



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Follow-Up Audit Report on the
Department of Education's Controls over
Non-Competitive and Limited-Competition
Contracts and Contract-Related Actions

ME17-078F

August 11, 2017

<http://comptroller.nyc.gov>



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OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the New York City Department of Education (DOE) to determine whether it implemented the eight recommendations made in our prior audit report entitled *Audit Report on the Department of Education's Controls Over Non-Competitive and Limited-Competition Contracts* (Audit #MG13-119A), issued on June 17, 2015. We conduct audits such as this to increase accountability and to ensure that City resources are used efficiently, effectively, and in the best interest of the public.

This audit determined that three of the prior audit's eight recommendations had been partially implemented and that five had not been implemented. Among other things, the audit found that DOE does not provide sufficient guidance for the assignment of existing contracts to other vendors, and, in particular, it fails to ensure that a proposed new vendor's capacity and history are adequately assessed; it does not offer its contract managers specific instruction about handling their responsibilities; it has not implemented a standard format with standard criteria and ratings for evaluating vendor performance; it has not ensured that its procurement files consistently show that issues of concern identified in its background review reports have been satisfactorily resolved; and it has not ensured that its procurement files consistently contain the documents and approvals needed to support contract awards.

Based on the audit findings, the audit made a total of 20 recommendations, including that DOE prepare more specific written procedures concerning assignments; expand training programs for its contract managers; implement a standard vendor performance evaluation format; ensure that issues of concern identified in its background review reports have been satisfactorily resolved prior to contract approval; and ensure that its procurement files contain all required supporting documents and approvals for the awarding of contracts.

The results of the audit have been discussed with DOE officials, and their comments have been considered in preparing this report. DOE's 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 blue 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

Follow-Up Audit Report on the Department of Education's Controls over Non-Competitive and Limited-Competition Contracts and Contract-Related Actions

ME17-078F

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City Department of Education (DOE or the Department) implemented the eight recommendations made in our prior audit report entitled *Audit Report on the Department of Education's Controls Over Non-Competitive and Limited-Competition Contracts* (Audit # MG13-119A), issued on June 17, 2015.

DOE contracts with outside vendors to acquire and provide necessary goods and services, including student bus transportation, universal pre-kindergarten, food, textbooks, educational software, and training and support materials for teachers. DOE also contracts with outside vendors for certain special education and assessment services (known as related services) for special needs students.

Rules governing DOE procurements and contracts are found in the Department's Procurement Policy and Procedures (PPP) manual. According to the PPP manual, the preferred method for awarding contracts is a fully competitive solicitation, which generally involves a Request for Bids or a Request for Proposals. However, when a fully competitive process is not feasible or appropriate and specific criteria have been met, DOE may use other methods to award contracts, providing that there is a clear written justification for the need. This follow-up audit focuses on the following seven types of contract actions that do not involve fully competitive solicitations: contract extensions; listing applications (used for certain content provided directly to students); contract renewals; sole-source procurements; contract assignments; negotiated services; and emergency purchases.

The prior audit found problems in DOE's contract assignment processes. In particular, the audit found weaknesses in the Department's assessments of the past performance of vendors who received contract assignments. There were also deficiencies in the justifications provided by the vendors who sought to assign these contracts and with the Department's approval determinations. In addition, the prior audit found that DOE had not (1) effectively enforced the requirement that contract managers formally monitor and evaluate the performance of vendors; (2) established minimum guidelines for monitoring contracts; and (3) developed a standard format

with criteria for managers to follow in conducting performance evaluations. Further, the prior audit found that DOE failed to consistently submit contracts to the Office of the New York City Comptroller (Comptroller) for registration in a timely manner. In connection with the prior audit, the Comptroller issued eight recommendations to improve DOE's performance.

Audit Findings and Conclusions

We determined that three of the prior audit's eight recommendations had been partially implemented and that five had not been implemented. Among other things, we found that:

- DOE still does not provide sufficient guidance for contract assignments, and, in particular, it fails to ensure that a proposed new vendor's capacity and history are adequately assessed. In addition, assignment files lack sufficient information justifying the assignments, detailing prior performance and documenting adequate insurance coverage, among other things.
- DOE has not developed written procedures or guidelines to help staff detect the warning signs of possible collusion when awarding contracts via actions other than fully competitive solicitations.
- While general guidance to contract managers appears to be available now in DOE's contract management training manual, it does not offer the contract managers specific instruction about handling their responsibilities. For example, the training manual is silent on the performance evaluations that must be conducted throughout the contract period and on the frequency of such evaluations.
- Despite DOE's representation in response to the previous audit that it would implement a standard format with standard criteria and ratings for evaluating vendor performance and a schedule for conducting such evaluations, we found that no such implementation has taken place.
- DOE still does not conduct required performance evaluations of contractors seeking renewals or extensions.
- DOE still does not adequately monitor its contract managers to ensure that contract monitoring and performance evaluations are conducted in accordance with its PPP manual.
- DOE does not ensure that limited-competition and non-competitive contracts are registered with the Comptroller prior to vendors beginning performance. As a result, vendor payments are delayed, which could potentially decrease competition and raise prices.

In addition, we found other areas where DOE's controls over contract actions other than fully competitive solicitations need to be improved. In particular, this follow-up audit disclosed that:

- DOE has inadequate controls over its procurement of contracts through the negotiated services method;
- Procurement files of approved contracts did not consistently contain background review reports or show that issues of concern identified in the reports had been satisfactorily resolved;
- Contract assignments in our sample were not approved by DOE's Vendor Research & Price Analysis (Vendor Research) unit before their starting dates; and

- Procurement files did not consistently contain the documents and approvals needed to support contract awards as specified in the PPP manual and other Division of Contracts and Purchasing (DCP) guidelines.

Because of DOE's deficient oversight of contract actions that do not involve fully competitive solicitations, there is a risk that the Department is not selecting the best vendors or obtaining the best prices for goods and services. This risk is of particular significance since we found that over \$2.7 billion (approximately 64 percent) of DOE's contract dollars registered with the Comptroller were awarded through one of the seven less than fully competitive contract actions. Moreover, since we found that the vast majority of vendors commence performance under their contracts prior to those contracts being registered, there is an added risk to DOE because the vendors cannot be paid until their contracts have been registered. As a result, the pool of vendors willing to bid on DOE contracts could be limited. Further, costs could increase because bid prices would potentially include a factor covering the risk to the vendor of not being paid timely or at all.

Audit Recommendations

To address the issues that still exist and other areas where DOE's controls need to be strengthened, this report makes a total of 20 recommendations, including the following:

- DOE should ensure that performance evaluations are conducted, especially of those contractors seeking renewals or extensions, and should maintain the results of these evaluations for future reference.
- DOE should monitor its contract managers to ensure that their activities are documented in well-organized files and are readily available.
- DOE should ensure that it submits contracts for registration to the Comptroller prior to their start dates.
- DOE should ensure that vendors do not commence performance under non-emergency contracts until they are registered with the Comptroller.
- DOE should monitor the heads of offices more closely to ensure that they do not make purchases exceeding \$25,000 without an approved contract being in place to reduce the risk of negotiated services contracts having to be awarded later to pay for services that have already been provided.
- DOE should ensure that all noteworthy adverse information issues cited on Background Review Summary sheets are satisfactorily resolved prior to contract approval.
- DOE should ensure that all required background reviews are conducted.
- DOE should ensure that assignments receive final internal approvals in accordance with applicable rules prior to the assignment start dates.
- DOE should ensure that the procurement files contain all required supporting documents and approvals for the awarding of contracts and for any increases to original contract awards.

Agency Response

In its written response, DOE purports to “agree” with all but one of the audit’s 20 recommendations, but often qualifies that agreement by stating that its agreement is “inasmuch as it reflects current practice.” Since the audit found deficiencies in DOE’s current practices that the recommendations seek to address, DOE’s facial “agreement” is often, in fact, not an agreement at all when read in the context of the full response and with DOE’s current practices as documented in the original audit and this follow-up. Based on the detailed narrative in DOE’s response, we conclude that it agreed with 7 of the audit’s 20 recommendations, partially agreed with 7, and disagreed with the remaining 6. Specifically, DOE disagreed with our recommendations that DOE develop more specific written procedures for its reviews of requested contract assignments; require the assignors to submit documentation that supports their written justifications for assignment requests; develop written procedures to assist staff in identifying the warning signs of possible collusion in the assignment process; ensure that contract managers maintain well-organized, readily-available contract management files; ensure that vendors do not commence work under non-emergency contracts until they have been registered with the Comptroller; and ensure the maintenance of required supporting documents and contract award approvals in DOE’s procurement files.

In addition, DOE disputed some of the findings and conclusions upon which the recommendations were based. However, after a careful review, we found DOE’s arguments unpersuasive and accordingly conclude that they provide no basis to alter our findings.

The full text of DOE’s response is included as an addendum to this report.

AUDIT REPORT

Background

DOE provides education to over one million students in more than 1,800 public schools and employs approximately 75,000 teachers. DOE contracts with outside vendors to acquire and provide necessary goods and services, including student bus transportation, universal pre-kindergarten, sports uniforms, cafeteria and kitchen equipment, food, textbooks, educational software, art services, and training and support materials for teachers. DOE also contracts with outside vendors for certain special education and assessment services (known as related services) for special needs students.

Rules governing DOE procurements and contracts are found in the Department's PPP manual.¹ According to the PPP manual, the preferred method for awarding contracts is a fully competitive solicitation, which generally involves a Request for Bids or a Request for Proposals. However, when a fully competitive process is not feasible or appropriate and specific criteria have been met, DOE may use other methods to award contracts, providing that there is a clear written justification for the need. This follow-up audit focuses on the following seven types of contract actions that do not involve fully competitive solicitations: contract extensions; listing applications; contract renewals; sole-source procurements; contract assignments; negotiated services; and emergency purchases. (Definitions of each of these contract actions are provided in the Appendix to this report.)

The PPP manual allows the head of a DOE office (a school principal or any individual who manages or oversees an office, bureau, or division within the Department) to directly approve any purchase up to \$25,000 without a contract. However, once the dollar value of a purchase exceeds \$25,000, a written contract must be executed. In that case, DCP is responsible for awarding such contracts and for ensuring the timely and efficient acquisition of goods and services.² In order for a contract to be executed, certain key documents must be prepared and approved, such as a background review report (which summarizes the results of research on the vendor, principal owners, and affiliates using sources such as Lexis Nexis and the Federal Debarment List), and a Request for Authorization for certain contract actions.

The PPP manual requires that a manager be assigned to each contract awarded by DOE. The manager's responsibilities include monitoring contractor payments; performing quality assurance, inspection, and testing functions; assessing the need for contract extensions and renewals; ensuring that goods and services purchased meet standards specified in the contract; maintaining a file that contains records, correspondence, and determinations pertaining to contract administration; and evaluating contractor performance on an ongoing basis for quality and timeliness, among other things, using standard criteria and rating levels.³

The City Charter requires that all non-emergency contracts be registered with the Comptroller before any payment can be made. According to the PPP manual, the documents to be submitted to the Comptroller must include a copy of the executed contract and a written justification for the basis of the award. The justification must specify the efficiency, benefit and need for awarding a

¹ DOE is not required to follow the City's Procurement Policy Board Rules.

² DCP consists of the following seven units: School Based Procurement; Transportation, Food, & Facilities Procurement; Technology & Instructional Material Procurement; Central Office Procurement; Vendor Research & Price Analysis; Policy & Public Affairs; and Technology & Data.

³ The contract manager is generally designated by the head of the DOE office that requested the contract. However, the functions of a contract manager can be performed by an individual who is not an employee of the office that requested the contract.

contract using a contract action other than fully competitive solicitations. According to the City Charter, after all the relevant information has been provided, a contract cannot take effect until it is registered by the Comptroller or 30 days elapse from the date the relevant documentation is submitted, whichever occurs first.⁴

A prior Comptroller's audit, entitled *Audit Report on the Department of Education's Controls Over Non-Competitive and Limited-Competition Contracts* (Audit # MG13-119A), issued on June 17, 2015, was conducted to determine: (1) whether DOE had adequate controls over contract actions other than fully competitive solicitations; and (2) whether DOE adequately monitored and evaluated vendor performance on awarded contracts.

The prior audit revealed problems with DOE's handling of contracts that have been assigned by the original awardee. In particular, the audit found weaknesses in the Department's assessments of the past performance of vendors who received contract assignments. There were also issues with the justifications provided by the vendors who sought to assign these contracts and with the Department's approval determinations. In addition, the prior audit found that DOE had not (1) effectively enforced the requirement that contract managers formally monitor and evaluate the performance of vendors; (2) established minimum guidelines for monitoring contracts; and (3) developed a standard format with criteria for managers to follow in conducting performance evaluations. Finally, the prior audit found that DOE failed to consistently submit contracts to the Comptroller for registration in a timely manner. In connection with the prior audit, the Comptroller issued eight recommendations to improve DOE's performance.

As recorded in datasets provided by DOE, 524 DOE contracts (valued at \$2.76 billion) were registered with the Comptroller during Fiscal Year 2016 that were procured through one of the seven less than fully competitive contract actions identified above. According to DOE, there were a total of 1,100 contracts (valued at \$4.29 billion) registered during Fiscal Year 2016. Thus, about 48 percent of DOE's Fiscal Year 2016 registered contracts (and about 64 percent of the total value of these contracts) were awarded through contract actions other than fully competitive solicitations. A breakdown of the dollar value of the registered contracts by contract action is shown in Table I below.

⁴ According to the City Charter, the Comptroller must register a submitted contract action within 30 days of the date of filing unless the Comptroller has grounds to refuse registration pursuant to Charter Section 328(b) or the Comptroller objects to registration pursuant to Section 328(c). If more than 30 days have elapsed since the date of the filing and the Comptroller has neither refused to register the contract nor objected to registration pursuant to Charter Sections 328(b) and 328(c), the submitting agency can "deem registered" the contract action. If the Comptroller objects to the registration of a submitted contract action pursuant to Charter Section 328(c), he must deliver that objection in writing to the Mayor and set forth in detail the grounds for the objection. Once received and reviewed, the Mayor can require registration of the contract despite the Comptroller's objections by responding in writing and either indicating the corrective actions, if any, that have been taken or will be taken in response to the Comptroller's objections, or the reasons why the Mayor disagrees with the Comptroller's objections. Once received, the Mayor's response cannot serve as the basis for further objection by the Comptroller, and the Comptroller must register the contract within 10 days of receipt of the Mayor's response.

Table I

DOE Contracts Registered in
Fiscal Year 2016 by Contract Action

Contract Action	Number of Contracts Registered	Dollar Value of Contracts Registered	Percent of Total Dollar Value of Contracts Registered
Extensions	163	\$ 2,061,369,781	48.11%
Listing Applications	53	\$ 338,495,546	7.90%
Renewals	155	\$ 183,483,346	4.28%
Sole-Source Contracts	1	\$ 105,000,000	2.45%
Negotiated Services	128	\$ 44,599,938	1.04%
Assignments	21	\$ 21,624,285	0.50%
Emergency Purchases	3	\$ 3,538,981	0.08%
Subtotal of Seven Contract Actions	524	\$ 2,758,111,877	64.36%
Fully Competitive Solicitations and Other Contract Actions*	576	\$ 1,527,312,536	35.64
Total Contracts Registered in Fiscal Year 2016 (Includes All Contract Actions)	1,100	\$ 4,285,424,413	100.00%

*DOE provided datasets containing details on all contracts registered in Fiscal Year 2016 associated with each of the seven contract actions other than fully competitive solicitations. We were not provided with details for contracts associated with fully competitive solicitations or other contract actions.

Objective

To determine whether DOE implemented the eight recommendations made in the prior audit report.

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 City Charter.

The scope of this audit covered contracts registered during Fiscal Year 2016 (July 1, 2015, through June 30, 2016) that were awarded as the result of one of seven contract actions that are not fully competitive. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures followed and the tests conducted during this audit.

Discussion of Audit Results with DOE

The matters covered in this report were discussed with DOE officials during and at the conclusion of this audit. A preliminary draft report was sent to DOE on May 10, 2017, and was discussed at an exit conference held on May 22, 2017. On June 7, 2017, we submitted a draft report to DOE with a request for comments. We received a written response from DOE on June 21, 2017.

In its written response, DOE purports to “agree” with all but one of the audit’s 20 recommendations, but often qualifies that agreement by stating that its agreement is “inasmuch as it reflects current practice.” Since the audit found deficiencies in DOE’s current practices that the recommendations seek to address, DOE’s facial “agreement” is often, in fact, not an agreement at all when read in the context of the full response and with DOE’s current practices as documented in the original audit and this follow-up. Based on the detailed narrative in DOE’s response, we conclude that it agreed with 7 of the audit’s 20 recommendations, partially agreed with 7, and disagreed with the remaining 6. Specifically, DOE disagreed with our recommendations that DOE develop more specific written procedures for its reviews of requested contract assignments; require the assignors to submit documentation that supports their written justifications for assignment requests; develop written procedures to assist staff in identifying the warning signs of possible collusion in the assignment process; ensure that contract managers maintain well-organized, readily-available contract management files; ensure that vendors do not commence work under non-emergency contracts until they have been registered with the Comptroller; and ensure the maintenance of required supporting documents and contract award approvals in DOE’s procurement files.

In addition, DOE disputed some of the findings and conclusions upon which the recommendations were based. To a significant extent, these disputes are based on DOE’s repeated contention that the contract documents and approvals that we cite as not having been present in the procurement files were available in a variety of other physical and electronic locations in DOE. However, no evidence of any of these records was ever produced in the course of the audit or in DOE’s audit response, notwithstanding DOE having been given many opportunities to do so. Specifically, during the course of the audit, we provided DOE with lists of all of the documents and approvals that we had been unable to find in the procurement files. In response, DOE never provided us with any of the missing documents and approvals even though DOE was given several weeks to do so. Moreover, while DOE refers to the existence of a relatively new electronic performance evaluation system when claiming that the auditors overlooked relevant documentation, DOE has not provided (nor has our audit found) evidence that DOE has implemented such a system or used one as a resource in connection with its reviews of the seven types of contract actions covered by the audit.

Accordingly, after a careful review, we found DOE’s arguments unpersuasive and conclude that they provide no basis to alter our findings.

DOE also asserted that

[T]his follow-up split the original eight recommendations into 20, undermining DOE ability to track these new recommendations to specific audit tests and thwarting our ability to meaningfully respond to the audit.

DOE’s above-quoted statement is not true. This report includes a Detailed Scope and Methodology section that provides a thorough description of all audit procedures followed, samples selected, and tests conducted to collectively form the basis for our findings and corresponding recommendations. The follow-up audit’s objective was to determine whether DOE had implemented the prior audit’s recommendations. While determining the implementation status of those recommendations, we found other areas where DOE’s controls over contract actions that involve other than fully competitive solicitations need to be improved, which resulted in additional recommendations. Furthermore, to address the issues that still exist since the prior audit, recommendations from the prior audit were either modified or expanded upon.

The full text of DOE’s response is included as an addendum to this report.

RESULTS OF FOLLOW-UP AUDIT

In this follow-up audit, we assessed the status of the eight recommendations presented in the previous audit report. We determined that three of them had been partially implemented and that five had not been implemented.

In addition, we found other areas where DOE's controls over contract actions other than fully competitive solicitations need to be improved. In particular, this follow-up audit disclosed that: (1) DOE has inadequate controls over its procurement of contracts through the negotiated services method; (2) procurement files of approved contracts did not consistently contain background review reports or show that identified issues had been satisfactorily resolved; (3) contract assignments in our sample were not approved before their starting dates; and (4) procurement files did not consistently contain the documents and approvals needed to support contract awards as specified in the PPP manual and other DCP guidelines.

In Fiscal Year 2016 alone, DOE had more than \$4 billion dollars in contracts registered by the Comptroller for the purchase of goods and services. However, because of DOE's deficient oversight of contract actions that do not involve fully competitive solicitations, there is a risk that the Department is not selecting the best vendors or obtaining the best prices for goods and services.

Previous Finding: "Inadequate Controls Over the Contract Assignment Process"

The previous audit found that DOE lacked specific procedures in the PPP manual or elsewhere to properly guide the evaluation and assessment of proposed assignment of contracts in which some of the services being provided by a contractor are assigned to another vendor at the request of the original awardee. While the manual provided specific procedures for handling all other contract actions, it did not offer guidance for the assignments of contracts.

In addition, the prior audit found limited evidence that DOE assessed vendor performance before approving contract assignments or that the justifications provided by contractors requesting contract assignments to other vendors were sufficiently reviewed.

When considering contract assignments, DOE requires that prior evaluations be reviewed if a potential vendor had a previous contract with DOE and that reference letters be reviewed if a proposed vendor did not have a previous contract with DOE. However, the prior audit found limited evidence in DOE's hard-copy files that the Department consistently evaluated the prior performance of a vendor seeking to assume some of the responsibilities in a contract via an assignment. There was also limited evidence that DOE adequately considered whether assignment requests were justified before granting them. Within the same files, for example, there were inconsistent justifications for the assignments.

Previous Recommendation #1: "DOE should establish standards for evaluating the responsibility and capacity of vendors proposed to take over contracts through assignments that are at least as detailed and comprehensive as those that apply to vendors who seek to be awarded contracts by DOE."

Previous DOE Response: "The DOE can agree with the recommendation inasmuch as it reflects current practice. Although assignments are outside the contract procurement process, the DOE conducts vetting procedures similar to those

performed with respect to competitive procurements. Thus, assignees must pass a thorough background investigation and a review to determine whether they can satisfactorily perform the obligations they will be assigned.”

Current Status: NOT IMPLEMENTED

To date, the PPP manual has not been updated to include any guidance on how assignments of existing contracts should be handled. DOE officials stated that the assignment process is not discussed in the PPP manual because they do not consider assignments to be “procurements,” notwithstanding the fact that they are “contract actions” that must be registered with the Comptroller.

However, even if by DOE’s definition assignments are not procurements, the identified deficiencies in the Department’s assignment processes still need to be addressed. It is incumbent on DOE to provide appropriate guidance and controls over assignments which, if not procurements, are contract actions that accounted for \$21.6 million in contract awards in Fiscal Year 2016 alone. Specific written guidance (in the PPP manual or elsewhere) is needed to ensure that they are appropriately handled.

DOE did provide us with guidelines that outline the assignment process: (1) the *Assignment of Contracts*, which is a guide that summarizes the documents and approvals required to complete an assignment file; and (2) the *Assignment of Contracts Checklist*, which is placed in the hard-copy file of each awarded assignment to be utilized by Vendor Research unit staff to identify and track key documents and approvals.

However, these materials only contain general guidelines for the assignment process; they lack specific instructions to ensure that assignments are evaluated fully and that prospective assignees demonstrate the capacity to meet their assignment responsibilities. For example, we note that the *Assignment of Contracts Checklist* does not identify all documents required in the assignment process. The checklist omits the Letter from Assignee Accepting the Assignment, a satisfactory DOE performance letter, and a related DOE evaluation to support the performance letter for a proposed assignee that had a prior DOE contract. The checklist also fails to specify the need of Vendor Research unit staff to conduct a background review for a proposed assignee, or the type of review that should be conducted based on the dollar value of the assignment (standard or comprehensive)⁵.

Previous Recommendation #2: “DOE should ensure that the supporting documentation, including comprehensive checks, performance evaluations (when applicable), and justification for the assignment requests, is obtained and carefully reviewed before approving assignment requests.”

Previous DOE Response: “The DOE can agree with the recommendation inasmuch as it reflects the current practice of performing thorough background reviews of potential assignees as well as the Department’s plan to roll out an electronic

⁵ Per DOE procedures, Vendor Research unit staff perform comprehensive background reviews on vendors for awards in excess of \$1 million and for certain goods and services (e.g., food, painting, carting, and transportation) irrespective of the contract’s dollar value. In addition, comprehensive background reviews may also be performed on existing vendors when adverse information comes to DOE’s attention. A more limited background review (known as a standard review) can be performed by analysts in one of DCP’s procurement units rather than the Vendor Research unit for contract awards of \$1 million or less.

performance evaluation system in spring 2015 that will assist contract responsibility centers in tracking oversight efforts.

However, we reject the assertion that we do not scrutinize assignments sufficiently. The DOE does not initiate assignments. We consider efficacy of an assignment upon receiving a request from the vendor and existing policies and procedures govern our review. Moreover, it is DOE practice to view an assignment request favorably when the assignee is accepting all terms and conditions of the assignor's contract, including price. As with any procurement, should any cause for concern present itself during our review of an assignment, it would be addressed in accordance with our established and standard practices.

In reporting on the timing of contract assignments the auditors appear to suggest that the DOE consider employing hard time constraints for assignments. It is, therefore, necessary to say that doing so would effectively hamstring operations and potentially create situations wherein necessary services would not be provided. Our current process considers assignments requested by contractors on a case-by-case basis; decisions are made in the best interests of this agency."

Current Status: PARTIALLY IMPLEMENTED

We sampled 12 assignment contracts in our follow-up review, and found that the documents and approvals needed to initiate the process and approve the contracts were generally present in the files. However, we found the following weaknesses in connection with the sampled assignment files:

- One of the files lacked a justification for the assignment from the assignor. Assignment justifications are important to assist DOE in determining the ongoing capacity of the assignor to continue to handle its remaining contract responsibilities and the appropriateness of awarding additional contracts to the assignor;
- The justifications for two of the assignments were either inconsistently stated on various documents within the same file or overly vague. In one file, a document indicated that the reason for the assignment was a "sale," while another document indicated that the reason for the assignment was "to consolidate work." In another file, a document indicated that the reason for the assignment was that the vendor "can no longer execute this contract due to its non-profitability factor;"
- None of the justifications for any of the assignments contained any supporting documents. For example, if the claimed reason for the assignment was a merger, then a copy of the agreement to merge could be useful, both to confirm the reason given and for future reference in connection with the assignor and assignee;
- The file for one of the assignments lacked the required Letter from Assignee Accepting the Assignment;
- One of the files lacked the Broker Certification, which certifies that the Certificate of Liability Insurance from the assignee was accurate; and

- One of the assignment files lacked a Background Review Summary sheet, which details the results of a background check conducted on a proposed vendor and notes any adverse information that could negatively impact its performance.

In addition, similar to the findings of the prior audit, we found weaknesses in performance evaluations. When a potential assignee had a prior DOE contract, DOE requires the contract manager for that contract to evaluate the prior performance of the vendor and submit this evaluation to DCP's Vendor Research unit for review. When a potential assignee did not have a prior DOE contract, DOE requires that the potential assignee provide a minimum of three reference letters, from individuals who have worked with or used the vendor, addressing the vendor's ability to handle the assignment.

We determined that the assignees for 8 of the 12 assignments in our sample had prior DOE contracts. However, none of the files for the eight assignments (with a total value of \$8,343,943), contained evidence of specific DOE performance evaluations. Instead, for six of eight assignments, the files only contained general performance letters from the contract managers that simply stated that the prior performance of the vendors was "satisfactory" with no further detail. For the other two vendors, we only found non-DOE reference letters in the files, notwithstanding the fact that these vendors had had prior DOE contracts. The absence of specific performance evaluations that cover the vendors' quality of work, on-time performance, compliance with contract terms, and billing practices, raises concerns as to whether DOE carefully assessed the ability of the assignees to assume responsibility for certain aspects of the eight contracts. If files contain only general performance letters or non-DOE reference letters, rather than detailed evaluations from DOE contract managers, there is an increased risk that vendors might be awarded assignments that they cannot adequately perform.

In addition, the file for one of the remaining four assignments in our sample contained a performance letter, although there was no evidence that the vendor had a prior contract with DOE in the assignment file, the City's Vendor Information Exchange System (VENDEX),⁶ or the Comptroller's Omnibus Automated Image Storage and Information System (OASIS).⁷ Thus, we question why a performance letter was prepared and three references were not obtained.

Finally, we note that DOE represented in its response to the earlier audit that it planned "to roll out an electronic performance evaluation system in spring 2015 that will assist contract responsibility centers in tracking oversight efforts." In connection with this follow-up audit, DOE officials said that the electronic performance evaluation system had been developed. However, DOE did not provide us with any evidence that a new system has been developed or is being used.

Previous Recommendation #3: "DOE should develop and implement sufficiently detailed written procedures to detect the warning signs of possible collusion. The procedures should include, among other things: the different forms of collusion that could exist; conditions favorable to collusion; and the steps to be taken when the possibility of collusion has been identified (such as winning vendors requesting that their contracts be assigned to other vendors that bid on those contracts)."

Previous DOE Response: DOE disagreed with this recommendation, stating that "DOE procurement managers are fully aware of the warning signs of collusion and take seriously their responsibility to report concerns about possible collusion in the bidding process to appropriate law enforcement agencies. The managers' performance in that regard would

⁶ VENDEX is a database containing information on vendors that do business with the City.

⁷ OASIS is an imaging system containing registered contracts and related documents.

not be enhanced by written guidelines that are already published and readily available on the Justice Department's website."

Current Status: NOT IMPLEMENTED

DOE has not developed written procedures or guidelines to help staff detect the warning signs of possible collusion when awarding contracts via actions other than fully competitive solicitations. While DOE officials stated that the training they provide to their contract managers covers this area, we found no evidence that it does. According to Department officials, this training includes a presentation by the Office of the Special Commissioner of Investigation for the New York City School District (SCI) that covers corruption and other criminal activity, as well as misconduct by anyone doing business with DOE.⁸ DOE officials stated that the SCI topics discussed at the training sessions are included in its 2012 contract management training packet, *Strategies for Effective Contract Management*. However, the packet does not contain any procedures regarding how to detect the warning signs of possible collusion or any reference to collusion at all. DOE officials also stated that staff can use the website of the Antitrust Division of the United States Department of Justice, if they so choose, to research and identify the warning signs of possible collusion.

While conducting training is useful, it is no substitute for providing a written reference for staff either about the warning signs of possible collusion or, at the very least, about where staff can go to obtain information on the issue. DOE's failure to develop written guidance in this area increases the risk that collusion could occur and go undetected. Proper guidelines could help staff identify the different forms of collusion that exist, the conditions favorable to collusion, and the steps to be taken when the possibility of collusion has been identified. With specific regard to assignments, for example, DOE procedures could instruct staff to identify situations in which a proposed assignee had bid unsuccessfully on a contract and was then selected by the winning bidder to handle certain aspects of the contract soon after it had been awarded.

Recommendations

To address the issues that still exist, we recommend the following:

1. DOE should prepare more specific written procedures concerning assignments, including standards for evaluating the responsibility and capacity of vendors to handle contracts through the assignment process.

DOE Response: "The DOE agrees with this recommendation inasmuch as it reflects current practice. As stated in the DOE's response to this recommendation in the original audit, DOE's procedures for assignments require that assignees be subject to a background check and a review to determine whether they can satisfactorily perform the obligations they will be assigned. The Comptroller adds the phrase 'more specific' as an expansion of the original recommendation without offering evidence of any test conducted or problem identified that needs to be addressed.

We additionally note that the DOE never indicated it would revise the Procurement Policy and Procedures ('PPP') manual to include reference to assignments. However, the guidelines established for conducting assignments, reflected in the

⁸ The Office of the Special Commissioner of Investigation for the New York City School District is a unit of the City Department of Investigation that operates independently of DOE. The office investigates alleged acts of corruption and other criminal activity, conflicts of interest, unethical conduct, and misconduct by anyone within the City School District or doing business with DOE.

Assignment of Contracts and related *Checklist*, are precise and followed by the Division of Contracts and Purchasing (DCP) staff. Also, it should be noted that assignments are governed by specific terms and conditions contained within each contract.”

Auditor Comment: As detailed in this report, the audit found deficiencies in DOE’s existing written procedures governing assignments. In particular, the *Assignment of Contracts* and the *Assignment of Contracts Checklist* cited by DOE in its audit response contain only general guidelines for the assignment process. In particular, they lack specific instructions to ensure that assignments are fully evaluated and that prospective assignees are responsible vendors that demonstrate the capacity to meet their assignment responsibilities. For example, neither of the two documents even mentions the need for background reviews of the proposed assignees. Furthermore, DOE’s refusal to establish procedures for assessing proposed assignments is in contrast to its implementation of such procedures for the other six contract actions in our audit scope. Considering that assignments accounted for \$21.6 million in contract awards in Fiscal Year 2016 alone, we continue to urge DOE to implement this recommendation and thereby address the specific gaps that this follow-up audit identified.

2. DOE should ensure that the supporting documentation for assignments, including adequate justifications for assignment requests and Background Review Summary sheets, is consistently obtained, carefully reviewed, and properly maintained in the assignment files.

DOE Response: “The DOE can agree with the recommendation inasmuch as it reflects the current practice for performing thorough background checks of potential assignees. Further, we note that the electronic performance evaluation system was implemented in late 2015. The DOE advised the Comptroller about its implementation in response to a question presented during the audit and is not aware of any attempt to schedule a demonstration. Moreover, prior to the audit, the DOE already had provided a demonstration to the Comptroller, albeit, a different office.”

Auditor Comment: While DOE broadly states that an “electronic performance evaluation system was implemented in late 2015,” during the audit, we found no evidence in DOE’s procurement or contract management files that an electronic performance evaluation system was actually being used in connection with DOE’s approval of contracts. The five contract managers we interviewed told us that they have not used an electronic evaluation system or even a standard performance evaluation format. None of the contract management files we reviewed contained any specific performance evaluations.

DOE Response: “The above notwithstanding, we note that the Report references 12 assignments that were reviewed and acknowledges that the documents and approvals necessary to process and approve them were present. However, the statement that none of the justifications for any of the assignments contained any supporting documents is misleading. While DCP approves assignments, such requests are received from and signed by a Program Division Head, and also signed by the DCP Chief Administrator responsible for the procurement which led to the contract being assigned. Accordingly, the program office that is responsible for managing the contract being assigned and the services performed thereunder would know and have deemed appropriate the justification for the assignment.

Further, any supporting documentation would be maintained by that program office. DCP will assure that the responsibility regarding document retention continues to be part of the contract management training.”

Auditor Comment: DOE’s response merely confirms exactly what the audit found and reports—that DCP approved assignments without reviewing supporting material for the written justifications. DOE seeks to justify its existing procedures by adding that the program office requesting DCP’s approval for the assignment “*would know*” the justification and “[*would*] *have deemed* [it] appropriate,” and that “any supporting justification *would be maintained* by that program office.” [Emphasis added.] However, DOE neither states that such documents exist nor takes a position on whether they should have been obtained and reviewed by DCP when making decisions on proposed assignments. Had such documents been in DOE’s possession, as noted above, it had ample opportunity during the audit to provide them. Without a well-supported justification for an assignment in the file, there is no evidence that DOE is thoroughly considering the reason for an assignment. To ensure that assignments are requested for appropriate reasons, adequate justifications for assignment requests should be maintained in the files. The justifications are important, not just for the assignments themselves, but also for DOE to determine whether assignors are capable of handling any other contracts they might still have with DOE or any future contracts for which they might submit bids or proposals.

DOE Response: “While we acknowledge that a letter from the assignee accepting the assignment was missing from the file, the assignee executed an Assignment of Contract, which is a binding document, thereby making the need for the letter from assignee moot.”

Auditor Comment: The presence of such a letter is needed to show that all required steps were taken leading up to the point of assignment, as required by DOE’s own guidelines. Moreover, to facilitate effective management review of assignments prior to their approval by the Vendor Research unit, DOE must ensure that its assignment files are complete.

DOE Response: “We also note that DCP maintains hard copy and electronic files, so while the auditors found that a Broker’s certification and the Background Review Summary were missing from the hard copy files, each was available in its respective electronic file. If requested, they would have been provided.”

Auditor Comment: Again, as noted, DOE had ample opportunity to respond to our findings and, specifically, to make available any evidence that it had that it believed to be relevant and not considered by us. In fact, on May 4, 2017 (prior to the issuance of the preliminary draft report and the exit conference), we sent DOE a list of the specific documents that were not available in the contract assignment files. Thus, DOE had the opportunity, prior to its receipt of our preliminary draft findings and the exit conference, as well as after, to provide additional documentation. However, it did not do so. Accordingly, we do not find any basis for altering our findings and continue to urge DOE to implement this recommendation.

3. DOE should require the assignors to submit documentation that supports their written justifications for assignment requests.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. Here we note that contract managers, on behalf of the office procuring the service, submit the request for an assignment and document it accordingly. Further, the DCP Chief Administrator who is responsible for the original procurement that led to the contract being assigned also must sign the request for an assignment, adding an extra layer of review.”

Auditor Comment: DOE’s response does not address the key purpose of the recommendation; namely, that DOE ensure that reasons for assignment requests are properly supported (e.g., a merger should be supported by a copy of the agreement to merge). None of the assignment files reviewed contained support for the justifications provided by the assignors.

Therefore, we continue to urge DOE to implement this recommendation to ensure that the justifications that assignors offer for the requested assignments are legitimate.

4. DOE should ensure that contract managers prepare performance evaluations and submit them to DCP’s Vendor Research unit for review when potential assignees had prior DOE contracts.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. The Report’s discussion regarding performance evaluations of assignees appears to reflect a misunderstanding of DOE’s procedures. Except for one, all assignment actions sampled had the performance evaluation required by the DOE, which is either three letters of reference or a satisfactory evaluation by a DOE staff, if applicable. Further, we again note that the DOE implemented an electronic evaluation system in late 2015.”

Auditor Comment: DOE’s response indicates that it did not understand the intent of this recommendation. Letters of reference or general performance letters alone are insufficient for vendors with prior DOE contracts. The PPP manual and DOE’s *Strategies for Effective Contract Management* training manual both state that performance evaluations should cover such areas as a vendor’s quality of work, on-time performance, compliance with contract terms, and billing practices. Such evaluations are needed in order to establish that past vendor performance justifies awarding the assignment. A mere one-sentence statement in a performance letter that the performance of a vendor with past DOE contracts was generally satisfactory, or three reference letters from entities that did business with a vendor, cannot establish that past performance *with DOE* was satisfactory in the specific areas that might be key to the successful handling of a newly-assigned contract. Moreover, as previously discussed, a performance letter was provided in one instance in which there was no evidence that the vendor even had a prior DOE contract. We, therefore, continue to urge DOE to implement this recommendation.

5. DOE should develop and implement written procedures that are sufficient to assist staff in identifying the warning signs of possible collusion in the assignment process.

DOE Response: “As stated in the response to this recommendation from the original audit, DOE procurement managers are fully aware of the warning signs of collusion. The written guidelines that are already available on the United States Justice Department website and information covered in the Department’s Contracts Management Training provide the necessary guidance in this subject.”

Auditor Comment: Without written procedures in place, DOE has no assurance that its staff are aware of, or consistently check for, the warning signs of collusion prior to approving assignments. We note that, notwithstanding DOE's representation, the *Strategies for Effective Contract Management* training manual does not contain any discussion or reference regarding collusion. As we state in the report, DOE officials state that staff can research the U.S. Department of Justice website for information on the matter. However, DOE provided no evidence that staff are even aware of that resource. DOE's failure to develop written guidance in this area increases the risk that collusion could occur and go undetected. Therefore, we continue to urge DOE to implement this recommendation.

Previous Finding: "Inadequate Evidence of Contract Monitoring and Performance Evaluations"

The previous audit found that DOE had not established minimum guidelines for monitoring contracts. Instead, DOE allowed contract managers to devise their own processes to ensure that vendors met their contractual obligations. As a result, DOE managers' monitoring of contracts was inconsistent.

In addition, the prior audit found that contract managers generally did not prepare performance evaluations of vendors as required by the PPP manual. DOE officials admitted that they had not enforced the requirement for managers to formally evaluate vendor performance and had not developed a standard evaluation criteria for them to do so. Managers were given wide latitude in assessing performance, and allowed to rely on their judgment and experience to determine whether vendors were performing at a level they considered satisfactory. DOE's failure to ensure that contract managers conducted performance evaluations based on consistent standards increased the risk that poorly performing vendors would receive new contracts, or have existing contracts extended or renewed.

Previous Recommendation #4: "DOE should establish minimum guidelines for contract monitoring. Such guidelines should include, but not be limited to, a detailed description of the monitoring process, including frequency of contact with a vendor, documentation of monitoring efforts made, and the recommended actions where instances of vendor non-compliance are identified."

Previous DOE Response: "DOE's procurement policies and procedures do not prescribe a specifically defined process for conducting monitoring and evaluation largely because the DOE's contracts cover a significant range of business, technical and service activity and contract ownership, a one size fits all approach would not serve the needs of this agency. Clearly, a contract for delivery of Central office supplies cannot, and should not, be managed and monitored in the same way as one for delivery of school-based special education support services. What is important is that the managers responsible for contract implementation engage in necessary oversight and maintain documentation consistent with the Department's Procurement Policy and Procedures so that contractor performance can be evaluated. To facilitate compliance with that standard, the Department has designed, and will soon roll out, an electronic system."

Current Status: PARTIALLY IMPLEMENTED

In response to our request that DOE provide us with all written procedures or guidelines for its contract managers to follow when monitoring contracts, DOE provided us with the PPP manual, updated through February 2016, and the contract management training manual, *Strategies for Effective Contract Management*, updated through May 2012. Based on our review of the PPP manual that was in effect during the previous audit and the one in effect during this audit, no revisions have been made to the PPP manual relative to contract management to enhance its limited discussion of this topic.

We also reviewed the contract management training manual, which had not been provided to this office during the previous audit, to determine whether it adequately describes the contract monitoring process. While we believe that the training manual can help provide a good foundation and general guidelines for contract managers, it does not offer them specific instruction about handling their responsibilities. For example, the training manual is silent on the performance evaluations that must be conducted throughout the contract period, and the frequency of such evaluations. This is an important part of the contract monitoring process for which the PPP or training manual should provide guidance. Conducting on-going evaluations allows DOE to improve program performance through the early identification and resolution of issues.

In addition, the training manual mentions that DOE has the right to set the conditions for inspecting and observing program activities to ensure that materials or services are being delivered in accordance with contract requirements. But neither the PPP nor the training manual offer guidance on how often these inspections and observations should take place, and how the results and any assistance provided to the vendors for improvement of their performance should be documented (e.g., with memoranda, reports, inspection checklists, or email correspondence). Finally, while the training manual mentions that contract managers should meet with vendors to ensure they understand their responsibilities under a contract, it does not offer guidance as to the frequency of these meetings.

During our interviews with five DOE contract managers, they seemed to recall receiving the training manual during contract management training sessions, but none indicated that they actually use or refer to the manual when monitoring contracts.

Previous Recommendation #5: “DOE should develop a standard format with standard criteria and ratings for evaluating vendor performance and establish a schedule indicating when such evaluations should be performed.”

Previous DOE Response: “The Department will be implementing Recommendation 5 of its own accord as early as this spring.”

Current Status: NOT IMPLEMENTED

Despite DOE’s representation in response to the previous audit that it would implement a standard format with standard criteria and ratings for evaluating vendor performance and a schedule for conducting such evaluations, we found that no such implementation has taken place. Neither the PPP manual nor the contract management training manual provides standard criteria and ratings for contract managers to use when evaluating a vendor’s performance. In addition, as noted above, DOE has provided no evidence that it has developed and used an electronic vendor performance tracking and evaluation system that it said would be implemented in its response to the previous audit report.

We note that, although the training manual states that not all contracts can be managed using the same criteria, there are a number of elements of contract management that apply to all contracts. These include assessment of a vendor's overall quality of work, on-time performance, compliance with all contract terms, results of on-site visits, billing practices, and prompt correction of any issues brought to a vendor's attention.

The five contract managers we interviewed stated that they had not used a standard performance evaluation format. Four of the five managers stated that their evaluations primarily consist of either a performance letter or an Abbreviated Recommendation document, both of which simply indicate whether a particular vendor's performance was satisfactory. The fifth contract manager stated that preparation of performance evaluations or letters is not "normally within our scope of work or responsibilities."

Without a standard evaluation format, DOE cannot consistently gauge vendor performance. Furthermore, the absence of a sound evaluation system decreases transparency and hinders the ability of DOE management to ensure that its vendors are meeting expectations.

Previous Recommendation #6: "DOE should ensure that performance evaluations are conducted, especially for those contracts seeking renewals or extensions, and that it maintains the results of such evaluations for future reference."

Previous DOE Response: "The DOE can agree with the recommendation inasmuch as it reflects the current practice of considering a vendor's performance when renewing or extending a contract."

Current Status: NOT IMPLEMENTED

As we found in our prior audit, DOE still does not conduct required evaluations of contractors seeking renewals or extensions. There was no evidence in the procurement files that performance evaluations had been prepared for any of the 18 renewals and extensions in our sample. The files only contained either a performance letter or an Abbreviated Recommendation document from the contract managers, which simply indicate whether the performance of the vendors had been satisfactory. None of the letters or Abbreviated Recommendations were supported by specific performance evaluations.

The absence of specific performance evaluations raises concerns as to whether DOE has carefully assessed the ability of its vendors, especially those seeking renewals or extensions. For example, DOE renewed a five-year contract (effective June 1, 2016) at an additional cost of \$2.3 million to provide elevator and escalator maintenance and repair services for an additional nine months based on an Abbreviated Recommendation on the vendor from the contract manager dated January 15, 2016. This renewal occurred despite the fact that there was no evidence in the contract management file that the vendor had addressed serious Division of School Facilities concerns expressed in a September 22, 2015 email that the vendor had "failed to provide service as required under [the] contract."

In addition, DOE does not require that background reviews be conducted for vendors seeking renewals or extensions. We believe that DOE should at least conduct limited background reviews (standard checks) on vendors seeking to renew or extend contracts, especially for contracts that have been renewed and extended many times. Some of the extensions registered in Fiscal Year 2016 relate to contracts that were originally awarded as far back as 1982.

Previous Recommendation #7: “DOE should monitor the compliance of its contract managers in ensuring that contract monitoring and performance evaluations are conducted in accordance with its PPP Guidelines.”

Previous DOE Response: “DOE intends to implement an electronic evaluation system. Among the benefits provided, that system will aid in the oversight of contract management.”

Current Status: PARTIALLY IMPLEMENTED

As noted above, in connection with this follow-up audit, DOE officials said that the electronic performance evaluation system had been developed. However, DOE failed to provide any evidence that a new system has been developed or is being used.

Moreover, we found that some contract managers did not maintain the well-organized contract management files called for in the *Strategies for Effective Contract Management* training manual. In fact, only three of the five managers we interviewed provided us with readily available files for the contracts in our sample under their supervision. Thus, DOE does not ensure that its contract managers consistently maintain such required files. Furthermore, specific performance evaluations were not prepared for any of the 26 contracts in our sample that were monitored by these managers.

Two of the contract managers we interviewed were unable to readily provide us with any type of files containing sufficient evidence of contract monitoring. Both contract managers took several weeks to provide the requested records, indicating that the contract monitoring documentation was not readily available.

We believe that one reason for this failure to maintain proper files is a lack of adequate training. Based on our interviews with the managers, it appears that contract management training is optional rather than mandatory, and is only offered every few years instead of annually. Some of the managers we interviewed could not even recall the last time that they went to contract management training.

Finally, while according to the PPP manual all contracts must have a contract manager, we found that this requirement is not consistently adhered to. For example, contract managers are assigned to contracts awarded in connection with DOE core-curriculum “listing applications.”⁹ However, there are no contract managers assigned to contracts awarded in connection with non-core-curriculum listing applications.

Failure to adequately monitor contracts hinders DOE’s ability to ensure that vendors are providing goods and services in accordance with contract terms.

Previous Finding: “Contracts Not Submitted for Registration in a Timely Manner”

The prior audit also found that DOE did not submit contracts to the Comptroller on a timely basis, to ensure that they were registered prior to the start dates of the contracts. Of the 32 contracts in our sample, 23 (72 percent) started before DOE submitted the contracts to the Comptroller for registration. Late submission of contracts for registration leads to vendors providing goods and services without being able to be paid because they do not have finalized contracts. This could

⁹ Listing applications are purchases of content provided directly to students, such as materials available from a particular publisher, artistic performances, and programs offered by cultural institutions.

result in cash-flow problems for the vendors, which could limit the number of vendors willing to bid on these contracts. Further, vendors might increase the cost of the goods and services they offer to cover an anticipated delay in payment.

Previous Recommendation #8: “DOE should ensure that it submits contracts for registration to the Comptroller’s Office in accordance with applicable time frames.”

Previous DOE Response: “The DOE will continue its efforts to register contracts timely.”

Current Status: NOT IMPLEMENTED

According to the City Charter, no contract can take effect until it is registered with the Comptroller. Registration is key to enabling the vendor to be paid and to ensuring that contract terms can be enforced.

To review the timeliness of contract submissions, we examined two datasets provided by DOE for all contracts registered during Fiscal Year 2016. One dataset included 358 contracts associated with five of the contract actions in our sample (listing applications, contract renewals, sole-source contracts, contract assignments, and negotiated services).¹⁰ The second dataset contained 163 contract extensions.

Of the 358 contracts identified in the first dataset, vendors for 302 (84 percent) of the contracts commenced performance (i.e., goods were provided or services were rendered) before DOE even submitted the contracts to the Comptroller for registration. Performance under these contracts started, on average, about 258 days (or over eight months) prior to submission, ranging from 2 to 910 days (or almost two and a half years) before submission. Of even greater concern is the fact that 33 of the 302 contracts were submitted to the Comptroller *after* the contract-end dates.

Of the 163 contracts identified in the second dataset, vendors for 140 (86 percent) of the contracts commenced performance before DOE submitted the contracts to the Comptroller for registration. Performance under these contracts started, on average, about 137 days (or over four months) prior to submission, ranging from 3 to 865 days (or almost two and a half years) before submission. Four of these contracts were submitted to the Comptroller *after* the contract-end dates.

Late submission of contracts for registration leads to vendors providing goods and services without finalized contracts.¹¹ This can cause cash-flow problems for the vendors and service disruptions for the City, because vendors cannot be paid prior to contract registration. Moreover, since vendors cannot be paid until their contracts have been registered, those that provide goods or services prior to contract registration risk receiving no payment because there is a chance that the contracts might never be registered. That risk could limit the pool of potential vendors willing to bid on DOE contracts. Further, costs could increase because bid prices would potentially include a factor covering the risk to the vendor of not being paid timely or at all. Finally, late registration contributes to a lack of transparency concerning how DOE is obligating City funds.

¹⁰ This dataset also included three emergency purchases, which were excluded from our analysis here because such purchases are not required to be submitted to the Comptroller prior to their start dates.

¹¹ Before registering a contract, the Comptroller ensures that sufficient funds exist to make payments for that contract, that all appropriate documentation and certifications have been submitted, that the contractor is not debarred or involved in corrupt activity, and that there were no instances of corruption in the letting of the contract.

Recommendations

To address the issues that still exist, we recommend the following:

6. DOE should update the *Strategies for Effective Contract Management* training manual to include specific procedures for contract monitoring. The manual should include details regarding the performance evaluations to be conducted on an ongoing basis throughout the contract period. It should also specify the frequency of conducting these performance evaluations; how often inspections and observations should take place at a vendor's facility; and how the results of these inspections and observations, including corrective action plans to improve performance, should be documented.

DOE Response: "The DOE agrees with this recommendation inasmuch as it reflects current practice. The training manual is subject to revision and the DOE will consider the recommendation in enhancing how contracts are monitored. It is important to highlight that the electronic evaluation system provides a standardized format for evaluating vendor performance.

The DOE rejects the assertion that it does not carefully assess vendors' ability to perform. For any award of a new contract, the DOE assesses vendors' performance as dictated by the specific facts and circumstances.

As for renewals and extensions, the Report makes it appear that these contract actions are just routine and automatic, when in fact each action goes through a distinctive and deliberative process. Whenever a renewal or extension occurs, the contract manager/program office is actively involved in the action. Renewals and extensions only occur when DOE staff responsible for managing the services support such action and believe the vendor's performance warrants continuation of the contract."

Auditor Comment: DOE's willingness to consider updating the manual in response to our recommendation will hopefully result in improved guidance for staff. Although DOE contends that it carefully assesses vendors' ability to perform, the evidence found in its records did not support that claim. Further, the report does not state or imply that renewals and extensions are routine and automatic. Rather, we found no evidence that specific performance evaluations were considered by DOE in connection with renewals and extensions. The only documentation in the files were general performance letters or Abbreviated Recommendations.

7. DOE should develop a standard evaluation format with criteria and ratings for assessing vendor performance. To achieve this, it should use the key universal components that DOE has already identified in the contract management training manual. Contract managers can supplement these components with criteria specific to the types of contracts they manage.

DOE Response: "The DOE agrees with this recommendation inasmuch as it reflects current practice. The DOE has implemented an electronic evaluation system that incorporates a standardized format. However, the DOE rejects the Report's assertion that without a standard format, transparency is impaired and vendor performance cannot be effectively assessed."

Auditor Comment: DOE reiterates that it has implemented an electronic performance evaluation system that incorporates a standardized format. However, as noted, DOE has not provided (nor has our audit found) evidence that DOE has implemented such a system or used one as a resource in connection with its reviews of the seven types of contract actions covered by the audit. Without a standard performance evaluation format, electronic or otherwise, DOE cannot gauge vendor performance in a uniform and consistent manner.

8. DOE should ensure that performance evaluations are conducted, especially of those contractors seeking renewals or extensions, and should maintain the results of these evaluations for future reference.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. An assessment of performance is a prerequisite to a new contract award, as well as to a renewal or extension.”

Auditor Comment: As previously explained, the files for the renewals and extensions in our sample only contained general performance letters or Abbreviated Recommendations, both of which simply indicated, in a single sentence, whether a particular vendor’s performance was satisfactory and/or generally met contract requirements. None of the files contained specific performance evaluations to support those general assessments. Furthermore, DOE’s response does not address the need to maintain the results of the evaluations for future reference.

9. DOE should conduct at least limited background reviews (standard checks) of vendors seeking to renew or extend their contracts—especially of those vendors whose contracts have been renewed and/or extended many times.

DOE Response: “The DOE agrees, in part, with this recommendation. Extensions are subject to a standard background check (or comprehensive if warranted based on the dollar value). As to renewals, performance is assessed (as indicated above in the response to Recommendation 8) and vendor’s VENDEX is reviewed, which provide a reasonable basis for the action taken.”

Auditor Comment: DOE’s response implies that it is already in compliance with the recommendation regarding extensions. DOE states that extensions are subject to either a standard or comprehensive background check, depending on the dollar value. However, during the audit, we were told otherwise. A senior official in DOE’s Vendor Research unit stated that background reviews are not conducted for extensions and renewals because the background reviews of the vendors were conducted at the time of the original procurements. Furthermore, DOE’s Process Summary spreadsheet dated December 4, 2015, which summarizes the award process for each contract action and includes references to the applicable sections of the PPP manual, states that a responsibility determination is *not* required for extensions. Finally, the files for the extensions in our sample lacked Background Review Summary sheets that would have presented the results of any background reviews that had been conducted by DOE.

Regarding renewals, DOE argues that an assessment of vendor performance and a review of VENDEX is enough to justify the renewal of a contract. We believe that DOE should conduct at least limited background reviews (standard checks) on vendors seeking to renew their contracts. According to DOE’s Background Review

Log for contracts valued at under \$1 million, limited background checks should include reviews of various sources (in addition to VENDEX), such as the Federal Debarment List and New York State tax databases. DOE has not articulated a reason for rejecting the part of the recommendation that it perform an equivalent limited background check for contract renewals, of which in Fiscal Year 2016 there were 155 with a combined total value exceeding \$183 million.

10. DOE should monitor its contract managers to ensure that their activities are documented in well-organized files and are readily available.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. The DOE uses a variety of media to maintain its files and the Comptroller was so advised both during the original audit and follow up. Due to the nature and volume of the contracted services, some records are stored electronically in the Contract Tracking System (‘CTS’); other electronic records, such as Word and PDF documents, are stored as files in staff’s computers; and physical records are filed and maintained by contract managers and DCP. Further, records are archived as necessary.”

Auditor Comment: DOE’s response indicates that it misunderstood the intent of the recommendation, which is that DOE ensure that contract manager files are well-organized and readily-available. As explained in the report, two of the contract managers we interviewed did not have well-organized files as called for in the *Strategies for Effective Contract Management* training manual. As a result, neither manager was able to readily provide us with files containing sufficient evidence of contract monitoring.

The training manual specifically states that contract manager files should be maintained in such a manner that management or newly-assigned employees would be able to read the documents in the file and determine its current status. Well-organized files are crucial to ensure that documentation is available to form the basis of an evaluation of a vendor and to make decisions about the vendor’s suitability for future contracts. Therefore, we continue to urge DOE to consider implementing this recommendation.

11. DOE should expand training programs to ensure that contract managers are aware of their responsibilities and the documentation they are required to maintain.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. Our training already addresses the need to create and maintain documentation supporting the actions and decisions taken as contract managers. Notwithstanding, the DOE will consider the suggestion to expand such training programs.”

12. DOE should ensure that every contract is assigned to a contract manager, as required by the PPP manual, including those contracts awarded by means of non-core-curriculum listing applications.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. We note that every contract is assigned a contract manager.”

Auditor Comment: DOE’s claim in its response to the audit directly contradicts information we were provided during the audit. Specifically, a senior DOE official responsible for listing applications informed us that contract managers are not

assigned to non-core-curriculum listing applications, one of the seven types of contract actions that are the subject of this audit. In fact, documentation provided to us by DOE regarding a non-core-curriculum listing application in our sample showed that no contract manager had been assigned.

13. DOE should ensure that it submits contracts for registration to the Comptroller prior to their start dates.

DOE Response: “The DOE, like all City agencies, will continue in efforts to register contracts in a timely manner.”

Auditor Comment: DOE should strengthen its efforts in this area. The Comptroller’s Bureau of Contract Administration reports in its Fiscal Year 2016 *Annual Summary Contracts Report for the City of New York* that DOE had the second highest number of “retroactive registered procurement contract actions” (i.e., contracts that started prior to the registration date) of any City agency during that year.

14. DOE should ensure that vendors do not commence performance under non-emergency contracts until they are registered with the Comptroller.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. The DOE does not pay vendors until their contracts are registered with the Comptroller. While there are cases where vendors deliver goods or services in advance of registration, the DOE does not commit to making payments until after registration by the Comptroller.”

Auditor Comment: DOE’s response indicates that it misunderstood the intent of the recommendation. To ensure that DOE awards contracts at reasonable prices, it must consistently ensure that work does not start prior to registration, except in true emergency situations. Allowing the delivery of goods and services prior to registration leads to delays in vendors’ receiving payment and creates a risk that the vendors will receive reduced or no payment at all if the contracts are not ultimately registered. As stated in the report, there is also a risk to DOE that these factors could increase bid prices on future contracts because bidders would likely factor into their bids the costs associated with delays in payment and the risk of not being paid at all. We continue to urge DOE to implement this recommendation.

New Issues

While examining the implementation status of the previous recommendations, we found other areas where DOE’s controls over contract actions other than fully competitive solicitations need to be strengthened.

Inadequate Controls over Contracts Awarded by Means of Negotiated Services

DOE needs to improve its monitoring of contracts awarded by means of negotiated services to ensure that goods and services are procured in accordance with its rules. According to Section 1-04 of the PPP manual, when seeking to procure goods or services that cost more than \$25,000, DOE schools and offices must first look to procure these items through contracts that have already been entered into by DCP. If the goods or services required by a school or office are not available through an existing contract, then they are to be procured in accordance with one of the methods

described in Chapter 3 (Methods of Source Selection) of the PPP manual. In such a case, the school or office is required to submit a request to DCP to procure the goods or services on its behalf through a new contract. For anticipated expenditures of \$25,000 or less, the school or office is authorized to directly procure the goods or services without a DCP-approved contract.

However, DOE does not have adequate controls to ensure that DOE schools and offices submit requests to DCP to procure goods or services on their behalf that cost more than \$25,000 through a DCP-approved contract. As part of this audit, we reviewed a sample of nine negotiated services contracts registered in Fiscal Year 2016. We found that in two negotiated services contracts that involved purchases over the \$25,000 limit (one for \$44,500 and the other for \$55,100), school officials purchased literacy services from Teachers College without an approved contract. In both cases, DOE retroactively entered into negotiated services contracts in order to authorize payments to the vendor.

We subsequently determined that, during Fiscal Year 2016, DOE retroactively awarded a total of 55 negotiated services contracts with Teachers College (each of which were valued at more than \$25,000, with the total value of the 55 contracts being \$2,061,450), to pay for goods or services that had already been purchased by school officials. Thus, DOE had to award the contracts (ranging in dollar value from \$29,500 to \$65,350) retroactively in order to authorize payments to the vendors. Had the procurement of these services been handled in accordance with DOE's rules, DOE could have used a more competitive solicitation process and, as a result, might have obtained better prices.

Because DOE awarded negotiated services contracts retroactively in order to authorize payments to vendors for services that had already been inappropriately purchased by school officials, the normal procurement process was circumvented and, as a result, many required procurement documents were missing for the two Teacher College contracts in our sample. These included the Certificate of Liability Insurance, applicable VENDEX documentation and the Background Review Summary sheet, which details the results of background checks and notes any adverse information. In addition, even though the procurement files for the two contracts in our sample contained Requests for Authorization, there was no evidence in the files of the required approvals.

Weaknesses in the Background Review Process

We found that DOE did not have evidence that background reviews were consistently conducted for proposed vendors. In addition, in some cases, we found no evidence that noteworthy adverse issues identified on the Background Review Summary sheets had been resolved before the contracts were awarded. Thus, in violation of its procurement rules, DOE awarded contracts to vendors who have not been determined to be “responsible” vendors and so may have significant integrity issues. Under the PPP manual, a vendor is considered to be responsible if DOE determines that it has the capability to fully perform the contract requirements and the business integrity to justify the award of a DOE contract.

According to DOE procedures, a proposed vendor cannot be awarded a contract unless DCP has conducted a background review and the vendor is determined to be responsible. A typical background review leads to one of three possible results: (1) no adverse information found; (2) no significant adverse information found, only minor issues identified; and (3) “noteworthy” information found, such as “governmental investigations, VENDEX [c]autions, large tax matters (e.g., over 100k for company, over 50k for principal), [and] significant news (e.g., corruption, adverse matters involving DOE, audits, [and] significant matters involving company or principals, . . .).”

If any “noteworthy” information is found, DCP must identify specifically what those issues are in the Background Review Summary sheet. It must also determine the current status of the issues. If DCP determines that a vendor is responsible, it must provide a written justification explaining the basis for that determination.

Of the 34 contract actions in our sample of registered Fiscal Year 2016 contract actions for which a background review was required, we found that a review had been conducted for only 19 of them.¹² Based on our analysis of these 19 background reviews, we determined that 14 contained “noteworthy” information about a potential vendor as defined by DOE. DOE awarded contracts to four of these vendors despite there being no evidence in the files that the issues identified on the Background Review Summary sheets had been resolved.

In one of these cases, a contract assignment, the Background Review Summary sheet indicated that the proposed vendor owed New York State tax dating back to February 2007 and that the “contract should not be sent for registration until the matter is addressed.” The summary further stated that an email had been sent to the Department of Finance (DOF) to inquire about this issue, and that DOE was waiting for DOF’s response. Another note indicated that the assignment should be placed on “hold” until feedback from DOF has been obtained and reviewed. Despite these notes, there was no evidence in the file that DOF had ever responded or that the issue was resolved. DOE approved the contract and sent it to the Comptroller for registration on February 23, 2016.

In another contract assignment file, the Background Review Summary sheet indicated that a performance letter was pending for the proposed vendor. The summary sheet noted that the “contract should not be sent for registration” until the Vendor Research unit received the performance letter. However, there was no evidence in the file that a performance letter was ever obtained, even though the proposed vendor had a prior DOE contract. That contract was also approved and sent to the Comptroller for registration.

In a third case, the Background Review Summary sheet for a listing application indicated that the vendor had been “debarred by Workers Comp through December 22, 2014.” The Vendor Research unit required confirmation that the vendor had Workers’ Compensation insurance and indicated that it would “track” this issue. However, the contract was approved and sent to the Comptroller for registration, even though there was no evidence in the file that this confirmation was ever received.

An additional concern is that 15 (44 percent) of the 34 contract actions in our sample for which background reviews were required lacked evidence that any background reviews had been conducted at all. To ensure that its vendors are responsible, DOE should ensure that all required background reviews are conducted.

DOE Response: “The DOE rejects as erroneous the Report’s assertions that the DOE lacked evidence that background reviews were consistently conducted for proposed vendors and that, in some instances, adverse noteworthy information were not resolved [*sic*]. Further, we reject the Report’s claim that we violated our own rules by awarding contracts to vendors that had not been determined to be “responsible” and said vendors may have ‘significant’ integrity issues (pg. 19). A review of the basis for the Report’s

¹² Of the 52 contract actions in our sample, 18 were renewals and extensions for which DOE does not require background reviews.

conclusions shows that these findings are based on a misunderstanding of the documents examined and required practices and procedures.

The Report states that it reviewed a sample of 34 contract actions from Fiscal Year 2016, for which background checks were required and that evidence of background checks were only found for 19 actions, of which 14 had noteworthy information. The Report erroneously concludes that for three of the 14, contracts were awarded even though there was no evidence that noteworthy adverse information was resolved. We found that:

- For one of the contracts, the resolution of the adverse information was available in the primary background check file maintained by Vendor Research unit.
- For another, while the Report said ‘performance letter’ had not been received (pg. 20), three such letters from DOE schools were included in the file.
- As to the third instance, the Report erroneously points to the prior background check in which it cites a Worker’s Compensation Board’s (‘WCB’) debarment. However, that background check, which appeared in the background file, was clearly identified as a *prior* background check. The file also included a clearly labelled *current* background check which included documentation from the WCB showing that there was no active debarment. Moreover, it should be noted that WCB debarments have a limited statutory application and only bar vendors from receiving public works contracts, of which DOE contracts are not. At a minimum, prior to a contract award, the DOE verifies with the WCB that the vendor has current insurance and also has paid any outstanding monies owed to the WCB (or is in a payment plan and current with its payments).

As for the remaining 15, which the Report asserts that background reviews had not been conducted, DOE records demonstrate otherwise. In all cases, either background checks were available in electronic and or hard copy format (9 of the 15), or the description of what was done appears within the Recommendation for Award. In all instances, background checks were conducted in accordance with DOE policy.”

Auditor Comment: DOE had no evidence in the procurement files, nor provided any in response to our preliminary or reported findings, to demonstrate that the adverse issues identified in Background Review Summary sheets had ever been resolved for the four contracts cited in the report. Thus, there was no evidence that the vendors were ever appropriately determined to be responsible and no basis now to alter our finding that DOE failed to follow its procurement rules in connection with certain contract actions.

For one contract, even though DOE states that documentation that indicates the resolution of the adverse information was available in the “primary background check file” in the Vendor Research unit, we were not provided with any documentation from that file, either during the audit or in the audit response.

For another contract, the Background Review Summary sheet indicated that since the proposed vendor had had a prior contract with DOE, a performance letter from the contract manager was necessary. In its response, DOE states that three letters in the file from DOE schools on the vendor served as performance letters. However, the three letters were reference letters, which according to DOE’s rules are sufficient only for vendors who have not had previous contracts with DOE. As stated in the Background Review Summary sheet, because the vendor in question had a prior contract with DOE, a performance letter from the contract manager was required. However, no such performance letter was in the file.

For a third contract, notwithstanding DOE's claim that the vendor was not debarred by the Workers' Compensation Board at the time the contract review was conducted, nothing in the procurement file that was provided to us showed that the debarment issue was resolved or that the documentation that DOE now states was in a separate background file (and which was not provided to us) was ever communicated to the DOE officials responsible for approving the vendor.

With regard to the 15 procurement files we cite as having lacked Background Review Summary sheets, DOE claims to have found nine of them elsewhere. However, DOE failed to provide those sheets to us even though we specifically requested them in an email sent to DOE on May 3, 2017, prior to the issuance of the preliminary draft report.

Assignments Were Approved by DOE after the Start Dates

Our review found that all 12 of the contract assignments in our sample were approved by DOE's Vendor Research unit after the assignment start dates—ranging from 4 days to 492 days (or 16 months) after the start dates. In one case, involving a contract assignment for universal pre-kindergarten services, the Letter from the Assignor Requesting the Assignment was dated September 2, 2014; the Letter from Assignee Accepting the Assignment was dated July 30, 2014; and the Assignment of Contract document was approved by the Vendor Research unit on May 8, 2015. According to the Request for Service form, the contract assignment began on January 1, 2014, which is 492 days (or 16 months) before it was actually approved. These late approvals create a situation where vendors provide goods and services but cannot legally be paid until the contracts are approved. The delays also hinder vendors' ability to provide quality goods and services.

Required Documentation and Approvals Not Consistently Present in Procurement Files

The procurement files for all 40 contracts in our sample (excluding the 12 assignments in our sample discussed above) were missing one or more documents and/or approvals needed to support the awarding of the contracts, including:

- Six contracts that were missing the Certificates of Liability Insurance and accompanying Broker Certifications.
- Eight contracts that were missing the required VENDEX documentation.
- Thirty-two contracts that were missing required approvals, such as those from the Panel for Educational Policy and the Chancellor's Committee on Contracts.
- Eight contracts that were missing the Procurement Execution Checklist, which is used to identify and track the required documents and approvals.

One listing application in our sample had many of the documents and approvals needed for an original contract worth \$175,000. However, the value of the contract was subsequently revised to over \$1.2 million, but most of the required documents and approvals, such as a comprehensive background review report and an approval by the Panel for Educational Policy, were not present in the procurement file.

DOE Response: "[T]he DOE rejects as erroneous the Report's assertion that all (40) sampled contract files were missing one or more documents and/or approvals necessary to support the award of the contracts. As previously noted in this response, the DOE

employs a variety of media to maintain its files. For 32 of the 40 contracts cited by the Report, the required documents were found in electronic files or as hard copies in other appropriate and official files for such records.

For the eight missing the Procurement Execution Checklist, three were located in the electronic files or other hard copy files. As to the remaining five instances, records were discarded after the contract was registered. The DOE will continue to reinforce its guidance on record retention.

As to the missing VENDEX documentation:

- Three contracts did not require it since their contract values were under \$100,000; and
- Five contracts had VENDEX Questionnaires or Certificates of No Change, which were located in hard copy or electronic files.

As a final point, except for one sampled contract, the Certificates of Liability Insurance and Broker Certifications were located in the hard copy or electronic file. As to the one exception, the vendor was self-insured and as such, a broker's certificate was not required by the contract."

Auditor Comment: In its response, DOE states that it uses a variety of media to maintain its files and that the missing documentation was available elsewhere for 32 of the 40 contracts that we cited as lacking required documentation. However, DOE failed to provide us with any of the missing documentation even though we specifically emailed DOE on May 16, 2017 (well before the issuance of the draft report on June 7, 2017) with details of the required documents and approvals that were not available in the procurement files. Thus, although DOE had ample opportunity to provide us with the missing documentation, it failed to do so. Furthermore, DOE's response fails to now provide any of the missing information it did not provide during the audit for the 32 contracts that were missing required approvals.

Finally, while DOE states that three contracts we cite for not having the required VENDEX documentation did not require it because their contract values were under \$100,000, we found that for two of those contracts, which were with Teachers College, DOE's assertion is incorrect. According to the PPP manual, VENDEX documentation is required for a vendor when all of its DOE contracts in the prior 12-month period collectively amount to \$100,000 or more. For the two Teachers College contracts, even though each individually was valued at under \$100,000, other contracts that this vendor had been awarded by DOE during the 12-month period prior to the two awards collectively amounted to over \$250,000. Thus, VENDEX documentation was required. With regard to the remaining contract, which was with New York Foundling Hospital, we do not dispute DOE's position that the PPP manual did not require VENDEX documentation.

Recommendations

15. DOE should monitor the heads of offices more closely to ensure that they do not make purchases exceeding \$25,000 without an approved contract being in place to reduce the risk of negotiated services contracts having to be awarded later to pay for services that have already been provided.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. The DOE will continue to work with heads of offices regarding compliance with such rules.”

Auditor Comment: In “continue[ing] to work with heads of offices regarding compliance,” we urge DOE to make additional efforts beyond what it has done in the past to improve compliance.

16. DOE should ensure that whenever a retroactive award of a contract is necessary, despite controls, all required documentation and approvals are obtained and maintained in the procurement files.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE uses a variety of media to maintain its records. Any required contracts’ documentation are collected and stored appropriately.”

Auditor Comment: DOE does not explicitly state that it agrees that documentation should be maintained in centralized procurement files. During the audit, DOE claimed that its documentation was stored in files on a variety of media in various locations. Maintaining a central location is important to facilitate effective management reviews of procurements prior to approval by DCP. We therefore continue to urge DOE to ensure that its procurement files contain required documentation and approvals.

17. DOE should ensure that all noteworthy adverse information issues cited on Background Review Summary sheets are satisfactorily resolved prior to contract approval.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice.”

Auditor Comment: As stated previously, documentation for the four contracts cited in the report in which unresolved issues were noted on the Background Review Summary sheets did not demonstrate that the adverse issues had ever been resolved. We therefore urge DOE to ensure that all noteworthy adverse issues are resolved before a contract is approved.

18. DOE should ensure that all required background reviews are conducted.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. Please see above response.”

Auditor Comment: Without Background Review Summary sheets present in its files, there is insufficient evidence that DOE consistently conducts required background reviews. DOE suggests in its response that it is sufficient to report the results of a background review in the Recommendation for Award. However, a Background Review Summary sheet is necessary to support any reference made in a Recommendation for Award to the background check that was performed on a vendor.

19. DOE should ensure that assignments receive final internal approvals in accordance with applicable rules prior to the assignment start dates.

DOE Response: “The DOE agrees with this recommendation inasmuch as it reflects current practice. The DOE, like all City agencies, will continue its efforts to approve and register contracts, including assignments, in a timely manner.”

Auditor Comment: Given our findings of deficiencies in DOE's ensuring that required internal approvals were obtained prior to assignment start dates, we urge DOE to take additional actions, beyond what it has previously taken, to ensure better compliance with applicable rules.

20. DOE should ensure that the procurement files contain all required supporting documents and approvals for the awarding of contracts and for any increases to original contract awards.

DOE Response: "The DOE agrees with this recommendation inasmuch as it reflects current practice."

Auditor Comment: As stated previously, DOE failed to provide us with any of the missing documentation for those contracts we cite in this report as lacking required documents and approvals. We therefore urge DOE to ensure that its procurement files contain copies of all required documents and approvals.

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 City Charter.

The scope of this audit covered contracts registered during Fiscal Year 2016 (July 1, 2015, through June 30, 2016) associated with seven contract actions other than fully competitive solicitations.

We reviewed the prior Comptroller's audit, entitled, *Audit Report on the Department of Education's Controls Over Non-Competitive and Limited-Competition Contracts* (Audit # MG13-119A) issued on June 17, 2015, to familiarize ourselves with the methodology used to conduct the audit testing, the findings, the eight recommendations, and DOE's responses to each of the recommendations.

To obtain an understanding of DOE's responsibilities and regulations governing the awarding of contracts pertaining to seven types of actions (extension, listing application, renewal, sole-source, assignment, negotiated services, and emergency purchase), we reviewed and used as our audit criteria the following:

- DOE's PPP manual, effective January 27, 2010, with amendments up to February 24, 2016;
- DCP's power point training packet, entitled *Procurement Training*, created November 2015, which summarizes the award process for the various contract actions and the associated approvals;
- DCP's Vendor Research unit's *Standard Operating Procedure for Background Reviews*, which summarizes the process for conducting comprehensive background reviews on vendors for all awards in excess of \$1 million and for certain goods and services;
- Checklists used by DCP's procurement analysts and the Vendor Research unit for conducting standard and comprehensive background reviews, which identify the various databases to use for the reviews;
- Various guidelines used by the Vendor Research unit outlining the assignment contract action process, including the *Assignment of Contracts Checklist* and the standard operating procedure, entitled *Assignment of Contracts* (which identifies all of the documents required to complete an assignment action); and
- Various documents required in the assignment contract action process.

In addition, we reviewed various guides used by DCP throughout the award process to supplement the PPP manual:

- DCP's Procurement Execution Checklist;
- An Excel spreadsheet updated as of November 15, 2016, entitled Request for Authorization and Panel Approvals, containing the required Request for Authorization approvals for each type of contract action that requires a Request for Authorization;

- An Excel spreadsheet updated as of November 15, 2016, entitled Executive Summary, containing the required approvals for each type of contract action that requires an Executive Summary;¹³
- An Excel spreadsheet dated December 4, 2015, entitled Process Summary, which summarizes the award process for each contract action and includes references to the applicable sections of the PPP manual; and
- DCP's *Contract Registration Packages: A Basic Overview*, updated March 2016.

To familiarize ourselves with DOE's computer systems and their various features and functions as they relate to the handling of contracts, we reviewed DOE's *Contract Processing System User Manual*, dated July 19, 2006, as well as DCP's *Contract Tracking System (CTS) User Manual*, dated October 11, 2016.¹⁴ We also observed a DOE demonstration of these systems provided by the Director of DCP's Central Office Procurement unit for Universal Pre-Kindergarten services, the Director of DCP's Technology and Data unit, and DOE's Contract Agent/Attorney.

To gain an understanding of the responsibilities of DCP officials and the controls in place in relation to the award process, we interviewed DCP's Executive Director; Chief Administrator of the Vendor Research unit; Director of the Vendor Research unit for Related Services, Background Checks; Chief Administrator of the Policy & Public Affairs unit; and Chief Administrator and Director of the Technology & Instructional Material Procurement unit. In addition, we met with one of the directors and several procurement analysts of DCP's Transportation, Food, & Facilities Procurement unit; and the Chief Administrator of the Central Office Procurement unit.

To gain an understanding of the responsibilities of contract managers, we interviewed five contract managers from the Division of Teaching and Learning, the Office of School Support Services for School Food and the Public Schools Athletic League, the Office of School Support Services for Pupil Transportation, the Division of School Facilities, and the Office of Related Services.

DOE provided us with two datasets containing detailed lists of contracts registered during Fiscal Year 2016 for contract actions other than fully competitive solicitations. One dataset contained a total of 361 contracts (valued at \$696,742,096) that were associated with six contract actions reviewed by this audit (listing application, renewal, sole-source, assignment, negotiated services, and emergency purchase). The second dataset contained a total of 163 contracts (valued at \$2,061,369,781) that were associated with the seventh contract action reviewed by this audit (extension).

As part of our review of the datasets, we conducted various data reliability tests to check for questionable entries, including duplicate contract numbers, blank fields, and clearly irrelevant and erroneous information. To determine whether the datasets provided to us were complete and contained all DOE contracts registered during Fiscal Year 2016, we judgmentally chose three contract actions (assignments, extensions for pupil transportation, and listing applications) and obtained access to the DCP cabinets containing the hard-copy files for the associated contracts registered during Fiscal Year 2016. We randomly selected 30 hard-copy contract files and

¹³ An Executive Summary is required for certain contracts in excess of \$25,000. It provides the pertinent details of a planned solicitation, and, upon approval, authorizes DCP's procurement unit to release the solicitation. Of the seven contract actions in our scope, only the sole-source contract action requires an Executive Summary.

¹⁴ Contract processing starts within the Contract Tracking System (CTS), which is used by DCP to internally track and manage contracts. CTS information is transferred into the Contract Processing System (CPS) where contract processing is completed. CPS was developed for DOE's Division of Financial Operations to improve contract processing, as well as to provide real-time access and transfer of electronic contracts to the City Law Department and to the Comptroller. CPS uses electronic imaging technology to store the contract documents received by the City.

determined whether these contracts were included in the datasets and, if so, whether the information on these contracts in the datasets was accurate.

From the total population of 524 contracts, we selected for audit testing a sample of 52 contracts, as follows:¹⁵

- 8 extensions, with a total contract value of \$575,514,225, representing 28 percent of the contract value of the total population of extensions;¹⁶
- 9 listing applications, with a total contract value of \$238,932,308, representing 71 percent of the contract value of the total population of listing applications;
- 10 renewals, with a total contract value of \$86,807,130, representing 47 percent of the contract value of the total population of renewals;
- 1 sole-source, with a contract value of \$105,000,000, representing 100 percent of the total population of sole-source contracts;
- 12 assignments, with a total contract value of \$18,011,901, representing 83 percent of the contract value of the total population of assignments;
- 9 negotiated services, with a total contract value of \$14,340,516, representing 32 percent of the contract value of the total population of negotiated services; and
- 3 emergency purchases, with a total contract value of \$3,538,981, representing 100 percent of the total population of emergency purchases.

Based on the type of contract action, we determined whether the DCP files contained the required documents, appropriate approvals, adequate written justifications and determinations, and evidence of either standard or comprehensive background reviews, where applicable. In addition, we calculated whether contracts were submitted to the Comptroller in a timely manner to ensure that they were registered prior to the start date of the contracts. Finally, we determined whether DOE conducted performance evaluations as required by its PPP manual prior to approving assignments, renewals, and extensions.

In addition, for the 12 assignments, we reviewed DCP files to gain an understanding of the circumstances that led to the assignments. We also reviewed the justifications provided by the vendors requesting the assignments to determine whether the justifications were adequately supported.

We also determined whether the most recent contracts awarded to any of the assignors in our sample had been awarded by means of competitive bidding. If so, we obtained the bidding lists that identified the vendors who bid on these recent contracts. Our purpose was to determine whether any of the assignees bid on these same contracts. If so, we determined whether these vendors were assigned soon after the competitive bid awards, which might indicate collusion amongst the bidders.

To determine whether DOE maintained evidence of contract monitoring, we requested the contract management files for the 26 of the 52 contracts in our sample that the five contract

¹⁵ When selecting our samples for extensions, listing applications, renewals, assignments, and negotiated services, we judgmentally selected the top three contracts with the highest dollar values first, and then randomly selected the remaining contracts. We also selected the only sole-source contract and the only three emergency purchases.

¹⁶ We initially selected 9 extensions; however, upon review of the documentation for one of the extensions, we determined that DOE incorrectly classified it as an extension rather than as a renewal. Thus, our sample of extensions was reduced to 8, and our sample of renewals was increased to 10.

managers we interviewed had been overseeing and reviewed the files to the extent they were made available to us.¹⁷

To test data reliability, we compared select information (such as contract dollar amounts) on our 52 sampled contracts recorded in DOE's CTS to information in the two datasets provided to us by DOE. We also compared select information on hard-copy documents to information in the two datasets to determine whether the information was accurate. In addition, for each of the 52 sampled contracts, we reviewed information in the Comptroller's OASIS to determine whether the contracts had been registered with the Comptroller, and whether certain contract information in DOE's datasets was consistent with information in OASIS.

Although the results of our sampling tests were not statistically projected to their respective populations, these results, together with the results of our other audit procedures and tests, provide a reasonable basis for us to determine whether DOE has adequate controls in place concerning contract actions other than fully competitive solicitations.

¹⁷ Of the 26 contracts, eight were extensions, two were listing applications, nine were renewals, four were assignments, and three were emergency purchases.

APPENDIX

Definitions of Seven Contract Actions Other than Fully Competitive Solicitations

Contract Action	Definition
Extension	Used when an existing contract is extended for a period of time. Two types of extensions are allowed, providing that a vendor's performance is satisfactory and all renewals have been exhausted. One type, known as a Section 4-07(a) extension, is when a contract is extended one or more times for a cumulative period not to exceed one year from the date of the expiration of the contract plus any renewals. The second type, known as a Section 4-07(b) extension, is when a contract is extended one or more times beyond the initial cumulative twelve-month extension period. With an extension, the terms and conditions are the same or substantially equivalent to those of the original contract, but there can be pricing changes which must be authorized by the Chancellor. In addition, a written determination must be prepared detailing the reasons that it is in the best interest of DOE to extend the contract. A Request for Authorization is required to be prepared. Examples include student bus transportation and cafeteria cleaning supplies.
Listing Application	Established for the purchase of content provided directly to students, such as materials that are available from a particular publisher, artistic performances, and programs offered by cultural institutions. A Request for Authorization is required to be prepared. Examples include textbooks and educational software.
Renewal	Used when an existing contract expires and the parties agree to continue the contract. In order for this to occur, the existing contract must contain a renewal clause and the vendor's performance must be satisfactory. The terms and conditions of the renewal are substantially unchanged from the existing contract, but there may possibly be revised quantities, schedules, or items to be supplied. A Request for Authorization is not required to be prepared. Examples include related services for special needs students, elevator maintenance and repair, and universal pre-kindergarten services.
Sole-Source	Used for the purchase of goods when there is only one source through which the goods can be purchased and when no other product is available in the marketplace that meets the same or substantially similar requirements. Prior to entering into a sole-source contract, DCP's Executive Director must make a determination that the goods are necessary and can only be obtained from a particular vendor. The determination must include a description of the process by which the determination was made. A Request for Authorization is required to be prepared. An example includes Apple Inc. products.
Assignment	Used when a vendor (known as the assignor) can no longer perform the terms and conditions of an existing contract and requests to assign the contract to another vendor (known as the assignee) who agrees to assume and faithfully perform all of the same terms and conditions of the existing contract. DOE must ensure that the assignee is capable of handling the contract and that the justification for the assignment is reasonable. A Request for Authorization is not required to be prepared. Examples of the reasons for an assignment include financial hardship of the assignor, the assignor going out of business, a merger between the assignor and assignee, and the assignee purchasing the assets of the assignor.

Contract Action	Definition
Negotiated Services	<p>Used when other contract actions are not practical or possible. A negotiated services contract can be used in any of the following scenarios: when only one vendor can satisfactorily meet DOE's requirements for the needed services and when a vendor must be retained quickly due to a supplier being terminated, having defaulted on a contract, or having otherwise become unavailable. The award of such a contract must be based upon a combination of cost, quality, and efficiency. A determination must be made that the negotiated services contract is in the best interest of DOE and that it is not practical or possible to go through a fully competitive solicitation process. The determination must include a detailed breakdown of the services to be provided; an explanation of why the proposed vendor was selected; and pertinent information concerning other vendors who had been contacted and why they were not selected. A Request for Authorization is required to be prepared. Examples include art services to the City schools and evaluation training services.</p>
Emergency Purchase	<p>Used when there is an emergency condition and the procurement of the items or services must be done quickly to meet the emergency. Therefore, given this constraint, a fully competitive solicitation process is often not feasible, but DOE requires that efforts be made to try to solicit competition. The requirement for registration by the Comptroller prior to implementation of a contract is waived for an emergency purchase. However, the emergency purchase contract must be submitted to the Comptroller as soon as practicable for registration. A Request for Authorization is required to be prepared. Examples include bread or milk distribution when an existing distributor is no longer able to provide the product.</p>



Raymond J. Orlando
Chief Financial Officer

June 21, 2017

Ms. Marjorie Landa
Deputy Comptroller for Audits
New York City Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 10007-2341

Re: *Audit Report on the Follow-up Audit Report on the Department of Education's Controls over Non-Competitive and Limited-Competition Contracts and Contract-Related Actions (ME17-078F)*

Dear Ms. Landa:

This letter will serve as the New York City Department of Education's ("DOE") formal response to the New York City Office of the Comptroller's ("Comptroller") draft audit report of the *Follow-up Audit Report on the Department of Education's Controls over Non-Competitive and Limited-Competition Contracts and Contract-Related Actions ("Report")*.

The original audit acknowledged that the DOE adequately documents the justification and authorization for non-competitive and limited competition procurements, while the DOE's response at that time expressed concern that certain conclusions offered by the Comptroller were not grounded in fact. The DOE again expresses that concern regarding this follow up and the basis for the Report's findings.

The DOE's review of the supporting documentation provided showed that in numerous instances the Report formed erroneous conclusions attributable either to a misunderstanding of the DOE's procedures and/or a failure to collect information relevant to the specific subject matter under review. As such, the conclusions drawn are not founded upon an accurate assessment of the entirety of the data and documents available.

Moreover, the DOE's response to the original audit noted that the Comptroller failed to formally expand the scope to include the DOE's post-procurement processes regarding contract monitoring. In offering that comment, the DOE questioned the conclusions drawn by the original audit as the Comptroller had not conducted the necessary fieldwork to support those findings. In this follow up, the Comptroller has split the original eight recommendations into 20, undermining DOE ability to track these new recommendations to specific audit tests and thwarting our ability to meaningfully respond to the audit. Further, the DOE's review of the supporting documents used as the basis of the reported conclusions

found that in most instance those conclusions were not supported. As a result, we question the assertions reported and the underlying recommendations.

Response to Recommendations:

Recommendation 1. *DOE should prepare more specific written procedures concerning assignments, including standards for evaluating the responsibility and capacity of vendors to handle contracts through the assignment process.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

As stated in the DOE's response to this recommendation in the original audit, DOE's procedures for assignments require that assignees be subject to a background check and a review to determine whether they can satisfactorily perform the obligations they will be assigned. The Comptroller adds the phrase "more specific" as an expansion of the original recommendation without offering evidence of any test conducted or problem identified that needs to be addressed.

We additionally note that the DOE never indicated it would revise the Procurement Policy and Procedures ("PPP") manual to include reference to assignments. However, the guidelines established for conducting assignments, reflected in the *Assignment of Contracts* and related *Checklist*, are precise and followed by the Division of Contracts and Purchasing (DCP) staff. Also, it should be noted that assignments are governed by specific terms and conditions contained within each contract.

Recommendation 2. *DOE should ensure that the supporting documentation for assignments, including adequate justifications for assignment requests and Background Review Summary sheets, is consistently obtained, carefully reviewed, and properly maintained in the assignment files.*

Response. The DOE can agree with the recommendation inasmuch as it reflects the current practice for performing thorough background checks of potential assignees. Further, we note that the electronic performance evaluation system was implemented in late 2015. The DOE advised the Comptroller about its implementation in response to a question presented during the audit and is not aware of any attempt to schedule a demonstration. Moreover, prior to the audit, the DOE already had provided a demonstration to the Comptroller, albeit, a different office.

The above notwithstanding, we note that the Report references 12 assignments that were reviewed and acknowledges that the documents and approvals necessary to process and approve them were present. However, the statement that none of the justifications for any of the assignments contained any supporting documents is misleading. While DCP approves assignments, such requests are received from and signed by a Program Division Head, and also signed by the DCP Chief Administrator responsible for the procurement which led to the contract being assigned. Accordingly, the program office that is responsible for managing the contract being assigned and the services performed thereunder would know and have deemed appropriate the justification for the assignment. Further, any supporting documentation would be maintained by that program office. DCP will assure that the responsibility regarding document retention continues to be part of the contract management training.

The Report cites conflicting justifications for one assignment, which is not an accurate statement, as there can be more than one reason for an assignment, which was the case in that instance. In another instance, the Report (pg. 10) asserts as vague the justification that the assignor, ". . . can no longer

execute the contract due to its non-profitability factor.” The DOE disagrees and when presented with such a situation makes the pragmatic decision as to whether it will approve an assignment or hold the vendor in breach.

While we acknowledge that a letter from the assignee accepting the assignment was missing from the file, the assignee executed an Assignment of Contract, which is a binding document, thereby making the need for the letter from assignee moot.

We also note that DCP maintains hard copy and electronic files, so while the auditors found that a Broker’s certification and the Background Review Summary were missing from the hard copy files, each was available in its respective electronic file. If requested, they would have been provided.

Recommendation 3. *DOE should require the assignors to submit documentation that supports their written justifications for assignment requests.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

Here we note that contract managers, on behalf of the office procuring the service, submit the request for an assignment and document it accordingly. Further, the DCP Chief Administrator who is responsible for the original procurement that led to the contract being assigned also must sign the request for an assignment, adding an extra layer of review.

Recommendation 4. *DOE should ensure that contract managers prepare performance evaluations and submit them to DCP’s Vendor Research unit for review when potential assignees had prior DOE contracts.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The Report’s discussion regarding performance evaluations of assignees appears to reflect a misunderstanding of DOE’s procedures. Except for one, all assignment actions sampled had the performance evaluation required by the DOE, which is either three letters of reference or a satisfactory evaluation by a DOE staff, if applicable. Further, we again note that the DOE implemented an electronic evaluation system in late 2015.

Recommendation 5. *DOE should develop and implement written procedures that are sufficient to assist staff in identifying the warning signs of possible collusion in the assignment process.*

Response. As stated in the response to this recommendation from the original audit, DOE procurement managers are fully aware of the warning signs of collusion. The written guidelines that are already available on the United States Justice Department website and information covered in the Department’s Contracts Management Training provide the necessary guidance in this subject.

Recommendation 6. *DOE should update the Strategies for Effective Contract Management training manual to include specific procedures for contract monitoring. The manual should include details regarding the performance evaluations to be conducted on an on-going basis throughout the contract period. It should also specify the frequency of conducting these performance evaluations; how often inspections and observations should take place at a vendor’s facility; and how the results of these inspections and observations, including corrective action plans to improve performance, should be documented.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The training manual is subject to revision and the DOE will consider the recommendation in enhancing how contracts are monitored. It is important to highlight that the electronic evaluation system provides a standardized format for evaluating vendor performance.

The DOE rejects the assertion that it does not carefully assess vendors' ability to perform. For any award of a new contract, the DOE assesses vendors' performance as dictated by the specific facts and circumstances.

As for renewals and extensions, the Report makes it appear that these contract actions are just routine and automatic, when in fact each action goes through a distinctive and deliberative process. Whenever a renewal or extension occurs, the contract manager/program office is actively involved in the action. Renewals and extensions only occur when DOE staff responsible for managing the services support such action and believe the vendor's performance warrants continuation of the contract.

Recommendation 7. *DOE should develop a standard evaluation format with criteria and ratings for assessing vendor performance. To achieve this, it should use the key universal components that DOE has already identified in the contract management training manual. Contract managers can supplement these components with criteria specific to the types of contracts they manage.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE has implemented an electronic evaluation system that incorporates a standardized format. However, the DOE rejects the Report's assertion that without a standard format, transparency is impaired and vendor performance cannot be effectively assessed.

Recommendation 8. *DOE should ensure that performance evaluations are conducted, especially of those contractors seeking renewals or extensions, and should maintain the results of these evaluations for future reference.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

An assessment of performance is a prerequisite to a new contract award, as well as to a renewal or extension.

Recommendation 9. *DOE should conduct at least limited background reviews (standard checks) of vendors seeking to renew or extend their contracts-especially of those vendors whose contracts have been renewed and/or extended many times.*

Response. The DOE agrees, in part, with this recommendation.

Extensions are subject to a standard background check (or comprehensive if warranted based on the dollar value). As to renewals, performance is assessed (as indicated above in the response to Recommendation 8) and vendor's VENDEX is reviewed, which provide a reasonable basis for the action taken.

Recommendation 10. *DOE should monitor its contract managers to ensure that their activities are documented in well-organized files and are readily available.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE uses a variety of media to maintain its files and the Comptroller was so advised both during the original audit and follow up. Due to the nature and volume of the contracted services, some records are stored electronically in the Contract Tracking System (“CTS”); other electronic records, such as Word and PDF documents, are stored as files in staff’s computers; and physical records are filed and maintained by contract managers and DCP. Further, records are archived as necessary.

Recommendation 11. *DOE should expand training programs to ensure that contract managers are aware of their responsibilities and the documentation they are required to maintain.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

Our training already addresses the need to create and maintain documentation supporting the actions and decisions taken as contract managers. Notwithstanding, the DOE will consider the suggestion to expand such training programs.

Recommendation 12. *DOE should ensure that every contract is assigned to a contract manager, as required by the PPP manual, including those contracts awarded by means of non-core-curriculum listing applications.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice. We note that every contract is assigned a contract manager.

Recommendation 13. *DOE should ensure that it submits contracts for registration to the Comptroller prior to their start dates.*

Response. The DOE, like all City agencies, will continue in efforts to register contracts in a timely manner.

Recommendation 14. *DOE should ensure that vendors do not commence performance under non-emergency contracts until they are registered with the Comptroller.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE does not pay vendors until their contracts are registered with the Comptroller. While there are cases where vendors deliver goods or services in advance of registration, the DOE does not commit to making payments until after registration by the Comptroller.

Recommendation 15. *DOE should monitor the heads of offices more closely to ensure that they do not make purchases exceeding \$25,000 without an approved contract being in place to reduce the risk of negotiated services contracts having to be awarded later to pay for services that have already been provided.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE will continue to work with heads of offices regarding compliance with such rules.

Recommendation 16. *DOE should ensure that whenever a retroactive award of a contract is necessary, despite controls, all required documentation and approvals are obtained and maintained in the procurement files.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE uses a variety of media to maintain its records. Any required contracts' documentation are collected and stored appropriately.

Recommendation 17. *DOE should ensure that all noteworthy adverse information issues cited on Background Review Summary sheets are satisfactorily resolved prior to contract approval.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE rejects as erroneous the Report's assertions that the DOE lacked evidence that background reviews were consistently conducted for proposed vendors and that, in some instances, adverse noteworthy information were not resolved. Further, we reject the Report's claim that we violated our own rules by awarding contracts to vendors that had not been determined to be "responsible" and said vendors may have "significant" integrity issues (pg. 19). A review of the basis for the Report's conclusions shows that these findings are based on a misunderstanding of the documents examined and required practices and procedures.

The Report states that it reviewed a sample of 34 contract actions from Fiscal Year 2016, for which background checks were required and that evidence of background checks were only found for 19 actions, of which 14 had noteworthy information. The Report erroneously concludes that for three of the 14, contracts were awarded even though there was no evidence that noteworthy adverse information was resolved. We found that:

- For one of the contracts, the resolution of the adverse information was available in the primary background check file maintained by Vendor Research unit.
- For another, while the Report said "performance letter" had not been received (pg. 20), three such letters from DOE schools were included in the file.
- As to the third instance, the Report erroneously points to the prior background check in which it cites a Worker's Compensation Board's ("WCB") debarment. However, that background check, which appeared in the background file, was clearly identified as a *prior* background check. The file also included a clearly labelled *current* background check which included documentation from the WCB showing that there was no active debarment. Moreover, it should be noted that WCB debarments have a limited statutory application and only bar vendors from receiving public works contracts, of which DOE contracts are not. At a minimum, prior to a contract award, the DOE verifies with the WCB that the vendor has current insurance and also has paid any outstanding monies owed to the WCB (or is in a payment plan and current with its payments).

As for the remaining 15, which the Report asserts that background reviews had not been conducted, DOE records demonstrate otherwise. In all cases, either background checks were available in electronic and or hard copy format (9 of the 15), or the description of what was done appears within the Recommendation for Award. In all instances, background checks were conducted in accordance with DOE policy.

Recommendation 18. *DOE should ensure that all required background reviews are conducted.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice. Please see above response.

Recommendation 19. *DOE should ensure that assignments receive final internal approvals in accordance with applicable rules prior to the assignment [sic] start dates.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

The DOE, like all City agencies, will continue its efforts to approve and register contracts, including assignments, in a timely manner.

Recommendation 20. *DOE should ensure that the procurement files contain all required supporting documents and approvals for the awarding of contracts and for any increases to original contract awards.*

Response. The DOE agrees with this recommendation inasmuch as it reflects current practice.

However, the DOE rejects as erroneous the Report's assertion that all (40) sampled contract files were missing one or more documents and/or approvals necessary to support the award of the contracts. As previously noted in this response, the DOE employs a variety of media to maintain its files. For 32 of the 40 contracts cited by the Report, the required documents were found in electronic files or as hard copies in other appropriate and official files for such records.

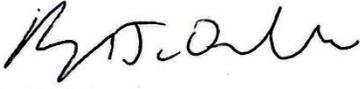
For the eight missing the Procurement Execution Checklist, three were located in the electronic files or other hard copy files. As to the remaining five instances, records were discarded after the contract was registered. The DOE will continue to reinforce its guidance on record retention.

As to the missing VENDEX documentation:

- Three contracts did not require it since their contract values were under \$100,000; and
- Five contracts had VENDEX Questionnaires or Certificates of No Change, which were located in hard copy or electronic files.

As a final point, except for one sampled contract, the Certificates of Liability Insurance and Broker Certifications were located in the hard copy or electronic file. As to the one exception, the vendor was self-insured and as such, a broker's certificate was not required by the contract.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. J. Orlando". The signature is written in a cursive style with a large initial "R" and "O".

Raymond J. Orlando
Chief Financial Officer