



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

MAURA HAYES-CHAFFE
DEPUTY COMPTROLLER FOR AUDIT

BUREAU OF AUDIT

July 3, 2023

Re: Cost Containment in Emergency Contracts

Dear Commissioner:

Emergency procurement is a purchasing method that allows City agencies to purchase goods and services more swiftly by dispensing with the City's normal safeguards when there is an unforeseen danger to life, safety, or property, or when an emergency creates an immediate and serious need for goods or services that cannot be met through normal procurement methods. Emergency procurement may be made with the prior approval of the Comptroller and Corporation Counsel, provided that such procurement shall be made with such competition as is practicable under the circumstances. In FY 2022, the City registered 302 contracts via the Emergency Procurement method, for a total value of over \$1 billion.

The Office of the Comptroller recently conducted a review of the Department of Mental Health and Hygiene's controls on staff hours and billing by an emergency contractor providing health services during the Covid-19 emergency. This report, like several others issued previously by auditors, shows that costs were not well controlled during the pandemic. Our reviews have demonstrated a number of challenges that agencies face in handling emergency contracts, including lack of competition during the selection of vendors, weak contract terms for managing costs, and insufficient monitoring of vendors during implementation. Lack of action on the part of agencies to mitigate those risks led to poor cost control, wasteful spending, and unsupported expenditures.

Emergency contracting, by nature, is often more expensive since time-strapped agencies cannot wait for lower bidders when goods and services are urgently needed. However, stronger emergency planning and mitigation steps to contain costs during an emergency remain essential to protect the fiscal interests of the City of New York. This responsibility belongs to agencies who administer contracts on the City's behalf.

Especially as multiple City agencies deploy emergency contracting to address the humanitarian crisis created by the arrival of tens of thousands of individuals seeking asylum, and as New York City prepares for future crises from extreme weather to future health emergencies, City agencies must be prepared to contain emergency spending costs. Here are several steps that should always be taken by agency staff to support cost containment:

1. **Maximize competition in vendor selection to the fullest extent practicable.**

Even when using emergency procurement methods, agencies must seek to obtain as much competition in vendor selection as is possible and practical given the conditions of the emergency. This is essential to cost control, from the start.

- a. Establish procedures for assessing and documenting cost reasonableness/cost comparisons and ensure these are documented and revised as conditions change. Documentation should avoid form language which provides only general information. Comparisons and the rationale used to support conclusions should be specific.
- b. Consult with other City agencies who may be purchasing the same goods or services to compare prices and determine whether it is prudent to utilize an already-existing contract.

In the asylum-seeker emergency, for example, there are multiple agencies utilizing staffing service contracts. Yet on several occasions, City agencies have proposed to open new contracts with existing vendors without discussing the possibility of utilizing an existing contract or comparing prices across already-existing contracts.

- c. Agencies should be leery of vendors that lack an established record of supplying needed goods and services. -Agencies must be assured that selected vendors have the requisite expertise and wherewithal to perform as required under the contract.
- d. Ensure that staff perform and document responsibility reviews and determinations, and appropriately consider and report results. Agencies should avoid using “cookie cutter” language when documenting decisions – it is important to show what factors were considered and how they support conclusions reached for each vendor selected.
- e. Agencies must ensure the use of sub-contractors is pre-approved before engaged by vendors. This must be done at the outset and over the duration of the contract. Sub-contractors must be appropriately vetted. As with vendors, agencies should be cautious when proposed sub-contractors lack an established, relevant, track record demonstrating the expertise needed to perform under their contracts with the vendor.

2. **Ensure strong contract terms and specific guidance to vendors to track and manage costs.**

In the case of emergency contracts, conditions are likely to shift through implementation. This makes it especially important that strong contracts are negotiated to give City agencies sufficient authority to direct vendors as conditions change, and to carefully track and manage costs.

- a. Ensure that program administrators are included when drafting contract terms and conditions, particularly as they relate to setting program goals, standards and specifying deliverables.
- b. If delegating aspects of contract compliance to another agency, ensure the delegation is supported by an appropriate MOU, so that the respective roles and responsibilities of all parties are clearly understood and memorialized in writing.
- c. Contracts should proactively contemplate the following questions:
 - i. What reimbursable costs will impact the total cost of goods and services provided under the contract? Cost containment measures cannot be designed until this is understood.
 - ii. What are the best ways to control the cost elements that will determine total reimbursement over the life of the contract? This question needs to be asked and answered before the contract goes into effect.

In the DOHMH audit, payment was established on a per unit basis plus a fee per staff hour. This per hour fee was also intended to cover the vendor's administrative expenses and provide profit. In these circumstances, the number of staff hours paid determined the total cost of the contract to New York City, and therefore, to control costs, DOHMH needed to ensure that staffing at each site, was closely monitored and pre-approved. The agency should have required the vendor to submit the actual per test and vaccine cost, per site, for a prior, pre-determined period, before approving staffing for the following period. Requiring the vendor to provide this information to DOHMH, and to obtain DOHMH's approval, before staffing was established for each site, at agreed intervals, could have resulted in a significant reduction in total payments to the vendor.
 - iii. How will the agency assess changing needs, and the costs vendors should reasonably incur, over time? Agencies should, for example, ensure that costs that are not fixed, such as PS costs, are reduced if the number of people or scope of services provided under the contract are reduced.
 - iv. What standards must the vendor meet in return for reimbursement? It is not uncommon for typical contract terms and conditions to be ambiguous. It is the agency's responsibility to consider the contract language when developing its operational plans and eliminating ambiguities by issuing additional written guidance to vendors.

- v. What documentation is required to support reimbursement? Agencies should be explicit in their guidance to vendors about what documentation must be provided before payment is made. (If not provided for in the contract, it is good practice to require vendors to submit claims for payment with a signed certification statement.)
- vi. What procedures has the vendor established internally to ensure contract terms and conditions are adhered to, and to monitor for fraud and other types of risk? Agencies should proactively ask vendors about the internal controls they have established to identify and prevent risks and should assess such controls for effectiveness.
 - a. Agencies should not waive terms and conditions in the contract, or policies and procedures, that have been added or established specifically to protect the City's fiscal interests.
 - b. Guidance issued to vendors should be repeated and reinforced with key vendor staff who are responsible for compliance. Once and done is rarely sufficient to ensure vendor compliance – agencies should reiterate guidance at regular intervals. Proof of issuance and receipt should be obtained in the first instance and following any subsequent reissuances.

3. **Conduct robust vendor oversight through contract compliance and enforcement.**

- a. Prepayment review processes should be established by the agency, in writing. Agencies should ensure that invoices contain all required information, and that they are supported by all required documentation before payment is made to the vendor. Agencies are expected to verify that costs claimed were actually incurred, were reasonable and were necessary to provide the contracted services. Costs should be adjusted based on the level of services provided. For example, if the number of individuals served is reduced over time, costs incurred by the vendor should also be reduced. If purchasing goods, the agency must verify that the goods were actually provided and that the claimed costs for such goods were consistent with contract terms and conditions. This can generally be done through sampling.
- b. Internal policies and procedures to support contract monitoring and oversight should be issued to agency staff, to ensure operational staff clearly understand what cost containment tasks must be performed. Agency staff should be trained, and a system of checks and balances should also be established. This usually takes the form of second level reviews and approvals. Checklists and forms to be completed can also help ensure tasks are carried out as expected and they also provide a useful paper trail if issues are later found.
- c. Agencies should conduct internal testing to assess whether established cost control measures are being followed by vendors and enforced by agency staff. This can be done by sampling transactions each month, continuously throughout the contract. Using the

examples above, sampling would be conducted to verify that the ratio of staff to tests/vaccines administered was submitted to the agency; that the subsequent period's staffing levels accounted for such ratios and were approved by the appropriate staff in advance; and invoices contained all the required information, were accompanied by all required documentation and second level reviewers signed off before payment was made. If errors are found during sampling, corrective action should be taken with the vendor and with agency staff, in writing.

4. **Hold vendors accountable for problems, errors, and contract violations during the contract period, in performance evaluations, and in consideration of extensions or renewals.**
 - a. If problems or errors are repeatedly found, vendors should be placed on 100% pre-payment review. Identified overpayments and unnecessary expenditures found on review should be recouped.
 - b. Procedures for identifying fraud should be in place, and where fraud is suspected, referrals must be made to DOI.
 - c. Agencies should seek legal advice early and often if vendors appear unable to perform under the contract as required, and where applicable, should pursue liquidated damages due and owing under the contract.
 - d. Performance evaluations must be completed in a timely fashion, accurately reflect performance, and be considered in decisions concerning renewal. Agencies regularly fail to complete performance evaluations, or simply fill them out with boilerplate language that fails to accurately assess contractor performance.
 - e. Contracts with problematic vendors should not be renewed or extended – even in an emergency.

5. **Track and document spending to ensure maximum reimbursement from state and federal funding sources.**
 - a. The City should implement cost accounting procedures for federal and state funds to improve the City's ability to track and maximize reimbursement. Currently, the City cannot monitor and manage grant spending and billing because costs incurred are not tied to the source of aid in the Financial Management System (FMS). A feasibility assessment for the enhancement of FMS was completed but remains to be implemented. The City should fully fund and prioritize these improvements.
 - b. Internal procedures should be developed for tracking and maintaining accurate and complete records of emergency expenditures. These should be sufficient to support

claiming against applicable Federal and State grants, and to ensure compliance with applicable claiming regulations.

- c. Available Federal and State funding sources should be maximized. This requires knowledge of claiming regulations, advance planning, and continuous review.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Maura Hayes-Chaffe", with a long horizontal line extending to the right.

Maura Hayes-Chaffe
Deputy Comptroller for Audit