenses; prepare purchase documents and draw down from these encumbrances as goods or services are paid.

NYDA Office Response: “The NYDA accepts this recommendation.”

5. All procurement transactions are encoded with the correct object codes for the goods and services ordered and received.

NYDA Office Response: The NYDA Office generally agreed, stating, “We currently endeavor to meet this requirement.”

Petty Cash Procedures and Controls

Controls over Petty Cash

The NYDA Office also maintains a petty cash fund that is used to pay for local and out-of-town travel-related expenses and small purchases. As derived solely from the description of transactions recorded in FMS, in Fiscal Year 2007 the NYDA Office used PVM vouchers to reimburse the demand account at least \$590,254 for cash outlays for petty cash, early case assessment, auto fuel, and confidential expenses. The total cash outlay could be as high as \$759,251 when considering that cash advances are also extended to authorized personnel for out-of-town expenses related to interviewing witnesses, extradition, recruitment, seminars and conferences. According to Comptroller’s Directive #3, a petty cash fund may be established to pay for postage, MetroCard use, phone cards, and very small purchases, and to provide cash advances to employees for business purposes.

We reviewed 289 petty cash reimbursement request forms and supporting documentation associated with the eight sampled PVM vouchers, totaling \$29,973, used to reimburse the demand account for petty cash expenditures. In compliance with Comptroller’s Directive #3, our review found that reimbursement requests were appropriately authorized and adequately supported by receipts. Further, the expenses appeared to be for legitimate business purposes. Consequently, we determined that the NYDA Office maintains generally adequate controls over its petty cash transactions.

The petty cash fund operations are administered by the NYDA Fiscal department. To be reimbursed for out-of-pocket expenses incurred for legitimate business purposes, employees are required to submit a reimbursement request form signed by the employee’s supervisor along with supporting receipts to the Fiscal department. Upon submission, a Fiscal employee reviews the approved request form and supporting documentation, reimburses the employee out of petty cash, and requires the employee to sign for receipt of the cash. In addition, the Fiscal department will provide advances for approved out-of-town travel and investigative purposes. To obtain such an advance, employees must submit an approved budget of proposed expenses. Hotel, airfare, and car rentals are arranged by the Fiscal department. A NYDA Office credit card will be provided to pay for these travel accommodations. Upon completion of the trip, the employee

must submit a detail of expenses with supporting documentation. Any residual cash must be returned to the Fiscal department along with the credit card.

The NYDA Office keeps cash on hand in two cash boxes—a large cash box that is kept locked in a safe accessible by only a small number of Fiscal department employees, and a small cash box from which petty cash disbursements are made during the day. At the end of each day, Fiscal department personnel total all petty cash expenditures and reconcile them with the cash balance in the small cash box along with outstanding advances. All petty cash expenditures are classified according to their use (i.e., local travel, out-of-town travel, etc.) and recorded in a petty cash journal from which the NYDA Office can track the uses of petty cash throughout the year.

While these control and reporting procedures generally comply with Directive #3, as discussed below, our review disclosed certain weaknesses, including the lack of: (1) surprise cash counts; (2) a cash-on-hand total (limit); and (3) segregation of duties. These weaknesses increase the risk that errors or fraud could go undetected. Also, we noted that reimbursement forms do not include required certification language.

Surprise Cash Counts Not Performed

The NYDA Office does not perform surprise cash counts and comparisons to control records as part of its routine control activities.

Directive #3 states: “Agencies should conduct periodic surprise counts of petty cash funds and review the supporting records and reconciliations. These counts should be made by an individual not involved in the management or reconciliation of the petty cash, preferably an auditor.”

NYDA Office officials stated that the persons responsible for petty cash are trusted, long-term employees. They further stated that surprise, or periodic, unannounced cash counts, are not performed. However, surprise cash counts provide an added control to ensure accountability over cash.

No Established Petty Cash Fund Limit

Comptroller’s Directive #3 states: “The amount of the cash fund that is maintained is dependent on the operating needs of the agency. . . . As a general rule, the amount of petty cash should not exceed \$1,500 unless the need for a larger fund is documented and maintained on file.”

During the audit, NYDA Office officials stated that there is no limit for the amount of petty cash reserves kept on hand. Instead, the amount varies based on anticipated needs. This was substantiated by samples of completed “Daily Analysis of Petty Cash” forms used to reconcile cash balances and expenses. Based on the daily analysis forms we reviewed for January 2, 2008, through February 11, 2008, the ending cash balance recorded on the forms ranged from as low as \$11,442 to as high as \$21,173. Further, on February 20, 2008, the day of

our observation of petty-cash closing procedures, we verified that the closing cash balance was \$12,507.

While the operations of the NYDA Office may necessitate large petty cash outlays, based on the variations in cash-on-hand balances, the controls over petty cash kept on hand would be enhanced by establishing a control limit against which expenditures and reimbursements should be periodically reconciled.

Lack of Segregation of Duties

While the NYDA Office Fiscal department has segregated various duties related to petty cash disbursement, reconciliation, and replenishment, we noted that the individual responsible for reconciling daily petty cash balances and expenses is assigned conflicting duties.

Directive #1 states, “Key duties and responsibilities need to be divided or segregated among different staff members to reduce the risk of error or fraud.” Also, Directive #3 states, “An individual should be assigned responsibility for reconciling the bank account on a monthly basis. This person should receive the unopened monthly bank statement and cancelled checks directly from the bank and should not have any other imprest fund responsibilities.”

In addition to being responsible for the daily reconciliation of petty cash balances and expenses, the Fiscal employee assigned that task is also responsible for processing petty cash expense bundles, maintaining petty cash advance records, preparing the PVM payment vouchers in FMS to replenish the demand account, and performing the monthly bank reconciliation for the NYDA Office demand account.

The purpose of segregating the assignment of imprest fund responsibilities and bank reconciliation functions is intended to reduce the opportunities to allow a single individual to be in a position to both perpetrate and conceal errors or fraud.

Reimbursement Forms Not Certified by Employees Requesting Reimbursement

The NYDA Office employee expense reimbursement request forms do not contain the employee certification statement required by Directive #6. The directive states that agency personal expense reimbursement request forms must incorporate at the employee signature the following language:

I hereby certify that this accounting is an accurate statement of my actual disbursements, that the expenditures were necessary in the performance of my official City duties, that no part thereof has been paid to me, or on my behalf except as stated hereon, and that the balance shown is a true statement of the amount due.

We reviewed 289 petty cash expense reimbursement request forms associated with the eight sampled PVM vouchers and noted that even though the NYDA Office requires employees

to sign the forms attesting to the receipt of reimbursement funds, the employees are not required to attest to the accuracy and complete accounting of the submitted expenses. The certification statement on the reimbursement request forms serves to remind employees of their accountability.

Recommendations

The NYDA Office should:

6. Conduct periodic surprise counts of petty cash funds and review the supporting records and reconciliations.

NYDA Office Response: “The NYDA will adopt the Comptroller’s recommendation to conduct surprise counts of petty cash and review the supporting reconciliations.”

7. Establish a control limit for petty cash reserves against which expenditures and reimbursements should be periodically reconciled.

NYDA Office Response: The NYDA agreed, stating: “We will further establish a control limit for petty cash reserves against which expenditures and reimbursements will be periodically reconciled. In accordance with the discussion in the exit conference, the petty cash limit will be set consistent with the operational needs of the office.”

8. Ensure that conflicting duties of petty cash fund responsibilities and monthly reconciliations of the NYDA Office demand account bank currently assigned to one Fiscal employee be appropriately segregated and assigned to different employees.

NYDA Office Response: The NYDA agreed, stating: “The office further agrees to segregate the duties of our small Fiscal staff such that the petty cash fund responsibilities and reconciliation of the demand account lie with different staff members.”

9. In accordance with Directive #6, incorporate the required certification paragraph on the agency’s expense reimbursement request forms.

NYDA Office Response: The NYDA agreed, stating: “[W]e will comply with Directive 6, and incorporate the appropriate certification paragraph on this office’s expense reimbursement forms.”

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ADDENDUM
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ROBERT M. MORGENTHAU
DISTRICT ATTORNEY

June 23, 2008

VIA HAND DELIVERY

John Graham
City of New York, Office of the Comptroller
1 Centre Street
New York, New York 10007

Re: Audit Report MJ08-074A

Dear Mr. Graham,

Enclosed is this office's response to the above entitled Draft Audit Report dated June 9, 2008. We appreciate the opportunity to be heard in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred J. Watts", with a long horizontal line extending to the right.

Frederick J. Watts
Executive Assistant District Attorney

FJW:rg

**Response by the New York County District Attorney's Office to Audit Report
MJ08-074A**

We accept the Comptroller's overall findings that The New York County District Attorney's Office (NYDA) "maintains adequate financial controls over its procurement practices and generally complies with many aspects of the Comptroller's Directives and PPB rules." After a careful review of the Draft Audit Report, NYDA replies below to each of the Comptroller's nine recommendations. For clarity, we restate the essence of the recommendation, and follow it with our response.

1. The NYDA should ensure that all payments are made promptly in accordance with PPB rules.

The NYDA endeavors to pay all vendors promptly, as well as to conform to PPB rules, and the administrative framework of the Mayor's Office of Contracts (MOC). Indeed, only 2 of the 50 vouchers examined were handled with an undue delay. Our adherence to PPB rules, and MOC's timetables, however, does slow our administrative processing. We pledge to redouble our efforts to pay all vendors in a timely fashion. We nonetheless emphasize that our efforts are only one component in ensuring prompt payment.

2. The NYDA Office should limit the use of miscellaneous vouchers...to those purchases in which the estimated or actual expenditures cannot be determined.

The facts as presented in the Audit Report in support of this recommendation, in our view, are misleading. We seek to clarify below.

Key Facts:

- The audit correctly points out that NYDA expended \$4 million using miscellaneous vouchers. The audit also correctly observes that \$2.1 million – more than half that amount – were paid to the NYDA demand account as reimbursement of funds. The audit does not emphasize that this \$2.1 million was properly the subject of miscellaneous vouchers for expenses such as witness fees, out of town travel for police and witnesses, and cash stipend payments to ADAs working late night shifts. Thus, it should be clarified that the Comptroller finds no fault with the use of miscellaneous vouchers in the amount of \$2.1 million paid to the demand account.
- Of the remaining \$1.9 million of miscellaneous vouchers, the Comptroller acknowledges that \$600,000 was properly accessed using miscellaneous vouchers.

- Thus, of the \$4 million of miscellaneous vouchers used, only \$1.3 million, or less than one third of the miscellaneous vouchers, are criticized by the Comptroller. This small percentage is far less than the impression left by the audit.

Of the use of the remaining \$1.3 million worth of miscellaneous vouchers, the NYDA maintain that over one half of the amount, or \$700,000, was proper.

- In the \$410,742 transfer of funds at the City's request, NYDA served as a conduit between the City of New York and the not-for-profit agency, The Police Athletic League (PAL). We maintain that a miscellaneous voucher was properly used in this transaction. Neither the Office of Management and Budget, which enlisted us to serve as a conduit, nor the Comptroller's Office, has offered any alternative mechanism to transfer the funds. Nor has the Comptroller's office suggested an object code (despite our express request) that was more suitable.
- NYDA contends that hotel accommodations for out of town witnesses are not an "ordinary expense with estimable or measurable amounts...." These expenses are related to specific cases that cannot be anticipated. Thus, using purchase documents and standard FMS procedures is unworkable.
- Computer related goods and services, and Temporary Staffing Services are similarly the result of last minute equipment failures, or unanticipated staffing needs. These expenses (totaling over \$275,000) are not "ordinary expenses with estimable or measurable amounts..." and thus are not amenable to purchase documents and FMS procedures.

Therefore, of the \$1.3 million dollars of miscellaneous vouchers at issue, over \$700,000 are proper subjects of the use of such vouchers.

As to the small remaining percentage of miscellaneous vouchers, NYDA pledges to better limit the use of miscellaneous vouchers to expenditures that cannot be determined in advance. NYDA contends that only a small percentage of our PVM use conflicted with principle.

3. The NYDA should obtain bids for purchase over \$5,000...in accordance with PPB rules.

The Audit Report lists purchases in Table II, and asserts that as to those items the NYDA should submit to a bidding process. However, several items on the list, including Looseleaf Law Publications; Matthew Bender & Co. Inc.; New York Law Publishing Co.; and West Publishing Corp. are sole source vendors providing legal research material and other law publications which are available only from those individual vendors. These sole source vendors amount to nearly \$247,000, or nearly one third of the amount in Table II. In addition, the \$16,040 spent on hotel accommodations are expenses for

housing witnesses in matters where confidentiality and witness safety are at a premium. Such expenses are not amenable to the PPB bidding process.

The audit significantly overstates the frequency with which the bidding process was not properly adhered to. This office nonetheless pledges to improve its use of bidding processes in accordance with PPB rules.

4. Budget for various routine, recurring ordinary expenses; prepare purchase documents and draw down from these encumbrances....

The NYDA accepts this recommendation. We emphasize, as stated above, that many expenses that the Comptroller appears to characterize as “recurring, ordinary expenses” are in fact not properly described in that fashion.

5. All procurement transactions are encoded with the correct object codes....

We currently endeavor to meet this requirement. The Audit Report cites only one transaction (in an audit of covering over \$8.5 million in purchases) where it finds fault with the object code used. Yet neither the Comptroller, nor OMB was able to instruct us as to the proper object code for the transaction in question. If NYDA is in error, it welcomes the guidance from the appropriate City agency.

6-9. Recommendations concerning Petty Cash Procedures and Controls

The NYDA will adopt the Comptroller’s recommendation to conduct periodic surprise counts of petty cash, and review the supporting reconciliations. We will further establish a control limit for petty cash reserves against which expenditures and reimbursements will be periodically reconciled. In accordance with the discussions in the exit conference, the petty cash limit will be set consistent with the operational needs of the office. The office further agrees to segregate the duties of our small Fiscal staff such that the petty cash fund responsibilities and reconciliation of the demand account lie with different staff members. Finally, we will comply with Directive 6, and incorporate the appropriate certification paragraph on this office’s expense reimbursement forms.