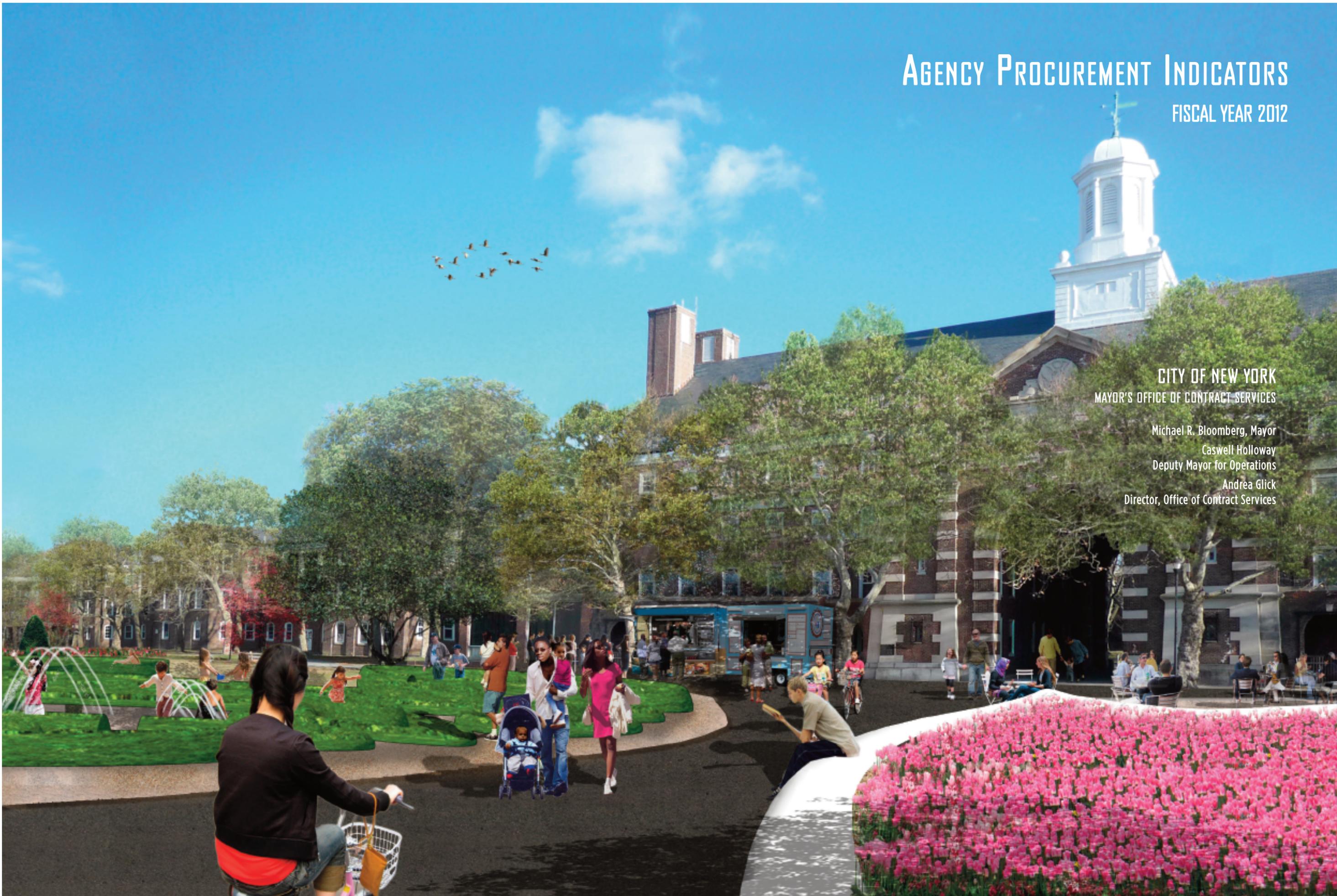


# AGENCY PROCUREMENT INDICATORS

FISCAL YEAR 2012

CITY OF NEW YORK  
MAYOR'S OFFICE OF CONTRACT SERVICES

Michael R. Bloomberg, Mayor  
Caswell Holloway  
Deputy Mayor for Operations  
Andrea Glick  
Director, Office of Contract Services



## CELEBRATING OUR CITY

Cover Image: Proposed design of Liggett Terrace, Governors Island. Image courtesy of West 8 team.

In May 2012, Mayor Bloomberg, elected officials, and the Trust for Governors Island broke ground on Phase 1 of a multi-phase, 87-acre park and public space plan for Governors Island. Designed by the landscape architecture firm West 8, Phase 1 creates 30 acres of new recreational spaces at the heart of the Island. The new design will also rejuvenate the landscape and public spaces of the Historic District, and will add key visitor amenities. The new public spaces include a 14-acre lawn for play and relaxation with two turf ball fields, the Hammock Grove, and Liggett Terrace. Framed by the wings of Liggett Hall, Liggett Terrace will be a lively six-acre urban plaza full of activity and amenities, including flower beds, plantings, public art, seating, food, and water features. Liggett Hall, designed by architects McKim, Mead & White in 1929, is a massive U-shaped neo-Georgian structure that traverses the Island. Its most distinctive feature is the Arch, the monumental archway that connects the Historic District's public spaces to Liggett Terrace. For more information, visit [www.govisland.com](http://www.govisland.com).

Through a public competitive sealed proposal process, the Trust for Governors Island awarded an \$18.4 million contract to LiRo/STV, a joint venture that will provide resident engineering services and help oversee the design and construction of all projects on Governors Island. Support for the Trust for Governors Island is provided through a master contract held by the City's Department of Small Business Services.

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## EXECUTIVE SUMMARY

In Fiscal 2012, New York City procured more than \$10.5 billion worth of supplies, services and construction, through more than 46,000 transactions. Procurement is one of the City's essential tools to serve the public and to accomplish critical governmental functions. Agencies procure everything from trucks to sweep the streets, to architectural designs for new firehouses, to biodiesel fuel for City vehicles, to human services provided by nonprofit partners working in communities throughout the City. The breadth and variety of City contracts reflect the breadth and variety of City services themselves.

New York City remains one of the largest contracting jurisdictions in the nation. In Fiscal 2012 the City made significant investments in economic development, water infrastructure, and waste management. The City also continued its commitment to providing service to New Yorkers in need through client service programs, and providing City workers with the goods and services necessary to do their jobs. Under the leadership of Mayor Michael R. Bloomberg, the City has continued to improve the procurement process.

This report tells the story of what New York City agencies bought during Fiscal 2012 and how those purchases were made.<sup>1</sup> Indeed, how we buy is just as important as what we buy. The procurement system is designed to achieve three main goals:

- Provide necessary goods and services on time and at the best value for the taxpayer.
- Operate fairly and transparently.
- Ensure the responsibility of our vendors, including their business integrity.

To measure our success achieving these goals, the Mayor's Office of Contract Services (MOCS) tracks key indicators of the performance of the City's procurement system.

In addition to the basic goals of fair and efficient contracting, the City's need for goods and services is an economic opportunity for the thousands of businesses in New York and around the world to compete for the City's business. Moreover, because robust competition for that business lowers prices and increases quality, it is in the City's interest to ensure that as many companies as possible are viable competitors. We also recognize that the procurement of goods and services has environmental impacts - making and delivering goods, exporting trash, fueling the City's fleet, and heating City-owned buildings. So in addition to tracking prices and quality, MOCS also evaluates whether the City's procurement

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<sup>1</sup> Fiscal 2012 runs from July 1, 2011 through June 30, 2012. Except where specifically noted, this report presents information on procurements by only the Mayoral operating agencies that are governed by Chapter 13 of the New York City Charter and the rules and regulations of the Procurement Policy Board (PPB). Agencies covered by this report are listed following the Glossary.

methods expand opportunity to potential competitors, and whether they are environmentally sustainable, or “green.”

Throughout this report, the symbols below identify particular procurements or initiatives that illustrate the commitment to these goals. We hope that these visuals provide an easy reference to a thorough reader or a quick browser seeking the areas where New York City procurement operated at its best.

**Expanding Opportunity** helps make New York City one of the most attractive among the world to new businesses and residents. When the City can be a better partner to the thousands of firms and nonprofit organizations with which we do business, we create jobs for New Yorkers and expand the economy. When more businesses want to become vendors to the City, all New Yorkers receive the benefits of increased service at a lower cost. Initiatives that helped expand opportunities in Fiscal 2012 include nonprofit capacity building and the M/WBE program.



**Going Green.** The importance of the environment cannot be overstated. Clean air, water, and soil are critical to both the physical and economic health of the City. Because the decisions we make now will affect the future of the City for generations to come, it is necessary to make sure that all procurement decisions are made with the environment in mind. Particular initiatives that furthered this goal in Fiscal 2012 include purchasing food from local sources and encouraging construction vendors to use environmentally preferable materials.



## I. TAKING INVENTORY: WHAT WE BUY

Overall, procurements declined in Fiscal 2012 by about 30%, as fewer large human service programs were awarded this year than in Fiscal 2011. Highlights from the Fiscal 2012 procurement cycle include:

- Ten agencies account for approximately 80% of the City’s total procurement dollar value; and the largest 25 contracts of the year account for 29% of the total dollars awarded. The Department of Homeless Services (DHS) tops the list of awarding agencies, owing to the award of contracts for the long term operation of transitional residences, five of which are among the Top 25 procurements in Fiscal 2012.
- City agencies processed approximately \$10.3 billion in payments on their procurement contracts during Fiscal 2012 – including those initially registered this year and those registered in prior years that are still active this year. While registered award values include multi-year (projected) spending, payments reflect actual dollars spent during the fiscal year.
- Human service procurements made up the largest portion the City’s procurement volume, at 28% of registered awards, and 29% of payments. City procurement also included goods and commodities (7% of registered awards, 3% of payments), construction (19% of awards, 32% of payments), architecture and engineering services (6% of awards, 5% of payments), other

professional services (19% of awards, 8% of payments) and standardized services (21% of awards, 23% of payments).

- The size of City contracts was comparable to prior years. About 77% of all purchasing dollars flowed in contracts that exceeded \$3 million. These larger contracts represented just over 1.2% of the total number of procurements made. By contrast, purchases for \$100,000 or less accounted for only 4% of the total dollar value purchased, but over 88% of the number of procurements processed.
- Approximately half of City purchasing resulted from competitive procurements, while 8% used selection methods controlled by governmental agencies, 18% relied upon methods with limited competition and 28% reflected renewals and continuations of existing contracts, or modifications to enhance those contracts.
- Competitiveness increased, with 95% of contracts showing high levels of competition (three or more competitors), compared to 88% last year.
- The City awarded 82 new concessions and collected nearly \$49 million from 584 operating concessions. The Department of Parks and Recreation (DPR) led in amount raised, with food operations and golf courses as its top revenue-producing concession types. The City approved 26 franchise transactions and collected \$214.7 million from 60 existing franchises, primarily from franchises held by the Department of Information Technology and Telecommunications (DoITT) for cable television and by the Department of Transportation (DOT) for street furniture. DOT and the Department of Consumer Affairs (DCA) registered agreements valued at \$23 million for sidewalk cafés and similar uses.

## II. HUMAN SERVICES

Human services contracts— i.e., contracts that agencies enter into with vendors (typically nonprofits) to provide services directly to clients and communities throughout the City – amounted to 28% of the total contract-dollars awarded in Fiscal 2012. Agencies hold new competitions for these client services contracts in cycles that generally run from three to six years.

- In 2011, the City announced it would offer nonprofits providing services in New York City free memberships to Essensa, a New York-based group purchasing organization. Essensa helps nonprofits stretch their budgets; at the close of Fiscal 2012, more than 200 nonprofit members with over 780 sites were taking advantage of the discounts.
- Executive Order 159 of 2011 amended Executive Order 50 of 1980, exempting nonprofits from the requirement to submit duplicative paperwork to the Division of Labor Services. Since the change was implemented, over 400 vendors have benefited, representing more than 600 contracts valued at \$850 million.
- Through Executive Order 122 and Local Law 50 of 2011, the City improved its provision of healthy, nutritious and sustainable food. The City’s agency food standards are currently applied to over 270 million meals and snacks served each year. MOCS, in consultation with the City’s Food

Policy Coordinator, promulgated guidelines for City agencies including strategies to procure food from New York State and other local sources.

- Long-term retroactivity in human service contracting held steady at 12% of continuation contracts. MOCS and the City's human services agencies ameliorated cash flow problems caused by late contracting and similar challenges. Through the City's cash flow loan program – administered by the Fund for the City of New York – MOCS issued 124 loans to 85 vendors in Fiscal 2012, totaling \$26.3 million. These totals are down from the prior fiscal year.
- The City's Nonprofit Capacity Building and Oversight unit held training sessions on best practices in nonprofit management attended by over 434 nonprofit leaders and staff from City agencies.

### **III. CONSTRUCTION**

To meet the design, construction, and renovation needs of the City's infrastructure and built environment, the City's eight primary agencies for construction (DDC, DEP, DPR, DOT, DCAS, DOC, DSNY, and HPD) entered into contracts that made up approximately 25% of all Fiscal 2012 procurements.

- During Fiscal 2012, City agencies awarded construction contracts valued at more than \$197 million that included at least one of fourteen possible Environmentally Preferable Purchasing specifications. City agencies also registered over \$784 million worth of contracts that were subject to the more comprehensive Green Buildings Law, Local Law 86 of 2005.
- During Fiscal 2012 alone, agencies awarded 74 contracts, valued at \$318 million, under cost-saving Project Labor Agreements (PLAs). To date, 143 contracts valued at \$2.4 billion have been registered under a PLA. Through these PLAs, the City aims to save more than \$300 million, while preserving approximately 1,800 construction jobs.
- For 61 contracts, worth nearly \$856 million, agencies mandated participation in apprenticeship programs to afford opportunities for New Yorkers to obtain well-paying construction jobs. All PLA contracts also provide for apprenticeship opportunities. In total, about 87% of the City's newly-awarded construction procurements provide for apprenticeships.
- 891 contracts, valued at \$1.6 billion, were subject to prevailing wage requirements, and 284 contracts, valued at \$144 million, were subject to the Living Wage Law.

### **IV. SUPPORTING CITY AGENCIES THROUGH GOODS AND SERVICES**

To keep government running, City agencies need to procure everything from office furniture to ambulances, from cleaning services to information technology. Procurements for Professional Services, Standardized Services, and Goods together make up 47% of Fiscal 2012 contracting.

- Using more than 1,000 requirement contracts, offered mainly by the Department of Citywide Administrative Services (DCAS), agencies placed just under \$1.6 billion worth of orders for supplies and services. The most heavily used requirement contracts (by dollar value) were those

for trucks, and for fuel. The most frequently used requirement contract (by number of orders) was for office supplies from Staples.

- Agencies processed task orders worth just over \$1 billion under master agreements, primarily the technology services agreements held by DoITT, and the design services agreements held by DDC.
- DCAS's Office of Citywide Purchasing entered into new Citywide contracts projected to save the City a total of \$43 million, including procurements for integrated pest management and off-site record storage.
- The City's P-card program continued its rapid rise, allowing City agencies to save time and money. City agencies used the P-card for 30% of all spending at the micropurchase level (\$5,000 or less).

## **V. EXPANDING OPPORTUNITY FOR MINORITY- AND WOMEN-OWNED BUSINESS**

- During the five-year history of the City's Minority- and Women-Owned Business Enterprise (M/WBE) goals program, agencies have awarded more than three billion dollars worth of work to certified M/WBE firms.
- In Fiscal 2012, almost \$1.6 billion dollars worth of the City's prime contracts were covered by M/WBE participation goals, including more than \$389 million covered by prime contract goals and about \$1.2 billion covered by subcontracting goals.
- M/WBEs obtained over \$529 million worth of City procurements (prime contracts and subcontracts) during Fiscal 2012. M/WBEs won nearly 29% of the City's small purchases, up from 25% in Fiscal 2011.
- M/WBE certifications rose by 9%, to more than 3,526 certified firms at the end of Fiscal 2011.
- Agencies awarded 220 Fiscal 2012 prime contracts that are subject to M/WBE subcontracting goals. The contracts will generate \$150 million in construction and professional services subcontracts, with about \$56 million slated for M/WBEs, i.e., about 38%.
- State and federal goals programs that apply to about \$418 million worth of Fiscal 2012 contracts will also yield \$96 million worth of subcontracts for M/WBEs and disadvantaged businesses (DBEs). EDC's subcontractor goals will yield nearly \$7.3 million (16%) in similar awards.
- All told, counting all subcontracts on all prime contracts, including those not covered by any goals program, certified M/WBEs won 31% of all subcontracts approved during Fiscal 2012, including 42% of the value of subcontracts below one million dollars.

## **VI. THE PROCUREMENT PROCESS: BALANCING THOROUGHNESS AND EFFICIENCY**

- To ensure that City agencies have a well-trained procurement staff, MOCS hosts courses on best practices and compliance through its Procurement Training Institute. In Fiscal 2012, 534 people attended one or more of the seventeen classes offered.

- In Fiscal 2012, agencies issued 340 non-responsiveness determinations and 12 non-responsibility determinations.
- MOCS announced VENDEX processing reforms to accelerate the contracting process, including measures to prioritize VENDEX submissions for pending contract awards; tighter timeframes for corrections of incomplete submissions; and moving VENDEX questionnaires online to allow electronic submission.
- The average time between public solicitation and finalization of award for competitive bids increased to 176 days, compared to 165 days in Fiscal 2011. Although quicker cycle times remain a goal, roughly half of the rise this fiscal year is due to increased processing times for large contracts (over \$10 million) which may take agencies additional time to finalize. The other half of the increase stems from the fact that large bid contracts made up 14% of the contracts in the Fiscal 2012 Citywide average, compared to only 5% in Fiscal 2011. For contracts valued at less than \$10 million, the average cycle time in Fiscal 2012 was 166 days, up only slightly from an average of 165 days in Fiscal 2011.

In the pages that follow, and in the appendices available online, we expand on each of the topics outlined above. Additional information can be found at the following web sites:

- For more information on MOCS and the topics covered in this report, [nyc.gov/mocs](http://nyc.gov/mocs)
- For a copy of the City's PPB Rules, [nyc.gov/ppb](http://nyc.gov/ppb)
- For information for vendors and potential vendors, [nyc.gov/selltonyc](http://nyc.gov/selltonyc)
- For information on assistance available to nonprofits, [nyc.gov/nonprofits](http://nyc.gov/nonprofits)



*Photo: Marcello Rios*

## **I. Taking Inventory: What We Buy**

New York City procures more goods and services than any other municipality in the country, and is one of the largest procurement jurisdictions at any level of government - in Fiscal 2012, the City procured \$10.5 billion of goods and services. This represents a decrease of almost 30% relative to Fiscal 2011, reflecting the cyclical nature of multi-year procurements, as well as planned reductions in City spending.

Ten agencies account for approximately 80% of the City's total procurement dollar value and 30% of the total number of contract actions in Fiscal 2012. The Department of Homeless Services (DHS) had the highest overall procurement value, led by procurements to provide shelter to homeless adults and families. The Department of Environmental Protection (DEP) posted the second-highest procurement value, with significant investments to protect the City's supply of clean drinking water, and provide for sewage treatment. And the Department of Small Business Services (SBS) had the third-highest procurement volume, including the Fiscal 2012 master agreement to support the City's Economic Development Corporation.

## A. 25 Largest Contracts

Many of the City's contracts support major initiatives that affect the lives of New Yorkers throughout the five boroughs. The City regularly enters into individual contracts that are valued in the hundreds of millions of dollars, occasionally even billions. The table below shows the 25 largest contracts ranked by dollar value. Together, these contracts account for nearly 29% of the overall Citywide procurement dollar volume during Fiscal 2012.

<b>Table I-1: Top 25 Contracts of Fiscal 2012</b>				
<b>#</b>	<b>Agency</b>	<b>Vendor</b>	<b>Purpose</b>	<b>Value</b>
1	SBS	NYC Economic Development Corp.	Master contract: citywide economic development	\$592,699,000
2	SBS	Governors Island Corporation	Economic development services on Governors Island	\$329,318,000
3	DDC	Waterworks a Joint Venture	Installation of water mains in Manhattan	\$236,759,690
4	DSNY	Waste Management of NY LLC	Export municipal solid waste from Brooklyn	\$164,304,608
5	DHS	Doe Fund Inc.	Transitional residence for homeless adults	\$157,542,080
6	FDNY	VF Imagewear Inc. D/B/A VF Solutions	Protective apparel and clothing distribution program	\$127,470,585
7	DSNY	Waste Management of NY LLC	Export municipal solid waste from Brooklyn	\$123,228,510
8	DCAS	Sprague Energy Corporation	Diesel and biodiesel, bulk delivery and rack up	\$90,427,500
9	SBS	NYC Economic Development Corp.	Master contract: maritime, aviation & rail services	\$90,183,000
10	DSNY	IESI NY Corporation	Export municipal solid waste from Brooklyn	\$87,155,873
11	DHS	Project Renewal Inc.	Transitional residence for homeless adults	\$86,316,848
12	DCAS	Consolidated Edison Co. of NY	Purchase of steam	\$77,920,089
13	DCAS	National Grid	Purchase of natural gas (Brooklyn, Queens, S.I.)	\$77,051,309
14	DoITT	Motorola Solutions Inc.	Radio products and services for City agencies	\$75,000,000
15	ACS	St. Vincent's Services Inc.	Family foster care services	\$73,624,372
16	DOT	Colonnas Shipyard Inc.	Drydocking services for large passenger ferry boats	\$71,509,169
17	SBS	NYC & Company, Inc.	Tourism marketing consulting	\$69,715,088
18	DHS	Basic Housing Inc.	Transitional residence for homeless adults	\$68,498,239
19	DCAS	Consolidated Edison Co. of NY	Purchase of natural gas (Manhattan, Bronx)	\$67,428,622
20	DHS	CAMBA, Inc.	Transitional residence for homeless adults	\$67,398,520
21	DOT	D'Onofrio General Contracting Corp.	Protect FDR timber structures from marine borers	\$64,256,000
22	FDNY	Purvis Systems, Inc.	Maint., repair, upgrade of communications systems	\$61,870,724
23	DHS	Basic Housing Inc.	Transitional residence for homeless adults	\$57,934,135
24	DEP	WeCare Organics	Transporting, processing and marketing of biosolids	\$56,480,100
25	DDC	Delaney Associates LP	Storm & sanitary sewers	\$56,226,907
<b>Total Value</b>				<b>\$3,030,318,968</b>

To foster *economic growth and development*, the Administration continues to strengthen the City's economic infrastructure throughout the five boroughs. The Department of Small Business Services (SBS) awarded the two largest contracts of Fiscal 2012, for a combined total of \$922 million. The largest was awarded to the Economic Development Corporation (EDC) to support citywide economic development projects, and the second largest was awarded to Governors Island Corporation for economic development services on Governors Island. SBS also awarded a contract to support citywide transportation infrastructure, and a contract for tourism marketing services to keep New York City a top destination for visitors from around the world.

*Human service* investments also continue to be a major focus of City procurement. Many of the Top 25 Fiscal 2012 contracts support major social service programs, including an Administration for Children Services (ACS) foster care program, and several shelters and residences for the Department of Homeless Services (DHS).

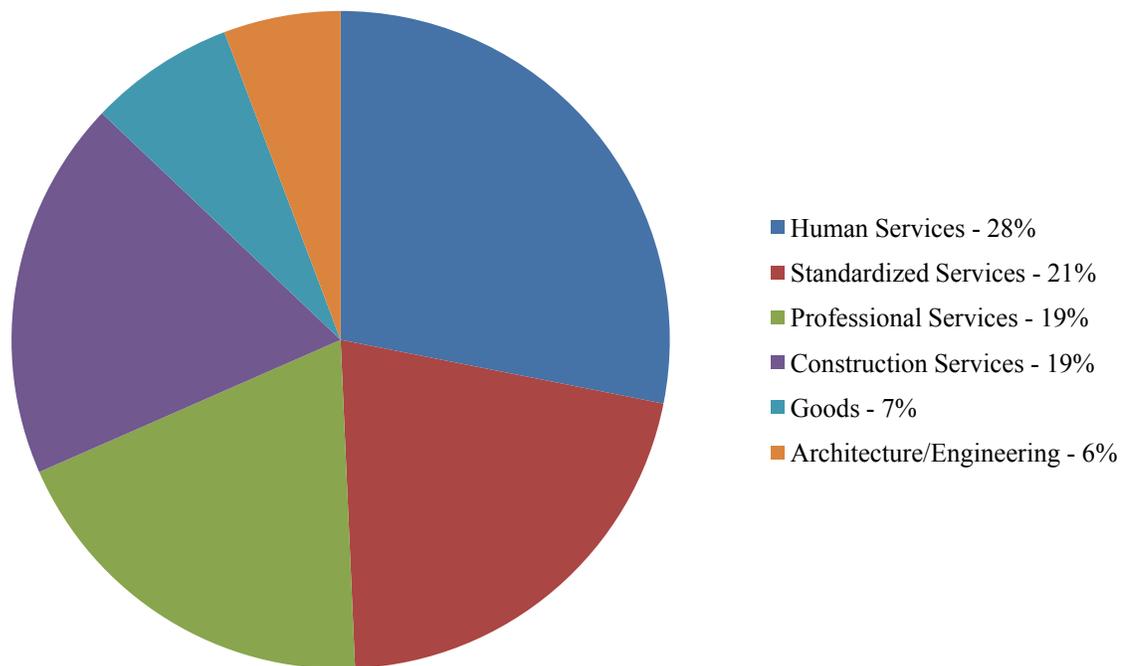
The City also made major *infrastructure* investments, as reflected in the Top 25 contracts. DDC awarded contracts for the construction of sewers and water mains. The Department of Transportation (DOT) registered a contract to repair structures under the FDR, and renewed a contract for drydocking services for large passenger ferry boats in order to lock in over \$3.5 million in savings negotiated under the City's Cost Containment initiative. FDNY and the Department of Information Technology and Telecommunications (DoITT) awarded contracts for products and services to support existing City voice communication networks.

Four of the Top 25 contracts were awarded by the Department of Citywide Administrative Services (DCAS), the City's chief purchaser of *goods and standardized services*. These contracts, for a combined \$313 million, were for fuel, heating oil and natural gas, providing heat for City buildings and keeping the City's fleet running. The Department of Sanitation (DSNY) registered three contracts for the export of municipal solid waste from Brooklyn. The Department of Environmental Protection (DEP) registered a contract for the transporting, processing, and marketing of biosolids from City dewatering facilities. And the Fire Department (FDNY) awarded a service contract for the support of their Quartermaster program, which provides protective apparel and equipment to uniformed members of the department.

## **B. Procurement by Industry Category**

The Mayor's Office of Contract Services (MOCS) tracks procurements according to six major industry categories: architecture/engineering, goods, construction services, human services, professional services and standardized services (definitions are included in the Glossary). The chart below reflects Fiscal 2012 procurement value by industry category. See Appendix A.

**Chart I-1: Dollar Value of Citywide Procurement by Industry**  
**Total Dollar Value = \$10.5 Billion**



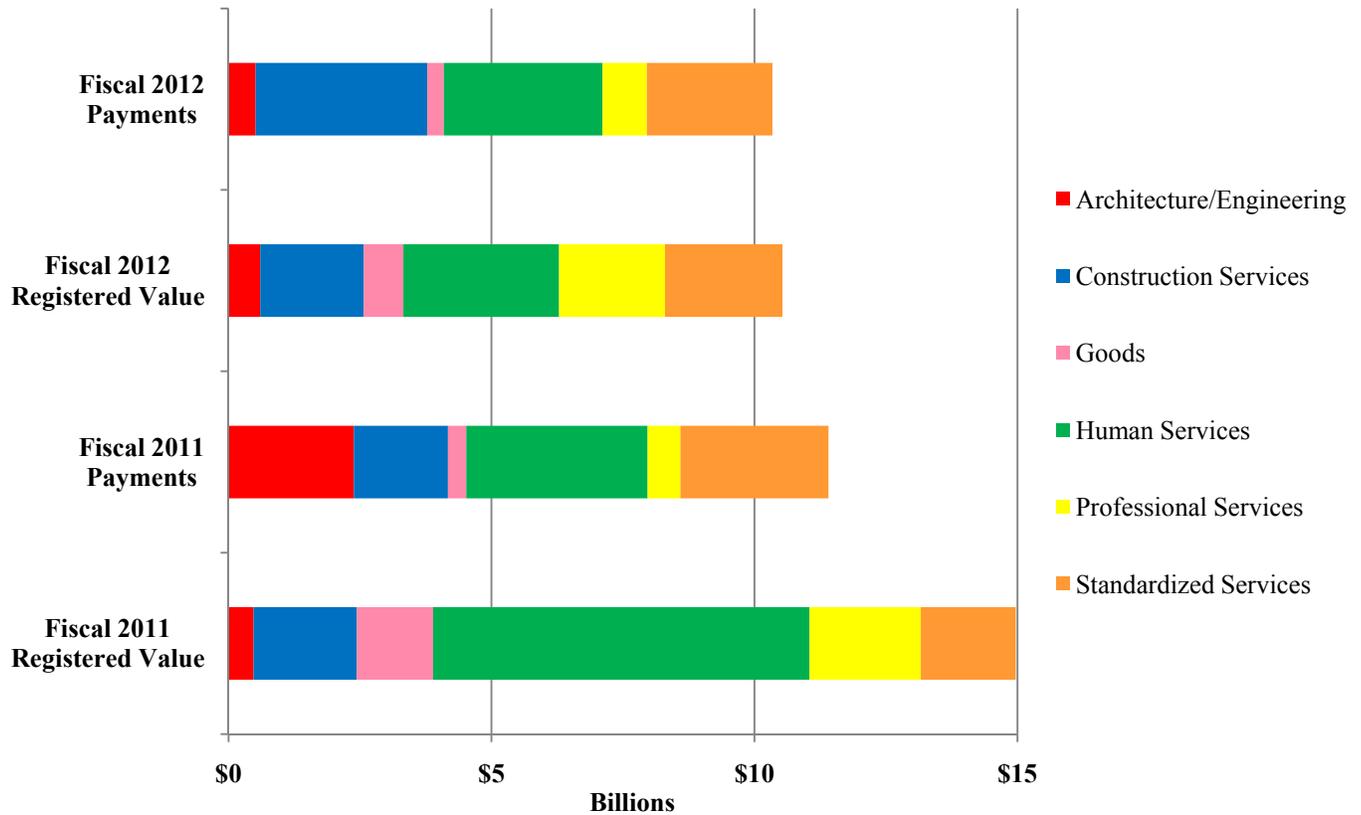
As this chart illustrates, contracts for human services comprised the largest portion of Fiscal 2012 procurement (28%). However, this percentage represents a return to historical averages; human services contracts declined from 48% of all City procurements in Fiscal 2011, which saw large contracts registered for some of the City’s major human service programs.

Procurement volumes fluctuate due to multi-year procurements, however, the portion of contract payments for goods and services delivered in each industry category remains more constant. This report typically tracks procurements by their value at registration, counting multi-year contracts entirely in the year of their initial registration. Because the proportion of multi-year awards remains relatively constant from year-to-year, this measure of contract value provides useful tracking information on procurement. Chart I-2 below provides information on the total payments made by City agencies on their contracts – both those contracts initially registered in this year and those registered in prior years but still active in Fiscal 2012.

Although the total value of Fiscal 2012 contract awards declined from Fiscal 2011, total contract payments rose slightly this fiscal year. Normal fluctuations in the contracting cycle are also evident in the differences in the relative sizes of the “slices” for each industry. Due to a large number of multi-year contract awards, the registered value of human service contracts was 48% of the total Fiscal 2011 procurement volume, almost twice as large a percentage as in Fiscal 2012, but the value of human service contract payments was approximately the same. Similarly, payments on construction contracts rose in

Fiscal 2012, even though the value of registered construction contracts remained roughly equal to Fiscal 2011.

**Chart I-2: Contract Registrations vs. Contract Payments**



### C. Size of Contracts

On the following page, Table I-2 presents overall procurement volume at various dollar values. See Appendix B for year-to-year totals for individual agencies. In Fiscal 2012, contracts for \$3 million or more totaled 77% of the overall dollar volume of citywide procurements. These larger contracts represented just over 1% of the total number of procurements made. By contrast, purchases for \$100,000 or less accounted for only 4% of the total dollar value purchased, but over 88% of the number of procurements processed.

**Table I-2: Dollar Value of Contracts by Contract Size**

Group	Fiscal 2012		Fiscal 2011		Fiscal 2010		Fiscal 2009	
	Value	%	Value	%	Value	%	Value	%
<\$0	(\$325,804,384)	-3%	(\$494,618,396)	-3%	(\$356,175,022)	-2%	(\$87,152,896)	-1%
\$1-\$100K	\$383,798,947	4%	\$369,473,060	2%	\$366,369,083	2%	\$395,136,349	3%
\$100K-\$1M	\$1,172,425,924	11%	\$1,150,658,936	8%	\$1,264,255,921	7%	\$1,172,540,171	9%
\$1M-3M	\$1,250,493,374	12%	\$1,768,765,335	12%	\$1,537,879,250	9%	\$1,367,579,730	10%
\$3M-25M	\$3,964,757,116	38%	\$5,368,642,883	36%	\$4,749,256,580	28%	\$3,904,333,698	29%
>\$25M	\$4,086,387,495	39%	\$6,803,756,808	45%	\$9,420,432,514	55%	\$6,666,004,423	50%
<b>Total</b>	<b>\$10,532,058,472</b>	<b>100%</b>	<b>\$14,966,678,626</b>	<b>100%</b>	<b>\$16,982,018,326</b>	<b>100%</b>	<b>\$13,418,441,475</b>	<b>100%</b>

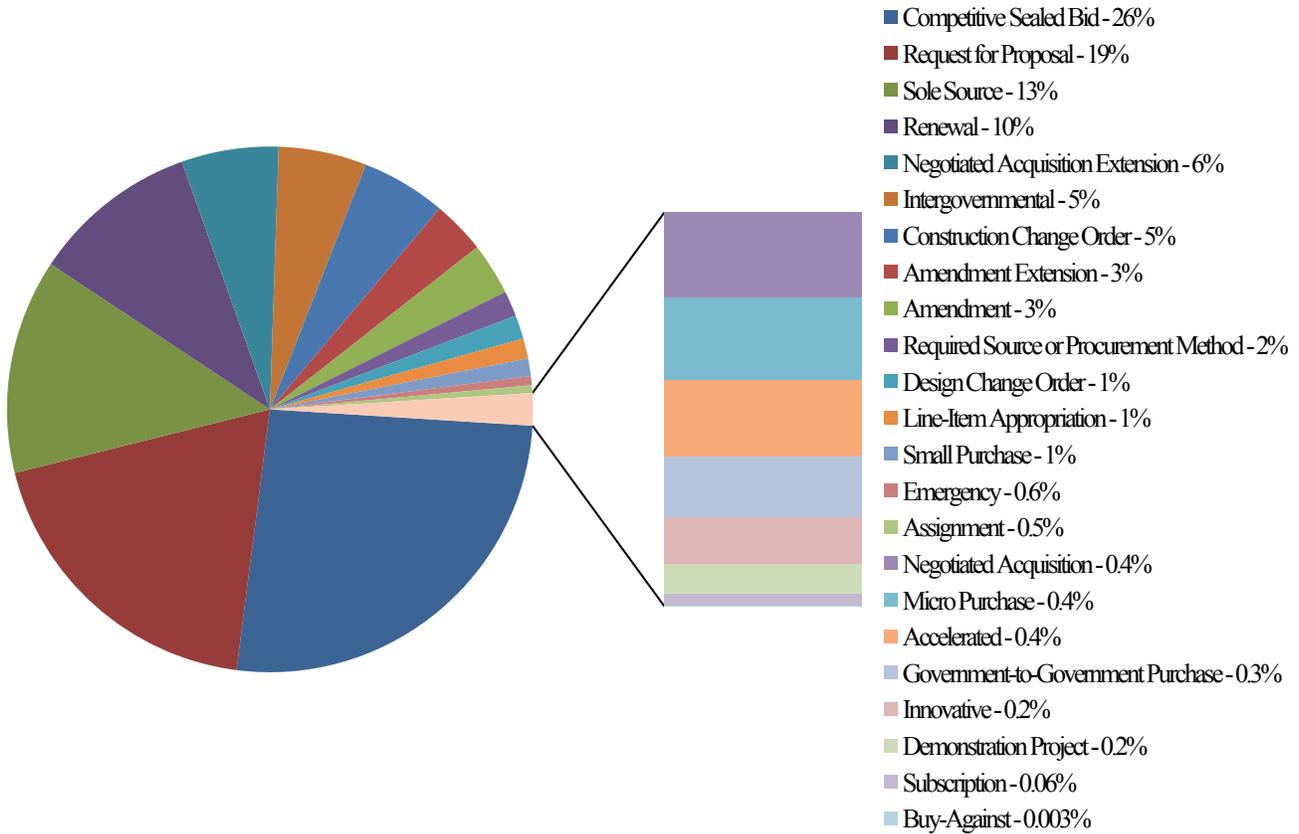
By far the most frequently used procurement method is micropurchase, which makes up 61% of the total number of Fiscal 2012 procurements, a total of 28,358 actions. But because this method reflects only purchases of \$5,000 or less, micropurchases account for a very small share of overall contract value (0.4%). Although they account for a far smaller number of procurements, Competitive Sealed Proposals (or “RFPs”) and Competitive Sealed Bids accounted for nearly half of the Fiscal 2012 procurements by value, at 45%. As Table I-2 indicates, agency procurement actions also include modifications of existing contracts, such as negative modifications that occur when an agency requires less of a good or service than it initially anticipated.

#### **D. Procurement by Method**

Chart I-3 reflects the total Fiscal 2012 procurement volume by dollar value for each of the procurement method categories tracked in this report. Agencies choose among the various methods based on their business needs and the City’s procurement rules.

By value, nearly half of all City procurements result from four competitive methods: *competitive sealed bids*, with vendors selected on a low-bid basis; *accelerated procurements*, a fast-track bid process for commodity purchases such as fuel that must be obtained quickly due to shortages or rapid price fluctuations; *competitive sealed proposals (also called requests for proposals or RFPs)*, with vendors chosen based on price and quality-based factors; and *small purchases*, a less formal competitive process for purchases valued between \$5,000 and \$100,000. Year-to-year comparisons of procurement volumes by various methods of procurement are shown in Appendix C.

**Chart I-3: Dollar Value of Contracts Citywide by Method of Procurement**  
**Total Dollar Value = \$10.5 Billion**



The next largest group of procurements, accounting for 28% of Fiscal 2012 procurement value, consists of six methods used to continue or enhance existing contracts. These include **renewals**, used when the initial contract provides specific terms for continuation, typically at the City’s option; **amendment extensions**, allowing the addition of up to one year to any current contract; **negotiated acquisition extensions**, allowing a negotiated additional term on the same basis as the initial contract; **amendments**, which allow the addition or subtraction of funds to a current contract to reflect programmatic needs; and change orders, which we classify as either **construction change orders** or **design change orders**, amending the contracts that support capital construction projects so that ongoing work can be completed.

Approximately 18% of Fiscal 2012 procurements rely on a variety of methods subject to more limited or no competition. These methods include: **sole source awards**, where only one vendor is available for the needed goods or services; **emergency contracts**, where public health or safety considerations dictate rapid response; **negotiated acquisitions**, where agencies may limit competition based on such considerations as time-sensitivity, confidentiality or the existence of very few competitors in the market; **micropurchases**, for purchases valued at no more than \$5,000; **government-to-government** contracts, where the City’s vendor is itself a government entity; **buy-against procurements** and **assignments**, which

are used when a vendor defaults, fails to fulfill its responsibilities or becomes unable to continue providing services or supplying goods; and **subscriptions** for periodicals, off-the-shelf training events, or memberships in professional organizations. Although subscription is not a new procurement method, the number and value of subscription contracts has historically been low in comparison to other methods, resulting in limited data. However, as MOCS strives to enhance its reporting capabilities and increase transparency, for the first time are able to leverage the improved tracking capabilities of the Automated Procurement Tracking (APT) system to report on subscription contracts Citywide.

Agencies also procure goods and services via selection processes based on determinations by other governmental agencies. These procurements account for 8% of Fiscal 2012 procurement value, and include: **intergovernmental procurements**, where the City “piggy-backs” on contracts held by other government agencies, typically state or federal entities; **required method** and **required/authorized source awards**, where an outside entity (also typically a state or federal agency) determines either how the City must solicit a contract or its actual choice of vendor; and **discretionary awards** (also called **line item awards**), where elected officials are authorized to designate the vendors and the amounts of the awards (see Vetting Contracts Designated by Elected Officials, page 29).

Detailed definitions of all these methods are included in the Glossary to this report.

## Innovative Procurements

In addition to the methods outlined above, to test and evaluate the feasibility of procurement methods not currently used by the City, agencies may propose an “innovative” method, as outlined in PPB Rule 3-12. An agency’s request must be approved by the City Chief Procurement Officer (CCPO).

During Fiscal 2012, DFTA completed an innovative procurement to serve seniors who have special needs, or who live in high-need community districts. The procurement began with a prequalification phase, guided by the prequalification procedure outlined in PPB Rule 3-10, and was completed by a negotiated acquisition which adhered to PPB Rule 3-04. This two-step procedure allowed DFTA to first establish a list of qualified organizations with demonstrated experience successfully serving older adults, and then issue a streamlined competitive solicitation directly to these organizations. DFTA designed the procurement method to decrease processing time, reduce the volume and complexity of paperwork required of vendors, and promote innovation by providing a vehicle for the evaluation of proposals with varying program designs.

In early 2012 DFTA awarded an Innovative Senior Center contract, worth \$2.7 million over a term of three and a half years, to Services & Advocacy for Gay, Lesbian, Bisexual and Transgender Elders (SAGE). This City contract establishes the country’s first full-time center for GLBT seniors, with services including hot meals, vibrant programming covering issues from health and wellness to workplace skills, comprehensive social services, a wide range of social activities, and leadership opportunities for GLBT seniors. In addition, SAGE will partner with community organizations in all five boroughs, improving services to GLBT seniors across the City.

## E. Competitive Procurements: Success Attracting Proposers

Competition is a primary indicator of the City’s ability to obtain the best deals for New Yorkers. We review competitiveness in competitive sealed bids and RFPs, as these procurements are open to all qualified vendors. We define a “highly competitive” procurement as one with at least three responses. In Fiscal 2012, the level of highly competitive procurements increased to 95%, ensuring City agencies can select high quality goods and services at the most competitive possible prices. Table I-3 shows year-over-year competitiveness by industry. For all categories, competitiveness levels remained high, or increased.

<b>Table I-3: Citywide Competition Level by Industry (Dollar Value)</b>				
<b>Industry Sector</b>	<b>% of Highly Competitive Procurements</b>			
	<b>Fiscal 2012</b>	<b>Fiscal 2011</b>	<b>Fiscal 2010</b>	<b>Fiscal 2009</b>
Architecture/Engineering	100%	99%	91%	87%
Construction Services	97%	98%	88%	62%
Goods	89%	87%	98%	95%
Human Services	99%	82%	95%	69%
Professional Services	92%	99%	69%	74%
Standardized Services	90%	91%	89%	97%
<b>Total</b>	<b>95%</b>	<b>88%</b>	<b>89%</b>	<b>80%</b>

## F. Emergency Procurements

When an agency must respond quickly to address unforeseen dangers to life, safety or property, it may utilize the Emergency Procurement method to meet needs for goods or services that cannot be addressed through other procurement methods.



Before conducting an emergency procurement, an agency must contact the Comptroller and the Law Department to get approval to proceed, and then begins the contracting process using the most competitive means practicable to procure the needed goods and services. The procurement’s scope of work must be specific to the goods and services required to respond to the emergency.

To assist agencies with purchasing emergency services and goods, the City's Purchasing Card (P-Card) program allows agencies to request a temporary waiver of the current \$5,000 limit on P-card purchases. The higher limit provides agencies greater flexibility and speed in purchasing goods and services. A request to increase the P-card limit during an emergency must be made to both MOCS and DCAS, and approved by the Comptroller. For more information on the P-Card program, see page 60.

### *Responding to Hurricane Irene*

When Hurricane Irene made landfall in New York City early Sunday August 28, 2011, it struck with maximum wind gusts of 58 knots and rain totals reaching 6.87 inches. Mayor Bloomberg issued five Executive Orders<sup>2</sup> to declare a State of Emergency and to ensure the safety of all residents. The EOs included instructions for mandatory evacuations from low-lying areas, alternative modes of transportation in case of disruption to the City's transportation system, and a call to action for City agencies to carry out all activities and measures needed to protect New Yorkers.

City agencies used the emergency procurement method to buy over \$19.5 million of goods and services to address flooding, damaged roadways and streets, fallen trees, and debris. OEM procured nearly \$600,000 in ambulance and bus services to provide transportation from nursing homes and hospitals located in low-lying areas. DEP used the emergency procurement method to protect and repair the upstate watershed, procuring over \$9.8 million for debris removal and emergency repairs to bridges in dams. DDC procured \$8.9 million dollars for emergency repairs to sidewalks, streets, curbs, pedestrian ramps, fire hydrants and public and private utilities under and above the ground. And DCAS procured \$100,000 worth of cots for OEM, to ensure the City had enough cots on hand to meet any additional need.

In addition to emergency procurements, the City utilized contracts already in place and available for use to respond to a natural disaster. OEM spent approximately \$5 million to replenish the emergency stockpile used to supply goods during Hurricane Irene. DPR used three existing contracts for tree removal, tree pruning, woody debris clearing and chipping, spending over \$4.9 million in services. DPR also supplied trees to DDC for replacement planting. Contractors working for DDC removed and disposed of uprooted tree stumps, repaired broken sidewalks, and planted replacement trees.

Eight agencies (DEP, DHS, DOB, DOHMH, DOT, DSNY, OEM, and DPR) used P-Cards to purchase nearly \$157,000 of goods and services related to Hurricane Irene. These agencies purchased items ranging from personal protection equipment for staff responding to flooding, to disinfectants and detergents for cleaning airbeds and blankets used at hurricane evacuation centers. P-Cards allowed agencies to make purchases quickly, avoiding any delay of response and remediation efforts by City staff.

According to Stacy Rosenfeld, Assistant Commissioner of Administration & Finance and ACCO at OEM, one of the obstacles OEM faces when conducting emergency procurements is identifying

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<sup>2</sup> From August 25, 2011 through August 30, 2011, Executive Orders 152, 153, 154, 155 and 156 were issued in response to Hurricane Irene.

vendors that have the capacity to meet the City’s need. In May 2012, OEM convened a Hurricane Irene interagency working group focused on logistics, which included the Mayor’s Office, DCAS, and OEM. This group developed recommendations based on the City’s experience responding to Hurricane Irene, including expanding staff training on emergency procurement processes, and adding to the lists of the vendors prepared to provide services during an emergency.

## G. Economic Development Corporation (EDC)

EDC, a nonprofit corporation operating under contract with the City, is the primary vehicle through which economic development services are provided by the City.<sup>3</sup> In Fiscal 2012, EDC’s procurements totaled nearly \$270 million. EDC’s procurement methods are similar to those of City agencies. These methods include public bidding (36%), RFP awards (24%), and other methods such as intergovernmental procurements, sole sources, small purchases and micropurchases (collectively 20%). EDC’s other procurements (20%) were done by means of “funding agreements” and interagency agreements, transactions similar to negotiated acquisitions or required source procurements. EDC’s selection of the business partner for the agreement is generally dictated by the commitments the City has made to support particular economic initiatives, specific institutions or redevelopment projects.

Most of EDC’s Fiscal 2012 procurements went to support construction and development projects (66%).<sup>4</sup> Another 4.7% supported professional services, including planning and economic studies and economic development-related services, as well as architecture and engineering. Finally, about 1% of EDC’s procurements entailed the purchase of goods or standardized services such as printing and mailing.

### *Sunset Park Vision Plan*

Deputy Mayor Steel has charged EDC with creating a comprehensive plan to improve conditions in the Sunset Park industrial district, located on the Brooklyn waterfront. To meet this challenge, EDC led the development of the Sunset Park Vision Plan, which



*Courtesy of EDC*

<sup>3</sup> EDC supports these efforts by conducting planning and feasibility studies, performing financial analyses, guiding projects through necessary public approvals and packaging various City programs and financing incentives. In Fiscal 2012, SBS registered a master contract for \$593 million and a maritime master contract for \$90.2 million.

<sup>4</sup> This figure includes direct construction work, construction management services, and EDC’s real estate development and property acquisition initiatives.

aims to create 11,000 jobs and eliminate 5,000 tons of annual carbon dioxide emissions by modernizing the industrial waterfront, renovating it for public use, and making it environmentally sustainable by utilizing renewable energy.

One component of this project is the redevelopment of the Bush Terminal Piers Open Space, located between 43<sup>rd</sup> and 51<sup>st</sup> streets in Brooklyn. Identified as a community priority in the late 1990s, this project will redevelop the long abandoned brown-field site to provide waterfront access, open space, and sports facilities to the Sunset Park community. To support this work, during Fiscal 2012 EDC leveraged State and Federal funding sources to award an \$8.4 million construction contract to Paul J. Scariano, Inc.

## **H. Revenue Generating Agreements**

City agencies also provide services and amenities through awards that allow private entities the right to use City-owned property in exchange for payment, provision of a public service, or both. These transactions are typically classified as either franchises, concessions or revocable consents. The City awards franchises and concessions in a manner similar to the procurement process, mainly using RFPs or competitive sealed bids. Many require public hearings; others require approval by the Franchise and Concession Review Committee (FCRC). Revocable consents follow a permitting process; the sponsoring agency conducts public hearings and MOCS oversees compliance with applicable laws and regulations. In addition to these types of agreements, on occasion the City enters into other types of revenue generating agreements, as detailed below.

### *Franchises*

A franchise confers the right to occupy or use City property, such as streets or parks, to provide a *public* service, such as telecommunications or transportation. The FCRC approved 26 franchise transactions in Fiscal 2012, including seven DoITT cable franchise renewals. The City's 60 existing franchises yielded nearly \$214.7 million in revenue, including more than \$129.5 million from cable television and more than \$51.4 million from street furniture – this total represents an increase from \$197 in franchise revenue last fiscal year.<sup>5</sup>

For instance, this Fiscal Year DoITT completed approvals of cable television franchise renewal agreements with Time Warner Cable and Cablevision Systems New York City Corporation. In addition to providing cable access channels, revenue for the City and support for the City's own telecom infrastructure, the renewals provide a range of other public benefits. In partnership with local nonprofit organizations, Time Warner Cable will create 40 public computer centers providing free broadband access to low-income populations across the city. Cablevision will provide infrastructure support to public libraries. Together, Time Warner Cable and Cablevision will build and maintain Wi-Fi hotspots in dozens of the City's parks. The companies will also bring high-speed fiber-optic cabling into non-residential

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<sup>5</sup> A comparison to prior fiscal years is shown in Appendix F.

buildings not currently being served, remedying the limited service options in some of the city's commercial and manufacturing areas.



Photo: EDC

### *Concessions*

A concession allows a private entity to use City-owned property for *private* use that serves a public purpose. Examples include pushcarts in City parks, recreational facilities such as golf courses and tennis courts, and parking lots. In Fiscal 2012, five agencies awarded 82 new concession awards, for which revenue projections were estimated at more than \$33.1 million, over the course of multi-year terms. DPR made 89% of the awards, representing 99% of the value, for uses including restaurants, snack bars and mobile food units; merchandise and marketing operations such as Christmas trees, newsstands and souvenirs; sports and recreation facilities, ice skating rinks, marinas and amusement parks; parking lots; and other types of concessions.<sup>6</sup> Agencies awarded over 85% of these concessions through competitive sealed bids or RFPs, and the rest by sole source or other methods.

During Fiscal 2012, the City collected nearly \$49 million from 584 operating concessions, up from more than \$46.6 million in Fiscal 2011. DPR took in more than \$42.4 million, with 17% of that revenue coming from golf courses, 18% from restaurants and 11% from pushcarts. DCAS collected nearly \$1.9 million from occupancy permits. EDC collected more than \$2.6 million from occupancy permits and the City's downtown Manhattan heliport. NYC & Company collected over \$1.4 million in fees for merchandise bearing City-owned trademarks and logos.

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<sup>6</sup> In addition to DPR, four other agencies awarded concessions during Fiscal 2012: NYCEDC, on behalf of DSBS; DOT; HPD; and DCAS. In addition to the 82 concession awards noted above, DPR also issued 181 short-term (less than 30 days) permits, requiring neither approval nor hearings, yielding \$568,507 in revenue. In addition, the FCRC approved five other requests to negotiate sole source concessions, two by DPR, two by DOT, and one by NYCEDC, on behalf of DSBS, that had not reached the award stage as of the end of Fiscal 2012.

This Fiscal Year, DPR awarded a concession to Central Amusement International, LLC (CAI) for the renovation, operation and maintenance of the Coney Island Cyclone roller coaster in Coney Island, Brooklyn. During each year of the fifteen-year term, the City will receive the higher of guaranteed minimum annual fees between \$200,000 and \$270,000, or 10% of gross receipts up to \$2.5 million, plus 15% of all gross receipts above \$2.5 million. Subject to DPR's prior written approval, CAI may provide additional amusement rides, activities and/or food service if space permits on the licensed premises. The concessionaire will invest a minimum of \$5.5 million for capital improvements.

### *Revocable Consents*

Revocable consents follow a permitting process; the proposed structures or facilities, often temporary, tend to be adjacent to the applicant's property, and for the sole use and benefit of the applicant, such as sidewalk restaurant tables, or a bridge over a street connecting two pieces of private property. The sponsoring agency conducts public hearings and MOCS oversees compliance with applicable laws and regulations. DOT registered 91 revocable consents, with a total projected value of nearly \$17 million, for bridges, conduits and other street and sidewalk obstructions. DCA registered 474 revocable consents for new or renewing sidewalk cafés, with a total projected value of more than \$6 million.

### *Revenue Contracts*

Although most contracts involve the City paying an outside vendor for goods or services, each year agencies also enter into revenue contracts that result in dollars flowing back to the City. Unlike franchises, concessions, and revocable consents, which typically compensate the City for the use of publicly owned space by a private entity, these revenue contracts are solicited and awarded following the PPB Rules. In Fiscal 2012, the City registered revenue contracts expected to generate approximately \$38 million per year,<sup>7</sup> including the following:

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<sup>7</sup> The figures presented here are based on projections, and assume full program implementation.

## Auto Auction

The City operates 27,000 vehicles and related equipment; including police patrol units, sanitation trucks, and fire engines. Each year up to 2,500 vehicles are salvaged and replaced with newer equipment.



*Photo: PropertyRoom*

Traditionally, DCAS held auctions for these salvage vehicles at the Brooklyn Navy Yards, and prospective buyers had to appear in person. OMB estimated that it cost the City \$1.4 million a year in overhead costs to conduct these auctions. In an effort to increase the net revenue the City gained from these vehicle auctions, DCAS entered into a “managed competition,” asking both outside vendors and existing DCAS staff to propose improvements to the auction program. The proposals were then evaluated by the Mayor’s Office allowing the City to rigorously weigh the benefits of operating auctions using City staff versus outside contractors.

PropertyRoom.Com Inc (PropertyRoom) was selected as the highest ranked proposer offering the most advantageous proposal to the City. As a national online auctioneering firm with experience conducting vehicle auctions and an existing vehicle seizure contract with NYPD, PropertyRoom offered a far larger buyer base, lower overhead costs to the City, and up to 50% higher total revenue for the City than previous auction results. Under the contract, registered by DCAS in Fiscal 2012, the City receives all gross revenue from sales, paying PropertyRoom for towing costs and a 12.5% sales commission. Early results show that revenue to the City has already increased 15% over traditional sales. And, because PropertyRoom handles towing and storage, this procurement freed up six acres at the Brooklyn Navy Yard. The new space will be used for the creation of a back lot complete with a New York City streetscape for film and television productions – supporting creative industries and the local economy, while avoiding disruptive shoots in the actual streets of New York.

## Surplus Goods

In addition to registering a contract for on-line vehicle auctions, DCAS registered a contract with the Public Group LLC to implement a pilot program to provide online public auctions of City-owned surplus goods, including office equipment, furniture, machine tools, and marine equipment. Online surplus auctions are used by other governmental agencies nationwide and have proven to be a reliable platform to turn surplus holdings into revenue. Although the contract started only recently, DCAS expects this partnership will help the City attract a broad buyer base, resulting in increased competition and nearly \$8 million in annual revenue. Other benefits from this contract include improved internal reallocation and streamlining of the City’s relinquishment process.





## II. Human Services

New Yorkers in need are helped by the efforts of the many nonprofit, and occasionally for-profit, organizations engaged by the City to provide **human services** directly to clients. Contracting to provide human services is the largest single category of City procurement this year, accounting for \$3 billion or 28% of the total contracting in Fiscal 2012.

The main agencies procuring human services contracts are ACS, CJC, DFTA, DHS, DOHMH, DYCD, and HRA. Together, these agencies account for 97% of human services contracting. Because agency decisions must account for factors other than price, such as program approach and experience, most human service procurements use the RFP method. In Fiscal 2012, new human services contracts procured through RFP accounted for \$1.3 billion or 83% of contracts newly awarded in this industry.

Because continuity of services is critical to the clients being served, many of these agencies' procurement actions are for the continuation of human services contracts. Renewals, amendment extensions, and negotiated acquisition extensions account for 45% of the human services universe for Fiscal 2012.

## A. Concept Reports

When an agency decides to initiate or substantially change a human services program, it issues a “concept report” to solicit feedback from stakeholders and other members of the public. The concept report includes the purpose of the program, the procurement timeline, the method by which proposals will be evaluated, the proposed term of the contract, funding information, and proposed requirements for vendor performance reporting.

### *The AIM (Advocate, Intervene, Mentor) Program*

In January 2012, the Department of Probation (DOP) released a concept paper for the new AIM program, with an anticipated annual funding of \$1.9 million. AIM enhances community safety through intensive mentoring and advocacy to reduce risk factors for adolescents on juvenile probation or facing institutional placement as a result of a Family Court disposition. In partnership with the Center for Economic Opportunity (CEO), DOP sought up to five qualified community-based organizations to serve adolescents in New York City.

Utilizing an intervention strategy that pairs youth with paid advocates, AIM provides structure and guidance needed for success by creating highly individualized plans with the youth and their families, helping transform attitudes and behaviors that have led to criminal activity. This approach serves young people whose needs go far beyond the traditional mentoring approach of companionship, confidence building, and minor academic, social or career guidance. DOP made contract awards to the five highest-scoring proposers, one to serve each of the five boroughs.

In its concept paper, DOP had specifically requested feedback on its proposal to include a Supported Work program component. Nine organizations submitted comments, and based on this feedback DOP replaced the Supported Work component with a Civic Engagement component, which includes opportunities for clients to participate in activities such as community board meetings, community benefit projects, cultural events, and voter registration drives.

### *Mobile Response Teams for New York City Schools*

Last fall, DOHMH released a concept paper for the Mobile Response Teams program for New York City Schools, with the goal of increasing schools’ awareness and knowledge of community-based mental health and social services. Expanding on a successful model currently deployed by DOE in the Bronx, this new DOHMH program will provide public middle schools in all five boroughs with the capacity to respond to mental health problems through staff training and consultation, linkages to community-based resources, direct crisis intervention, and prevention activities. Mobile Response Teams will be responsible for up to five schools, and will be stationed for one day per week at each school. Teams will be available to respond to crises at member schools, regardless of the team’s location on a given day. DOHMH anticipates releasing an RFP based on this concept report in Fiscal 2013.

## **B. Streamlining the Contracting Process: Division of Labor Services**

As part of Mayor Bloomberg's Nonprofit Assistance Initiative, launched in April 2009, MOCS and the Office of the Deputy Mayor for Health and Human Services have worked to eliminate onerous and unnecessary contracting requirements that take the time and resources of nonprofits away from quality service provision.

Until recently, Executive Order (EO) 50 of 1980<sup>8</sup> required nonprofits awarded a City client services contract to submit an Employment Report to SBS's Division of Labor Services, which monitors equal employment opportunity compliance by City vendors. However, upon review, SBS and the Mayor's Office determined that the information required by the Employment Report was already adequately captured in other nonprofit filings, such as filings required by the IRS and by the City's Capacity Building and Oversight review (see page 32). As a result of this review, the Mayor issued EO 159 of 2011 which amended EO 50 to exempt contractors entering into client services contracts in addition to emergency contracts from the requirement to file an Employment Review.<sup>9</sup> Nonprofit contractors were the primary beneficiaries of this change, although EO 159 also reduced the frequency of the reporting requirement for all other vendors from every 24 months to every 36 months, a change designed to ease administrative burdens.

The City held a public hearing on conforming changes to the PPB Rules necessary to implement EO 159; comments received were in support of the changes, which became effective February 5<sup>th</sup>, 2012. Since then, these changes have exempted more than 400 nonprofit vendors, representing over 600 client services contracts valued at more than \$850 million. In addition, the rule change allowed sixteen emergency contracts to proceed expeditiously; these sixteen contracts were worth over \$17 million, and were held by fourteen different vendors.

## **C. Group Purchasing: Big Savings for the Big Apple**

On October 5, 2011, Mayor Michael R. Bloomberg and Deputy Mayor of Health and Human Services Linda I. Gibbs announced that Essensa, a New York-based group purchasing organization, will offer free membership to nonprofits providing services in New York City.

This group purchasing plan is the latest addition to a set of initiatives Mayor Bloomberg first announced in 2009 to assist New York City's nonprofits. Essensa helps nonprofits stretch their budgets by

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<sup>8</sup> As amended by EOs 94 and 108 of 1986.

<sup>9</sup> Although EO 159 generally exempts contractors entering into emergency contracts or contracts for client services from the Employment Report submission requirement, the exemption is not absolute. The SBS Commissioner may require an Employment Report from a Client Services contractor if the Commissioner believes, in his sole discretion, that the Client Services agency is in violation of the equal employment requirements of City, State or Federal law.

taking advantage of discounts on thousands of widely used name-brand products and services, knowledgeable staff, advanced reporting capabilities, and customized analysis to identify more efficient buying patterns. Nonprofits that have contracts with City agencies can reduce administrative costs by buying through the group purchasing program, since these purchases have already satisfied the competitive purchasing requirements in City contracts. As of the close of Fiscal 2012, more than 200 nonprofit members with over 780 sites were taking advantage of the discounts. Cost savings examples for members include 24% savings on appliances, 25% savings on office products, 65% savings on copier leasing and 69% savings on shipping costs. Nonprofits can find out more at [www.essensa.org/NYC](http://www.essensa.org/NYC).

## **Faces of Procurement: Helping Nonprofits Save**

Overseeing the group purchasing effort is Maureen Murphy, Special Counsel for the SAVE Unit responsible for implementing shared services initiatives with New York City’s health and human services agencies – whose collective budgets total more than \$20 billion.

### **How did nonprofits hear about the savings available through Essensa? What feedback have they given?**

Beginning in October 2011, the SAVE Unit and Essensa coordinated ten orientation sessions held in all five boroughs. Essensa and SAVE also continue to schedule targeted information sessions with City agencies and their providers.

As Essensa learns more about the specific and unique needs of the New York City nonprofit community, they have been quick to explore solutions. For example, Essensa began offering insurance coverage options in May 2012, in response to an emerging need voiced by the nonprofit community. The response to this new offering has been terrific, and there are many nonprofits now utilizing the Essensa insurance broker. The SAVE Unit has also been receiving great feedback on cost savings from the group purchasing workgroup convened by Human Services Council and United Way of NYC, and have been sharing that information with the nonprofit community as part of Essensa’s recruitment efforts.

### **What are the goals of the program going forward?**

The goal has been and continues to be to help New York City’s nonprofits maximize savings that can be reinvested into their programs that provide vital services to the residents of New York City. The SAVE Unit will continue to educate the nonprofit community about the benefits of joining Essensa, and will work with Essensa to make sure we are meeting the group purchasing needs of the city’s nonprofits.



*Photo: Marcello Rios*

## D. Controlling Costs – the Central Insurance Program

The City helps meet the insurance needs of its nonprofit partners through its innovative Central Insurance Program (CIP). CIP provides human services vendors with comprehensive general liability (GL), workers' compensation (WC), disability, property, and some health insurance at no additional cost to the vendor. CIP's Fiscal 2012 agency portfolio, which covers more than 800 nonprofit providers operating at more than 1,000 sites, includes specific programs of ACS, DYCD, DFTA and HRA. As described below, there are changes on the horizon in Fiscal 2013 for both DTFA and ACS, and CIP is working closely with HRA to respond to New York State changes in the home attendant program.

As detailed in Table II-1, the City spent \$270.6 million in Fiscal 2012, to provide insurance coverage to nonprofits through CIP, down 5% from the \$285.5 million spent in Fiscal 2011. All covered providers receive coverage for disability, workers' compensation and general liability (WC/GL) – the cost for these types of insurance totaled over \$146.4 million. HRA's home attendant program accounted for more than 90% of Citywide WC/GL costs and more than 78% of Citywide disability costs. Health insurance, offered to DFTA providers and ACS providers, accounted for \$123.3 million or 46% of total CIP expenditures. In Fiscal 2013 both DFTA and ACS will no longer provide health benefits through CIP.

<b>Program</b>	<b>ACS</b>	<b>DFTA</b>	<b>DYCD</b>	<b>HRA</b>	<b>Total by Category</b>
WC/GL <sup>10</sup>	\$7,604,541	\$5,591,368	\$299,446	\$128,022,117	\$141,517,472
Disability	\$789,098	\$242,547	\$43,913	\$3,862,480	\$4,938,038
Other Coverage	\$131,488	\$266,308	\$33,458	\$103,383	\$534,637
Health Insurance	\$104,139,989	\$19,188,778	N/A	N/A	\$123,328,767
Additional Costs <sup>11</sup>	\$43,946	\$13,743	\$2,446	\$215,103	\$275,238
<b>Total by Agency</b>	<b>\$112,709,063</b>	<b>\$25,302,744</b>	<b>\$379,263</b>	<b>\$132,203,083</b>	<b>\$270,594,153</b>

In Fiscal 2012, WC and GL retrospective claims dropped by 1% from the prior year. Retrospective claims include those filed up to five years after an injury, as well as previously filed claims that remain unsettled. CIP has streamlined its business processes in order to improve efficiency, reducing its administrative role to focus more on risk management.

CIP works closely with HRA's home attendant and DFTA senior center providers, enabling them to report claims directly to the insurance carriers. This model, standard in the insurance industry, helps to reduce administrative burdens and serves CIP's goal of reducing costs by reducing late claim reporting (i.e., more than 15 days after injury). HRA's home attendant providers make up over 80% of all workers compensation claims, while DFTA senior center providers account for around 7%. To date, this

<sup>10</sup> Includes budgeted amounts for retrospective claims.

<sup>11</sup> Additional costs refer to the costs associated with the Citywide broker contract.

streamlined process continues to show dramatic improvement in claims reported to the insurance carrier within 5 days of the event, up from 44% in Fiscal 2011 to 60% in Fiscal 2012.

In 2007, because of the New York State Workers' Compensation reforms, CIP and the insurance carrier implemented a Workers Compensation Settlement Initiative. Since then, over 440 claims have been settled and closed, which as of March 2012 had reduced claims reserves by \$14.8 million. Closing claims and reducing reserves are crucial to eliminating future retrospective costs and expenses.

## E. Nutrition Standards

Mayor Bloomberg's Executive Order 122 (EO 122) committed the City to the creation of ambitious nutrition standards for food purchased and served by the City. These standards were developed and released jointly by the City's Food Policy Coordinator and the DOHMH Commissioner, and are an integral part of the City's effort to increase access to healthy foods by improving the nutritional quality of food served in its programs. City agencies are currently implementing the standards, which apply to more than 270 million meals and snacks served per year, by either the City or by City vendors, across a variety of settings, including schools, senior centers, homeless shelters, public hospitals, and correctional facilities.<sup>12</sup>



*Photo: Joe Andreano*

Some changes City agencies have made since the introduction of the standards include:

- Replacing white bread with whole wheat bread;
- Providing two servings of fruits and vegetables for each lunch and dinner served;
- And switching from whole milk to low-fat or skim milk.

Agencies have also leveraged the City's buying power to work with vendors to provide new products that meet the City's nutrition standards. For instance, DCAS collaborated with manufacturers to reduce sodium and saturated fat levels in many of their meat products, and the Department of Correction successfully worked with a manufacturer to develop a whole wheat bread recipe with increased fiber content that also met the required sodium limits.

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<sup>12</sup> The nutrition standards apply to entities, most notably the Department of Education and the Health and Hospitals Corporation, which are not otherwise covered in this report because their purchasing authority does not derive from the City Charter.

## **Faces of Procurement: Feeding the City**

Kim Kessler, the City's Food Policy Coordinator, speaks about the opportunities and challenges of using procurement as a tool to advance the City's food policy goals:

### **How does the City's food policy work intersect with procurement?**

Through our Agency Food Standards, we are working to improve the food environment in our City agencies by improving the food we offer. This means we have to improve the food we procure - and so to reach our nutrition goals we are working hand in hand with procurement staff. This involves everything from getting our standards written into contracts to sourcing hard to find lower sodium items. We are also aiming to increase the amount of food grown in New York State, with a particular focus on fresh and seasonal foods.



*Photo: Marcello Rios*

### **What have been the benefits of using procurement to advance some strategic goals?**

Procurement presents a real opportunity to move a goal from merely aspirational (“let's try to serve healthier food”) to a systematized process (“let's not purchase unhealthy items”).

### **Do you have advice for other policy professionals about working on procurement issues?**

One thing I have learned through working on this is the importance and the complexity of our procurement process. My colleagues who work on procurement have also helped me to understand the limits of procurement for advancing policy. And even where procurement is an appropriate tool, it's far from a snap-your-fingers solution. The gains the City has made in procuring healthier foods reflect the hard work of many people over the past several years.



## F. New York Food Purchasing

On August 17 of last year, Mayor Bloomberg signed Local Law 50 of 2011, which helps City agencies provide New Yorkers with fresh, healthy, and delicious food that is sustainably produced and transported. Pursuant to this law, MOCS, in consultation with the City's Food Policy Coordinator, promulgated guidelines for City agencies with strategies to procure food from New York State and other local sources (these guidelines are available at [nyc.gov/MOCS](http://nyc.gov/MOCS)).

In addition, this year MOCS and City contracting agencies conducted the first annual survey of the City's food vendors to determine the sources of food provided to the City under contract. Going forward, the City will continue to work with its vendors to better understand their existing tracking systems and capture as much sourcing information as possible from those systems.

<b>Table II-2: Results of Food Sourcing Survey</b>		
<b>From NYS Source</b>	<b>Other Source – During NYS Availability</b>	<b>Other Source – Outside NYS Availability</b>
\$8,051,148	\$7,558,194	\$1,062,004

City agencies purchase food both directly, such as DCAS's purchases of food that DOC serves in correctional facilities, and indirectly, for example DFTA's contracts for senior centers, which often include provision of food for clients within the contracted scope of work.

Table II-2 summarizes the total volume of food reported by vendors to the City as purchased during Calendar 2011 from New York State sources, and the volume of food purchased from other sources during the period of time in which that product was generally available from New York State sources. This information is broken down by food type in Appendix O,<sup>13</sup> along with a list of vendors who completed the sourcing survey at the City's request.

## G. Monitoring and Remedying Retroactivity in Human Services Contracting

The City seeks to achieve 100% timeliness in contracting. A contract is considered late or "retroactive" when its start date occurs before the contract is registered by the City Comptroller. Retroactivity may cause cash flow and service continuity problems for human services vendors because the City cannot pay the vendors prior to registration, although the vendors are providing services.

MOCS evaluates agencies for compliance with timeliness benchmarks for renewals and extensions (amendment extensions and negotiated acquisition extensions), as well as RFP awards for existing programs, i.e., awards that are not for new or substantially-modified programs. In all cases, when agencies fail to register contracts on time, the nonprofit providers must find the resources to pay for salaries, rent and insurance as they continue to serve clients, even though their City payments are late because their contract has not been registered.

<sup>13</sup> The data presented here also includes "other" food types not tracked pursuant to Local Law 50. These food types are not included in Appendix O.

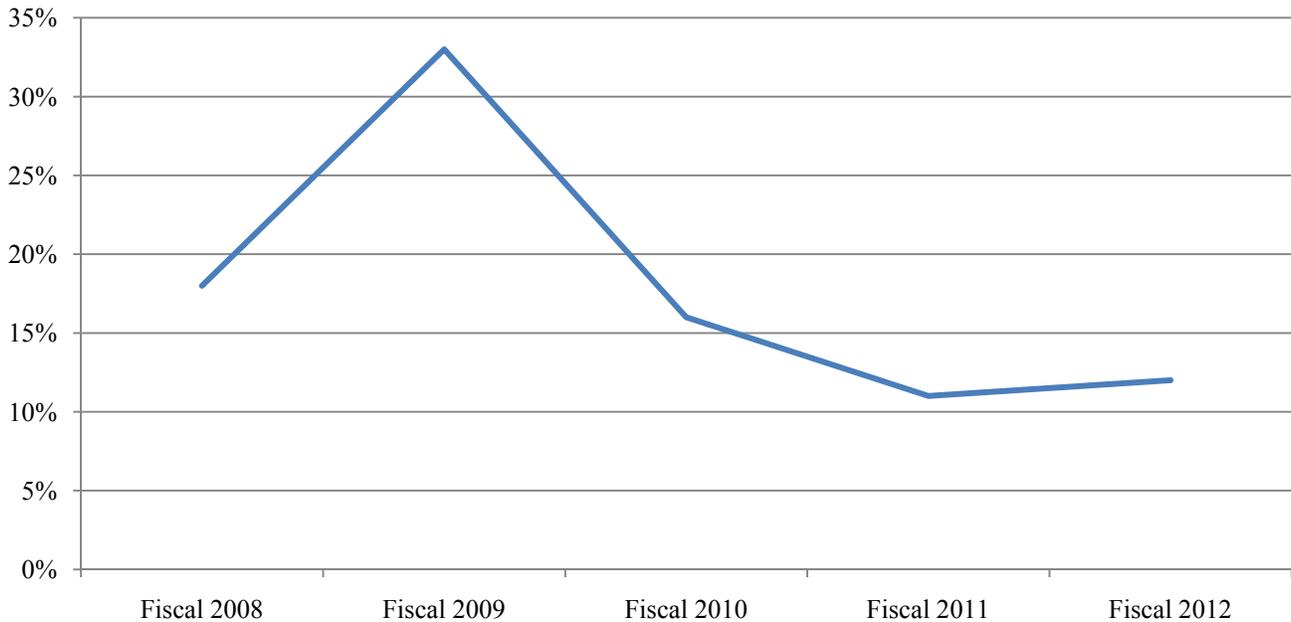
<b>Table II-3: Fiscal 2012 Major Human Service Agencies Overall Retroactivity for Contract Continuations</b>									
<b>Agency</b>	<b>Fiscal 2012</b>					<b>Percent Retroactive by Dollar Value</b>			
	<b>All Continuations</b>		<b>Retroactive Continuations</b>			<b>Fiscal 2012</b>	<b>Fiscal 2011</b>	<b>Fiscal 2010</b>	<b>Fiscal 2009</b>
	<b>Count</b>	<b>\$ Value</b>	<b>Count</b>	<b>\$ Value</b>	<b>Average Days Retro</b>				
ACS	251	\$353,227,580	65	\$292,704,533	22	83%	23%	69%	89%
DFTA	261	\$173,809,416	81	\$75,846,732	21	44%	36%	9%	10%
DHS	50	\$421,208,103	18	\$182,016,688	32	43%	37%	34%	52%
DOHMH	129	\$124,294,434	24	\$20,692,248	44	17%	44%	43%	36%
DYCD	610	\$120,142,145	316	\$76,294,850	54	64%	29%	64%	54%
HRA	69	\$176,722,567	30	\$98,464,062	42	56%	69%	91%	84%
All Other Agencies	73	\$52,147,065	56	\$42,353,612	65	81%	55%	73%	97%
<b>Total</b>	<b>1,443</b>	<b>\$1,421,551,310</b>	<b>590</b>	<b>\$788,372,725</b>	<b>45</b>	<b>55%</b>	<b>29%</b>	<b>61%</b>	<b>64%</b>

Agency performance on this indicator remained consistent with last year’s performance. As shown in Table II-3, for contract continuations that were retroactive, the average number of days of retroactivity increased by less than 10% to 45 days in Fiscal 2012, compared to 41 days in Fiscal 2011.

A more significant indicator than overall retroactivity is the level of “long-term” retroactivity, defined as delays longer than 30 days. When agencies are able to register their contracts very soon after their start dates (i.e., within the first 30 days), payments to vendors typically do not lapse. Thus, to more accurately review agencies’ performance, MOCS focuses on the rates of “long-term retroactivity,” i.e., delays of longer than 30 days.

Here, the results are mixed. As Chart II-1 shows, the six agencies processing the majority of the City’s human services programs remained consistent and posted a 12% rate of long-term retroactivity, compared to 11% in Fiscal 2011.

**Chart II-1: Major Human Services Agencies: Long-Term (>30 Days) Contract Retroactivity**



MOCS will continue to work closely with all of the human services agencies to mitigate and correct late contracting patterns, to ensure that any shortfalls that burden nonprofit providers can be swiftly addressed via the use of the City’s now much-expanded cash flow loan fund, administered through the Fund for the City of New York.

## **H. Vendor Loan Fund**

The Returnable Grant Fund (RGF) was created in 1992 to help nonprofit organizations avoid cash flow deficits caused by expenses incurred after a contract is submitted to, but before it is registered by, the City Comptroller. Since its inception the RGF has made over 3,803 interest-free loans, totaling more than \$300 million. The RGF is administered by the Fund for the City of New York in conjunction with the Mayor’s Office of Contract Services. Loans are given to vendors that meet the program’s eligibility criteria and can demonstrate a short term cash flow need.

**Table II-4: Returnable Grant Fund Loans, Top Five Processing Agencies by Dollar Value**

Fiscal 2012			Fiscal 2011			Fiscal 2010		
Agency	Value	Count	Agency	Value	Count	Agency	Value	Count
DHS	\$8,348,782.88	16	HRA	\$10,343,771	22	ACS	\$14,634,078	68
DYCD	\$4,727,090.04	40	ACS	\$8,276,006	61	CJC	\$3,537,459	22
DFTA	\$4,470,237.03	22	CJC	\$7,095,039	17	DYCD	\$3,305,021	42
CJC	\$2,854,095.64	12	DHS	\$5,501,036	13	DHS	\$2,801,516	4
DOHMH	\$2,015,282.95	7	DYCD	\$4,583,862	35	HRA	\$1,108,143	4
Top Five	\$22,415,488.54	97	Top Five	\$35,799,714	148	Top Five	\$25,386,217	140
All Others	\$3,904,851.69	27	All Others	\$6,975,086	56	All Others	\$3,992,153	46
<b>Total</b>	<b>\$26,320,340.23</b>	<b>124</b>	<b>Total</b>	<b>\$42,774,800</b>	<b>204</b>	<b>Total</b>	<b>\$29,378,370</b>	<b>186</b>

In April 2009, Mayor Bloomberg launched the Mayor’s Nonprofit Assistance Initiative to support nonprofits in times of economic hardship. On July 1, 2009, the amount available for lending by the RGF increased by 150%, from \$8 million to \$20 million. In addition, the eligibility criteria for loans were expanded to permit nonprofits to obtain loans during any stage of the City’s contracting process. Vendors experiencing delays in funding from New York State contracts, and that have an expense funding relationship with the City, are also eligible. As detailed in Table II-4, these expansions allowed the RGF to make 124 loans to 85 vendors in Fiscal 2012, totaling \$26.3 million. These totals are down from the prior fiscal year, representing a return to typical levels after the significant increase in total human service procurement volume in Fiscal 2011.

## **Faces of Procurement: Managing Nonprofit Finances**



*Photo: Fortune Society*

JoAnne Page is the President and Chief Executive Officer of the Fortune Society, a nonprofit leader in the criminal justice field providing innovative programs to create alternatives to incarceration and assist former prisoners reintegrate into society. The Fortune Society has an annual budget of approximately \$19 million, and receives funding from Federal, State and local sources, as well as private foundations and other nonprofits that share their mission. In Fiscal 2012, the City alone had active contracts with The Fortune Society, totaling \$18.3 million over multi-year terms. The contracting agencies included CJC, HRA, DOC, DYCD and DOHMH.

JoAnne spoke with Jenny Way, the City's Nonprofit Contract Facilitator, about how the Returnable Grant Fund supported the Fortune Society by loaning the nonprofit vendor a total of \$2 million, secured by City and State contract receivables.

**What was the cash flow need that prompted you to apply for cash flow assistance through the Returnable Grant Fund loan at the beginning of Fiscal 2012?**

We rely on a line of credit in order to continue to provide services in spite of any cash flow problems resulting from delayed funding from various sources. However, following the financial crisis in 2008, the bank that provides our line of credit imposed a requirement that we avoid using the line of credit for thirty consecutive days each year. Since we were still facing delayed funding, the City loaned us the money to support the operation of essential programs.

**What was the process like to apply for and receive loans through the RGF?**

This was a really urgent situation, and MOCS stepped up beautifully to let us borrow through the fund. I have never before seen better coordination from a government partner; it was a heroic effort. MOCS staff combed through receivables to identify the amounts we could borrow against.

## I. Prompt Payment

Under PPB Rule 4-12, MOCS is required to determine whether any City agencies have fallen sufficiently short of the long-term retroactivity benchmarks, such that they must be required to make interest payments to vendors for costs incurred as a result of late registrations. DYCD and HRA both posted high rates of long-term retroactivity for Fiscal 2012; however, so far they have both achieved better rates of on-time submission for their Fiscal 2013 contracts.

While it is important to ensure that agencies are held accountable for delays that they can and should control, it is equally important to note that any funds an agency may use for the payment of interest would reduce available funds for program services. In order to prevent losses of much-needed programmatic funding, even where MOCS has found that particular agencies have registered their contracts with unacceptable levels of lateness, MOCS generally addresses the impacts on providers through the provision of no-interest loans, rather than through mandates for the payment of interest.

Although the issue is most pressing for human services vendors, payment delays to contractors in any sector can disrupt their business operations and impose costs that are ultimately passed back to the City. To encourage timely payment, PPB Rule 4-06 requires agencies to pay interest to contractors in cases of payment delays. To measure agency success in this area, MOCS tracks the amount of interest each agency is obligated to pay. In Fiscal 2012, the net interest paid by agencies citywide totaled \$808, a negligible figure relative to overall procurement volumes.

## J. Vetting Contracts Designated by Elected Officials



Some nonprofits receive contract awards because they are directly designated for such awards, termed “discretionary” or “line item” contracts, by the City Council or a Borough President.<sup>14</sup> Although the amount of these awards is a small percentage of the total procurement volume, and strict contract requirements apply, these awards recognize the connection between local elected officials and the communities they represent. Discretionary awards support large institutions and small nonprofits alike with expense funding that is processed via line item contracts or grants, or capital funding that results in a grant, contract or funding agreement.

For example, the City Council allocated seven Fiscal 2012 awards to Central Astoria Local Development Coalition, totaling \$89,151. Since 1979, Central Astoria Local Development Coalition has been dedicated to preserving and enhancing the neighborhood of Astoria as a vibrant, affordable, harmonious, and desirable community in which to live, work, and do business. One of these awards, a \$35,000 award managed by the Department of Small Business Services, provided for tree guards, seasonal street cleaning, a street fair, and the publication and distribution of two newsletters.

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<sup>14</sup> Section 1-02(e) of the PPB Rules authorizes awards “to community-based not-for-profit organizations or other public service organizations identified by elected City officials other than the Mayor and the Comptroller.”

In Fiscal 2012, City agencies processed a total of nearly \$149 million in discretionary line item contracts, amendments and grants. This includes awards allocated and cleared in Fiscal 2012, awards allocated and cleared in previous years, and awards allocated through the capital budget.

<b>Table II-5: Top Ten Agencies Administering Line Item Awards</b>								
<b>Top Ten Agencies</b>	<b>Expense Awards from Fiscal 2012</b>		<b>Expense Awards from Prior Years</b>		<b>Capital Awards</b>		<b>Total</b>	
	<b>\$</b>	<b>#</b>	<b>\$</b>	<b>#</b>	<b>\$</b>	<b>#</b>	<b>\$</b>	<b>#</b>
EDC <sup>15</sup>	N/A	N/A	N/A	N/A	\$89,231,221	10	\$89,231,221	10
DYCD	\$35,331,589	1,645	\$11,224,717	726	N/A	N/A	\$46,556,305	2,371
DFTA	\$22,697,018	765	\$2,705,518	108	N/A	N/A	\$25,402,536	873
DHMH	\$16,340,958	287	\$4,782,574	96	\$6,453,719	6	\$27,577,251	389
DCLA	\$8,755,319	721	N/A	N/A	\$2,048,917	4	\$10,804,236	725
SBS	\$7,443,100	117	\$549,000	18	N/A	N/A	\$7,992,100	135
CJC	\$6,525,029	34	\$5,337,907	21	N/A	N/A	\$11,862,936	55
DDC	N/A	N/A	N/A	N/A	\$5,053,130	19	\$5,053,130	19
HPD	\$6,393,472	158	\$607,294	3	N/A	N/A	\$7,000,766	161
DHS	\$2,400,000	7	N/A	N/A	N/A	N/A	\$2,400,000	7
Other	\$3,606,745	132	\$660,952	5	N/A	N/A	\$4,267,697	137
<b>Total</b>	<b>\$109,493,230</b>	<b>3,866</b>	<b>\$25,867,962</b>	<b>977</b>	<b>\$102,786,987</b>	<b>39</b>	<b>\$238,148,179</b>	<b>4,882</b>

Since discretionary award recipients are chosen directly by elected officials, the competition requirements of the PPB Rules do not apply, making the vetting process crucial. As part of this process, the City Council requires nonprofits seeking more than \$10,000 to demonstrate that they are qualified to provide services. This “prequalification” process is initiated through a filing with DYCD, and is overseen by MOCS; the relevant agencies overseeing each program area make the substantive determinations as to whether each applicant is qualified. Organizations receiving \$10,000 or less are vetted by Council staff. To facilitate contract processing, MOCS distributes a consolidated list of all cleared awards to agencies as reviews are completed. In addition, as a result of a directive from the Speaker of the City Council, each funded organization receiving over \$10,000 in cumulative City Council discretionary funding must have a member of its senior staff or board of directors attend a MOCS-sponsored Capacity Building Training session.<sup>16</sup> These sessions bring together experts to help nonprofits expand their capacity in fundraising, leadership skills, board development, internal controls, the City contracting process, legal compliance, nonprofit lobbying and leadership development.

<sup>15</sup> The figures presented for EDC reflect the total registered value of the award, aggregating funding from sources in addition to City Council Members and Borough Presidents.

<sup>16</sup> Nonprofit organizations that receive over \$1 million in programmatic funding from City agencies are exempt from the training mandate as they are reviewed by MOCS’s Capacity Building and Oversight unit (see page 32). In addition, large nonprofits may apply for a waiver of the mandate based on their in-house expertise in the areas covered by the training.

In Fiscal 2012, the City Council allocated \$119 million in expense funding through over 5,000 individual awards. Agencies processed these awards as efficiently as possible once the vetting process was completed, often bundling multiple awards into one contract or amending an existing contract. To speed contract processing for qualified organizations, those that were prequalified in a prior year were required simply to certify to their contracting agency that no material changes in programming or key staff had occurred since their last submission of an application. Any changes that could affect prequalification status were required to be disclosed.

MOCS clears these awards as quickly as possible, but delays may occur, for example, when awardees become delinquent with applicable State Charities Bureau registration and annual filing requirements. Nevertheless, by the end of Fiscal 2012, MOCS had succeeded in clearing 96% of this year’s discretionary awards, and agencies had completed registration of 84% of the value of those awards, slightly above last year’s 83% completion rate.

<b>Table II-6: Fiscal 2012 Top Five Agencies Discretionary Council Expense Allocations</b>			
<b>Agency</b>	<b>Council Allocation Value</b>	<b>Cleared Allocation Value</b>	<b>Value Processed in Fiscal 2012</b>
DYCD	\$42,866,793	\$40,492,956	\$34,913,548
DFTA	\$14,855,844	\$14,156,986	\$10,897,936
DOHMH	\$20,839,243	\$19,411,323	\$15,217,141
CJC	\$11,915,399	\$11,877,274	\$6,525,029
DCLA	\$8,877,497	\$8,744,359	\$8,744,359
Top 5 Subtotal	\$99,354,776	\$94,682,898	\$76,298,013
Other Agencies	\$19,727,451	\$19,202,628	\$19,688,317
<b>Total</b>	<b>\$119,082,227</b>	<b>\$113,885,526</b>	<b>\$95,986,331</b>



## K. Nonprofit Capacity Building

There are 27,015 nonprofit organizations in New York City registered with the IRS under section 501(c)(3) of the Internal Revenue Code; approximately one tenth (2,666) of these organizations receive contract or grant funds from the City. These City-funded nonprofits provide many of the client and community services that New Yorkers rely on in tough times. In fact, government-funded fee-for-service contracts constitute the largest source of funding for nonprofits throughout New York City. City agencies alone processed a total of \$3.7 billion in contracts and grants with nonprofits in Fiscal 2012.

The Capacity Building and Oversight (CBO) initiative, launched by MOCS in 2007, provides dedicated technical assistance to the City’s nonprofit vendors. Over the last five years, MOCS has supported the City’s nonprofit partners through a free training program, the CBO Review program, and a helpdesk for nonprofits to access instant assistance. In Fiscal 2012, CBO staff responded to over 7,000 requests for nonprofit assistance.

CBO conducted twelve nonprofit training sessions during Fiscal 2012, attended by a total of 434 nonprofit leaders and staff from City agencies charged with working with nonprofits. Two types of trainings were provided: (1) full-day

“Capacity Building Trainings,” which are funded by the New York City Council and combine comprehensive compliance information with skill-building workshops, and (2) half-day topical trainings through the Procurement Training Institute ([see page 79](#)). Training topics and attendees are listed in Table II-7.

<b>Table II-7: Attendance at Fiscal 2012 Capacity Building Trainings</b>	
<b>Training Topic</b>	<b>Attendees</b>
Best Practices in Human Resources	17
Lobbying and Nonprofit Compliance	9
Board Development: Oversight and Effective Governance	3
Proposal Writing	24
Administering the Returnable Grant Fund	8
Contracting with NYC: Current Issues	28
Capacity Building Training for Council Funded Community Partners <sup>17</sup>	345
<b>Total</b>	<b>434</b>

As part of the CBO initiative, MOCS conducts reviews of nonprofit providers’ internal controls, governance structures, and fiscal oversight practices. To avoid imposing delays in the contracting process, reviews are not linked to particular contract awards. Nonprofits holding \$1 million or more in City contracts are selected by CBO through a randomized process, although CBO also reviews smaller organizations that request a review, or that are referred to CBO by City agencies. Of the 1,873 nonprofits holding contracts in Fiscal 2012, only 556 met the \$1 million CBO threshold. However, the value of these 556 nonprofits’ contracts makes up nearly 98% of the value of all open contracts with the nonprofit sector.

<sup>17</sup> This class was offered six times during Fiscal 2012.

In Fiscal 2012, CBO opened 5 new reviews and completed 51 reviews, most of which had been opened in prior years. Additional reviews remained active as of the close of Fiscal 2012 as organizations were still in the process of implementing CBO recommendations. Recommendations may include improved board structure and governance policies, stronger financial controls, stricter conflicts of interest and other organizational policies, and best practices for executive compensation approvals. Many recommendations are intended to be implemented over a period of time, particularly those that require adoption by a board of directors. CBO reviews closed in Fiscal 2012 had an average duration of two and a half years. Since the program began, CBO has opened reviews of 443 nonprofits, and completed 220 of those reviews.

In addition to its regular reviews, CBO provides an important oversight function when the City has serious integrity concerns about a vendor. In such cases, MOCS, CBO and the contracting agencies may work with the vendor to establish a Corrective Action Plan (CAP) that addresses the City's concerns. (Often the CAP includes a requirement for a nonprofit vendor to complete a CBO review.) Once the CAP is in place, CBO helps make sure the vendor stays in compliance with the CAP's terms. In Fiscal 2012, MOCS and CBO helped develop four new CAPs. In total, CBO is currently overseeing compliance for nine CAPs, including CAPs put in place in prior fiscal years.

## **CBO Highlight: Strong Place Day Care**

CBO reviews are conducted for vendors that hold City human service contracts valued at \$1 million or more in aggregate, and generally involve correspondence and conversations over a significant length of time, depending on the type of recommendations the nonprofit agrees to implement. As part of a random group of nonprofits that met the \$1 million threshold, CBO initiated a review of Strong Place Day Care Center, Inc. Established in 1970, this Brooklyn-based nonprofit organization provides child care services and is being recommended for an award to fund 270 seats at three sites as part of the competitive selection process for the City's Early Learn NYC program.



*Photo: Strong Place Day Care.*

CBO staff found that the organization was already operating with many “best practices” in good governance and fiscal management. However, Strong Place Day Care had not memorialized these practices in written policies, an important internal control that supports the sustainability of these good practices as an organization grows and staff change.

CBO made eight recommendations to improve the organization's financial controls, board structure and legal compliance: 1) Develop and adopt a Financial Policies and Procedures Manual, 2) Document the employee loan policy, 3) Develop and adopt a Statement of Ethics or Code of Conduct, 4)

***“Strong Place Day Care is proud of its track record of educational excellence and fiscal responsibility for more than 40 years. Our liaison with CBO helped us to update our by-laws and financial policies as well as to provide suggestions regarding new best practices policies... We are excited about our upcoming expansion and the opportunity to provide services to more families in our community.”***

***- Loraine Pennisi, Director, Strong Place Day Care Center***

referred the organization to a source for pro bono legal assistance to advise the board on its review of the by-laws. Strong Place Day Care Center's board was instrumental in the completion of the CBO Review process and took the lead in ensuring full implementation of the best practices CBO recommended.

Develop and adopt a Document Retention Policy, 5) Develop and adopt a Whistleblower Policy, 6) Develop and adopt an overall budget separate from ACS program budgets, 7) Revise corporate by-laws to ensure compliance, and 8) Elect a Treasurer. CBO provided sample policies and budgets to assist Strong Place Day Care Center, and



*Photo: Marcello Rios*

### **III. Construction**

The City of New York is responsible for 6,300 miles of road; almost 800 bridges, tunnels, and related structures; 19 reservoirs; 6,500 miles of water mains; 7,400 miles of sewer pipes; 14 wastewater treatment plants; 1,700 parks covering 29,000 acres; 58 waste transfer stations; 50 City-owned office buildings; and 14 corrections facilities. In addition, the City supports the renovation and construction of hundreds of thousands of private residential units and dozens of cultural facilities. In order to meet these design, construction, and renovation needs, in Fiscal 2012 the City contracted for \$2.8 billion of **construction services** and **architecture/engineering services**.

The City's construction portfolio is primarily managed by eight agencies: DDC, DEP, DPR, DOT, DCAS, DOC, DSNY, and HPD. Together these agencies were responsible for 99% of all construction and architecture/engineering contracts in Fiscal 2012. In order to procure these services, agencies use a variety of methods. The most important for construction services is competitive sealed bidding, which accounted for 96% of all new contracting in that industry. In architecture and engineering, the predominant method of procurement is RFP, accounting for 90% of new contracting.

On any construction project, the City has to be able to respond to changes in conditions, necessary changes in scope, and other unforeseen circumstances. In order to do this, agencies process change orders to modify the terms of contracts. Change orders can add or subtract money from the value of the contract and extend or reduce the term of the contract being modified. In Fiscal 2012, agencies processed almost 2,600 construction and design change orders worth over \$700 million.



## A. PlaNYC

On Earth Day 2007, Mayor Bloomberg announced PlaNYC, a broad initiative to enhance New York City's livability and sustainability through 2030 and beyond. Updated in 2011, PlaNYC establishes ambitious goals in the areas of land, water, transportation, energy, air and climate change, outlining 132 individual initiatives. Highlighted below are two Fiscal 2012 contracts that contribute to the PlaNYC effort:



### *Green Infrastructure Demonstration Projects*

New York City has a combined sewer system comprising approximately 61% of its sewer infrastructure, which means that during heavy rains sewage may be discharged into the city's waterways. Since the 1980s, DEP has undertaken projects to reduce or abate these Combined Sewer Overflow (CSO) events. To further this goal, DEP recently revised a Consent Order with the New York State Department of Environmental Conservation, which outlines Green Infrastructure Demonstration Projects in three priority watersheds: 26th Ward, Newtown Creek, and Bronx River.

In each of these areas, DEP will create comprehensive green infrastructure improvements within a target area, systematically monitoring their impact reducing the levels of rainwater in the sewers, and reducing the chance of a CSO. During Fiscal 2012, DEP awarded J. Pizzirusso Landscaping Corp. an \$880,800 competitive sealed bid contract to install green infrastructure in the 26<sup>th</sup> Ward, a 23-acre watershed that discharges into Jamaica Bay. These improvements include porous pavement, as well as bioswales that use specific plants, trees and engineered soil to capture rainwater before it enters the sewers, helping stop pollutants from entering the City's waterways.

### *Standardized Pedestrian Wayfinding System*

A coordinated pedestrian information network, known as "wayfinding," will help pedestrians crack the code for traveling to, from and around the city's neighborhoods. By providing clear, readable signs, pedestrians will be able to better orient themselves to determine how long it takes to walk to key locations. This initiative is a critical first step in making New York City's world-class streets easier to

navigate and even more accessible for New Yorkers and visitors alike, improving mobility whether on foot, on a bike, in a car, or taking mass transit.

In Fiscal 2012, DOT awarded Penta City Group, JV a contract for \$12.4 million to implement a Standardized Pedestrian Wayfinding System. In addition to promoting walking as a healthy and easy activity, a pedestrian information system can relieve overcrowding on mass transit by highlighting walking as a mode of both choice and convenience. It also encourages exploration, and with it the potential to boost profits for local businesses from increased foot traffic. Additionally, the system strengthens the goals outlined in PlaNYC and DOT’s strategic plan, enhancing public space while helping to engineer a greener, greater New York City.

To learn more about these and many other PlaNYC efforts, log on to [nyc.gov/PlaNYC](http://nyc.gov/PlaNYC).



## B. Buying Sustainably



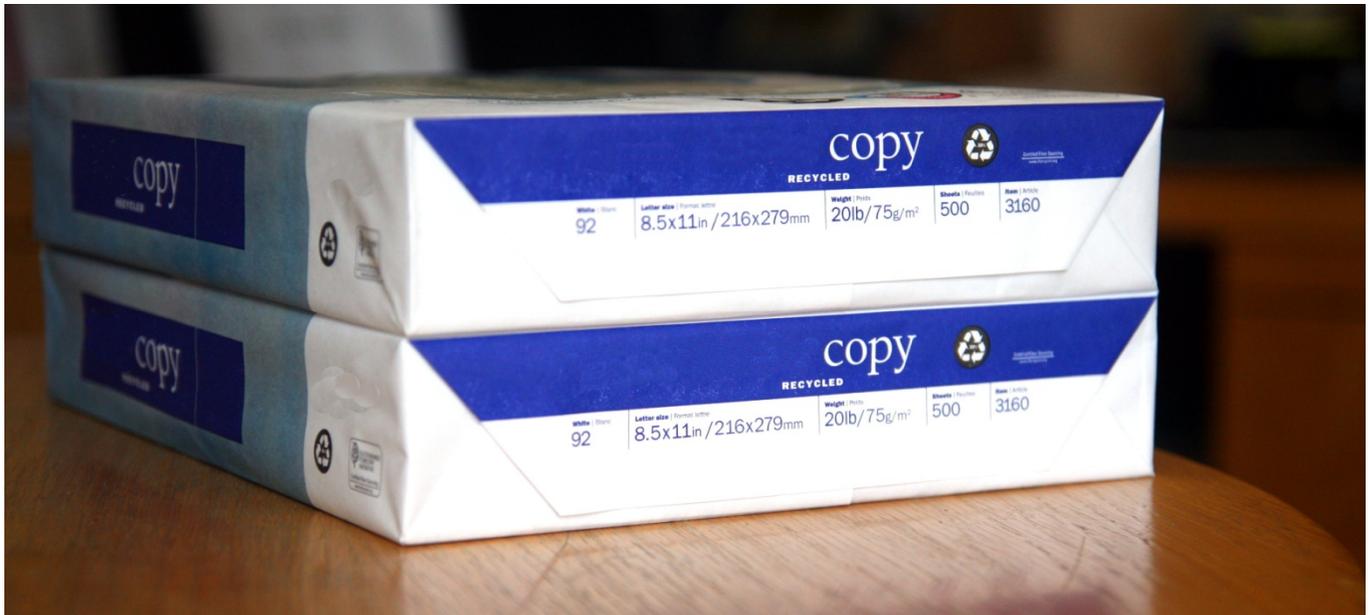
Procurement supports the Administration’s efforts to promote a sustainable New York City in multiple ways. Not only do specific procurements advance the goals of the City’s innovative PlaNYC (see above), but various local laws ensure that sustainability is considered for all relevant procurements.

<b>Table III-1: Fiscal 2012 EPP Goods</b>	
<b>Products</b>	<b>Value</b>
Carpeting	\$152,976,413
Paper products	\$7,466,208
Architectural Coatings	\$196,644
Miscellaneous Products – Non-Construction	\$51,479
<b>Total</b>	<b>\$160,690,744</b>

### *Environmentally Preferable Purchasing (EPP)*

Pursuant to Local Law 118 of 2005 (LL 118), City agencies are required to meet environmental standards, such as minimum recycled content, when purchasing particular categories of goods. Table III-1 details the value of these EPP goods purchased by the City in Fiscal 2012. A detailed listing of goods contracts covered by the EPP standards is included in Appendix E. (See Chapter IV for more information on City goods purchasing.)

City agencies also procure EPP goods indirectly, by requiring City construction contractors to use goods that meet EPP standards.<sup>18</sup> During Fiscal 2012, City agencies awarded construction contracts valued at more than \$197 million that included at least one of fourteen possible EPP specifications. This total includes more than \$72 million in contracts with specifications for Energy Star products, over \$104 million in contracts with specifications for EPP-compliant lighting equipment, and nearly \$84 million in contracts with specifications minimizing the hazardous content of architectural coatings.<sup>19</sup> A detailed list of these contracts is included in Appendix E.



*Photo: Marcello Rios*

Although they are not subject to EPP reporting requirements, most of the City’s largest capital projects are covered by the more comprehensive Green Buildings Law, Local Law 86 of 2005 (LL 86), with specific requirements for green construction, energy cost reduction and water conservation.<sup>20</sup> In Fiscal 2012, City agencies registered over \$784 million worth of contracts that were subject to LL 86.

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<sup>18</sup> Local Law 118 requires the City to conduct a survey once every four years of construction vendors purchasing EPP products. Agencies request purchasing data from vendors with relevant open construction contracts not subject to the more comprehensive LL 86. Although vendors are not required to report this information, many vendors comply with this request. For contracts open in Calendar 2011, responding vendors reported a total of \$782,655 of products purchases under EPP standards. This subtotal consists of \$377,351 in miscellaneous products such as carpeting, \$228,810 in HVAC equipment, \$88,104 in lighting products, \$35,372 in plumbing fixtures, and \$1,000 in appliances.

<sup>19</sup> Some contracts use specifications for more than one category.

<sup>20</sup> Projects that cost \$2 million or more and entail new buildings, additions to existing buildings and/or substantial reconstruction, must achieve LEED® Silver certification from the United States Green Building Council (USGBC). Projects costing \$12 million or more must also meet energy cost reduction targets. Projects to install or replace boilers and HVAC comfort controls costing \$2 million or more, and projects to install or replace lighting systems costing \$1 million or more, must meet energy cost reduction targets. Plumbing system projects costing \$500,000 or more must meet water use reduction targets.

Finally, during Fiscal 2012 the City instituted new amendments which expanded the list of projects and goods to which EPP standards apply. These amendments will increase the impact of the EPP program to make sure City contract dollars support energy efficiency, encourage recycling, and minimize the use of potentially hazardous materials. For a complete copy of the newly revised EPP Standards, please visit [www.nyc.gov/mocs](http://www.nyc.gov/mocs).

### C. Project Labor Agreements

Project Labor Agreements (PLAs) are agreements between a property owner and relevant unions that establish labor provisions that will apply to all work done on a project. Since Fiscal 2010, the Bloomberg Administration has engaged in a series of Project Labor Agreements with the Building and Construction Trades Council of Greater New York (BCTC), aimed at realizing potential cost savings of more than \$300 million, while preserving approximately 1,800 construction jobs during the economic downturn. The PLAs lower construction costs and promote job stability by providing common labor provisions for contractors and subcontractors, such as standard work hours and holidays, and lower overtime and shift premiums. In addition, when utilizing a PLA, the City can save time and money by awarding construction work to a single general contractor, instead of to multiple contractors as would otherwise be required by the State's Wicks Law.

To date, 143 contracts valued at \$2.4 billion have been registered under a PLA. In Fiscal 2012 alone a total of 74 contracts valued at \$318 million were registered under a PLA. For example:

Contracts registered in Fiscal 2012 under the PLA that covers most City renovation work include: Washington Square Park Comfort Station and Field House Renovation (DPR), Kew Gardens Library Renovation and Expansion (DDC), and Exterior Repairs of the 123<sup>rd</sup> Precinct House (NYPD). Under the DEP PLA, contracts were registered in Fiscal 2012 for projects including the Reconstruction of the Richmond Hill Road Pumping Station, and Tank Replacement/Upgrade at the Bowery Bay Water Pollution Control Plant. In early Fiscal 2012, MOCS negotiated a PLA for construction of three structures for the Ferry Point Golf Course, and DDC registered the contract later in the year.

#### *PLA Workforce*

The PLAs also contain provisions to promote M/WBE contractor participation. MOCS and SBS have joined the Mayor's Committee on Construction Opportunity to look at both contractor and workforce diversity on PLA projects on an ongoing basis. In Fiscal 2012 16 contracts under PLA, valued at \$67 million, were awarded to MWBE firms; 63 active PLA projects had 142 subcontracts awarded to M/WBE, with a total value of \$25.3 million.



A “snap shot” census of the trade workforce on each active PLA project is taken the first week of each calendar quarter (i.e. the first week of January, April, July, and October), giving a picture of workforce diversity, apprentice utilization, and use of “bring along” hiring provisions for regular workers of nonunion contractors.

**Chart III-1: PLA Workforce by Gender & Ethnicity**

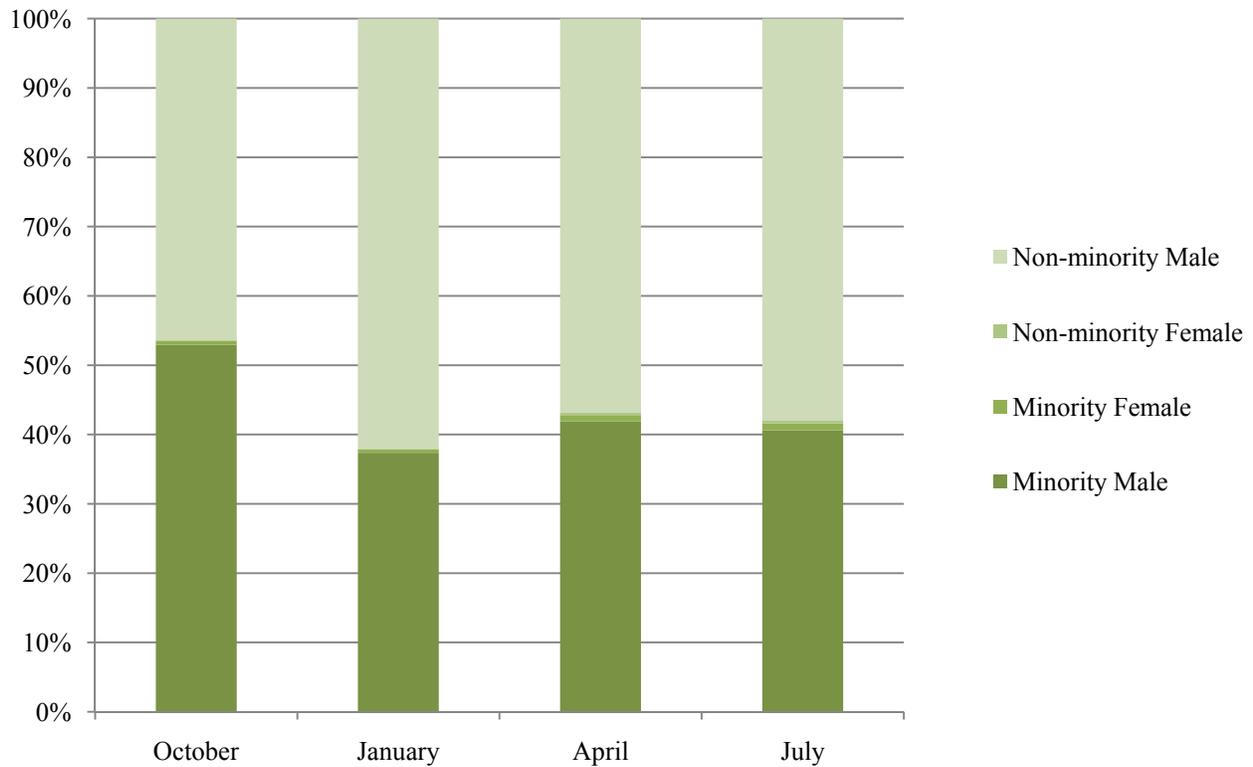
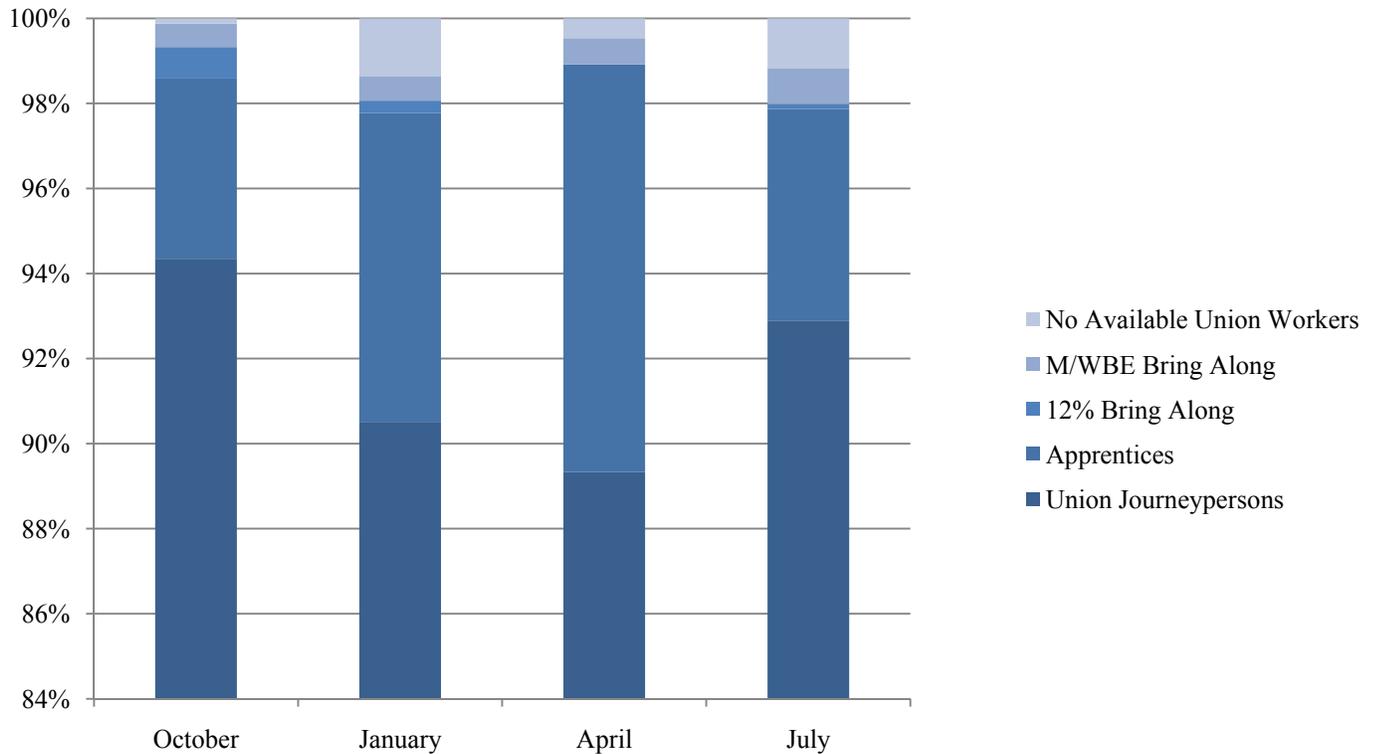


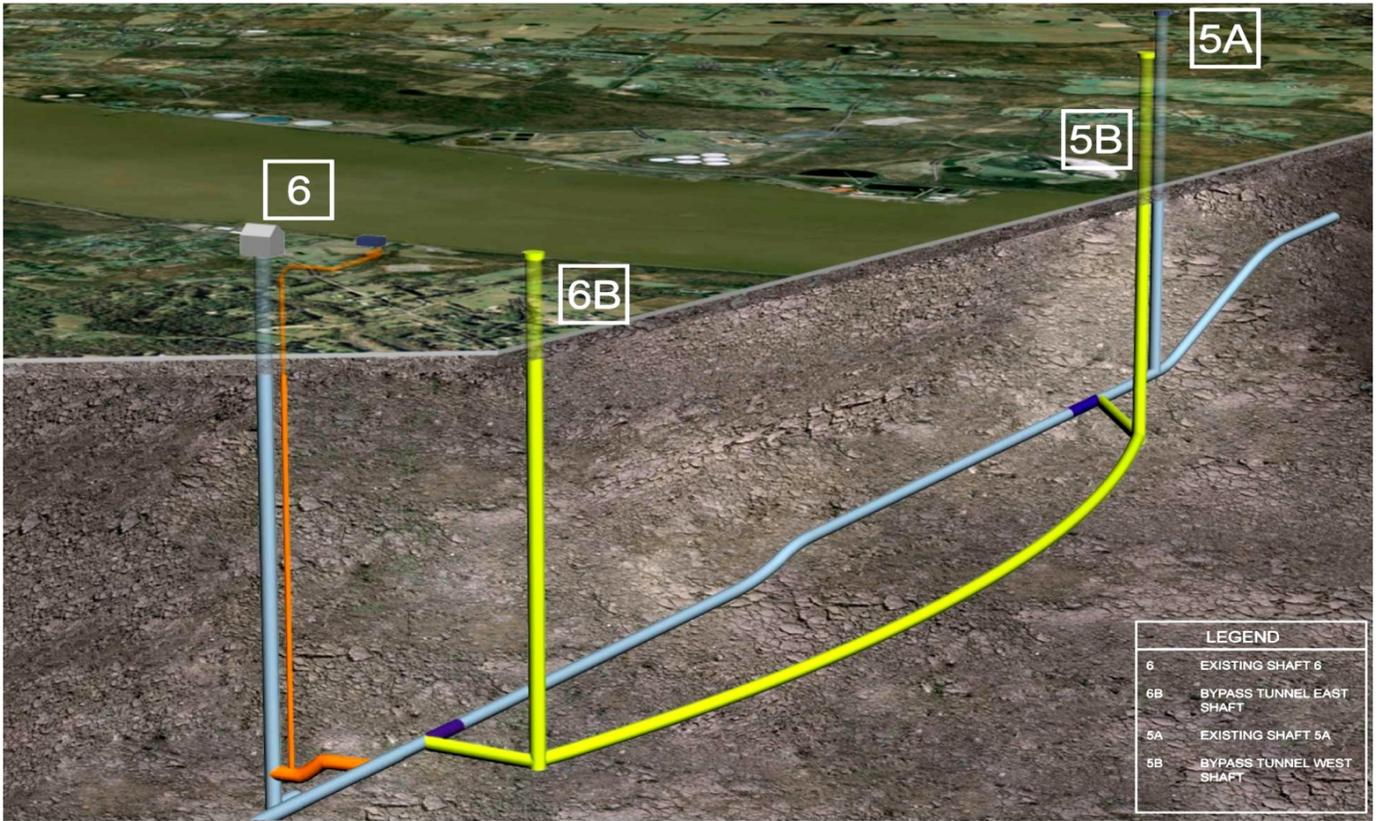
Chart III-1 above presents data from this census that breaks down worker participation by gender and ethnicity. Chart III-2 below breaks down the data by union status. As the chart shows, the vast majority of workers on PLA projects are union members or participating in a union-sponsored apprenticeship program (see below). M/WBE contractors and other contractors may “bring along” some of their own workforce if no union workers are available, or under other conditions specified by the PLA.

**Chart III-2: PLA Workforce by Union Status**



*Water for the Future PLA*

During Fiscal 2012, DEP launched its Water for the Future Program: Delaware Aqueduct Rondout-West Branch Tunnel Repair. This project will address the known leaks in the Rondout-West Branch Tunnel (RWBT), a section of the Delaware Aqueduct that currently conveys more than 50% of the drinking water for New York City and is the primary source of water for residents and businesses of the towns of Newburgh and Marlborough. Currently, the RWBT leaks approximately 35 million gallons of water per day. DEP plans to construct a bypass tunnel around the leaking areas of the RWBT. Once the construction of the bypass is completed, the aqueduct will be shut down to allow repairs to the existing tunnel.



Time is of the essence for the construction of the bypass tunnel so that the necessary repairs can be made to the RWBT, safeguarding the City’s water supply. In addition to the aggressive schedule, the project will require, over a sustained period of time, a highly skilled work force of specialty trades. As a result, the City negotiated and implemented a Project Labor Agreement (PLA) for the construction of the bypass tunnel, ensuring contractors will be able to meet staffing needs. The RWBT PLA, entered into with the Hudson Valley Building and Construction Trades Council, will provide a cost-effective mechanism for completing the project, with a projected savings of between \$16.7 and \$22.9 million. The first phase of this project—to build the shafts for this tunnel in Newburgh (Orange County) and Wappingers Falls (Dutchess Counties) - was out for bids as Fiscal 2012 came to a close.

## D. Apprenticeship



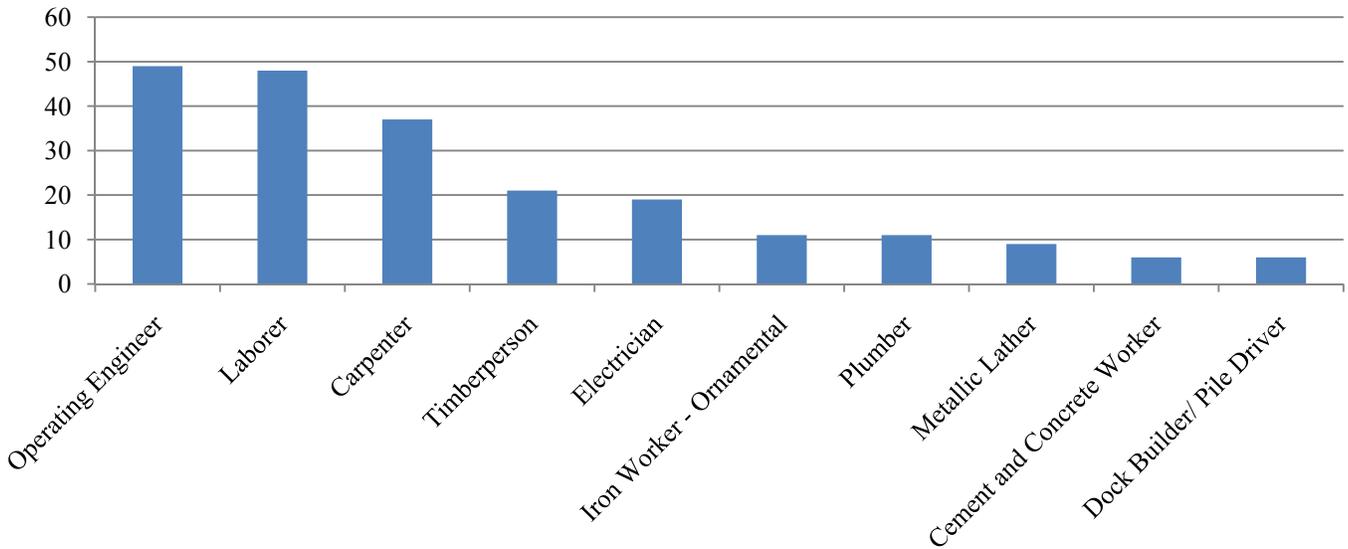
Apprenticeship programs teach a skilled trade through classroom instruction and offer paid on-the-job training under the guidance of experienced workers, providing a chance for New Yorkers to advance toward well-paying jobs in the construction industry. Under a directive issued by MOCS (the Apprenticeship Directive), the City requires nearly all vendors awarded construction contracts valued at greater than \$3 million to show participation in apprenticeship programs that have been approved by the State Department of Labor and successfully operating for at least three years.

**Table III-2: Fiscal 2012 Newly-Awarded Construction Contracts – Apprenticeship Program Coverage**

Agency	Total \$	App. Dir.		PLA		Union		Gov't/Non-Profit/Utility		Uncategorized	
		\$ Value	%	\$ Value	%	\$ Value	%	\$ Value	%	\$ Value	%
DCAS	\$76,961,225	\$18,000,000	23%	\$52,272,784	68%	\$190,000	0%	\$95,000	0%	\$6,403,441	8%
DDC	\$699,044,427	\$591,944,337	85%	\$66,511,163	10%	\$18,765,931	3%	\$647,000	0%	\$21,175,998	3%
DEP	\$243,620,076	\$107,114,252	44%	\$106,980,659	44%	\$18,086,085	7%	\$999,871	0%	\$10,439,209	4%
DOT	\$130,277,151	\$85,684,053	66%	\$0	0%	\$7,953,883	6%	\$16,000,000	12%	\$20,639,215	16%
DPR	\$161,481,747	\$48,509,052	30%	\$9,884,641	6%	\$27,033,149	17%	\$1,380,000	1%	\$74,674,905	46%
DSNY	\$9,465,858	\$0	0%	\$4,860,676	51%	\$771,511	8%	\$0	0%	\$3,833,671	40%
HPD	\$20,562,795	\$0	0%	\$0	0%	\$5,001,448	24%	\$0	0%	\$15,561,346	76%
All Others	\$77,328,788	\$4,595,500	6%	\$67,736,435	88%	\$970,627	1%	\$1,740,000	2%	\$2,286,227	3%
<b>Citywide</b>	<b>\$1,418,742,067</b>	<b>\$855,847,193</b>	<b>60%</b>	<b>\$308,246,357</b>	<b>22%</b>	<b>\$78,772,634</b>	<b>6%</b>	<b>\$20,861,871</b>	<b>1%</b>	<b>\$155,014,011</b>	<b>11%</b>

In Fiscal 2012, City agencies registered 61 construction contracts that fell under the Apprenticeship Directive, representing a total value of nearly \$856 million. In addition to these contracts, the City awarded 74 contracts under the City's PLAs (see page 39). While contracts subject to a PLA are technically exempt from the Apprenticeship Directive, the terms of the PLA require all contractors working on PLA projects to participate in the union-affiliated apprentice programs. Thus, an additional \$308 million of construction contracts had apprenticeship participation via the PLAs. An additional \$79 million of construction contracts went to firms that participate in apprentice programs, although the specific procurements did not require apprentice participation. All told 87% of the value of construction contracts registered in Fiscal 2012 supported apprenticeship participation.

**Chart III-3: Fiscal 2012 Apprenticeship Traces**



During Fiscal 2012, virtually all vendors covered by the Apprenticeship Directive complied by participating in programs affiliated with a union, usually a union associated with the Building Trades. The trades most commonly included in those prime contracts are those associated with heavy, highway, or site construction, as distinct from work within a building.

<b>Table III-3: Fiscal 2012 Apprenticeship Subcontracts</b>		
<b>Agency</b>	<b>#</b>	<b>Value</b>
DCAS	7	\$351,600
DDC	13	\$7,663,422
DEP	41	\$14,206,067
DOT	25	\$34,316,917
DPR	84	\$12,404,418
DSNY	17	\$7,336,160
<b>Total</b>	<b>187</b>	<b>\$76,278,585</b>

During Fiscal 2012, there were a total of 187 subcontracts, valued at \$76.3 million, on projects covered by the apprenticeship directive but not a PLA. This amounts to 2% of the total value of the open prime contracts in this category. However, subcontracts involving apprenticeable trades are only required to have apprenticeship participation where the value is one million dollars or more. Many subcontracts are for services that do not involve trades such as professional engineering, laboratory testing and construction photography. In Fiscal 2012, 24% of the value of subcontracts under the Apprenticeship Directive were awarded to M/WBE firms.

**Table III-4: Fiscal 2012 Subcontracting on Non-PLA Construction Contracts Subject to Apprenticeship Requirements**

Type of Goals Program	Total Subcontracts		M/WBE Subcontracts			Non-M/WBE Subcontracts		
	Count	Value	Count	Value	%Value	Count	Value	%Value
State/Federal Goals	65	\$47,319,891	20	\$8,358,793	18%	45	\$38,961,099	82%
LL129 Goals	122	\$28,958,694	34	\$9,587,026	33%	88	\$19,371,667	67%
<b>Total</b>	<b>187</b>	<b>\$76,278,585</b>	<b>54</b>	<b>\$17,945,819</b>	<b>24%</b>	<b>133</b>	<b>\$58,332,766</b>	<b>76%</b>

Table III-5 below shows the trades associated with the subcontracts of contracts under the apprenticeship directive.

**Table III-5: Trades Listed in Fiscal 2012 Apprenticeship Subcontracts**

Trade Classification	# Subcontracts Including Listed Trade	Trade Classification	# Subcontracts Including Listed Trade
Bricklayer/Mason	3	Operating Engineer	28
Carpenter	8	Ornamental Iron	14
Cement Worker	13	Painter	12
Derrickperson/Rigger	3	Painter Structural	3
Dockbuilder	6	Plumber	15
Electrician	22	Pointer	1
Engineer	2	Roofer	2
Floor Coverer	1	Sheet Metal	5
Glazier	2	Sign Erector	2
Heat & Frost Insulator	6	Steamfitter	2
Laborer	69	Stone Mason	1
Mason	2	Structural Iron	7
Metallic Lather	1	Tile Layer	2
Millwright	3	Timberperson	1

## E. Change Orders

Change orders are amendments to construction or architecture/engineering contracts that authorize additional work necessary to complete a project, or to add work that does not amount to a material change to the original contract scope. To report with greater precision, we separate change orders into either design change orders (DCOs) on architectural and engineering contracts, or construction change orders (CCOs) on construction services contracts.

In Fiscal 2012, design change orders averaged 19% of the original contract value. Although this is 10% higher than Fiscal 2011, it is important to note that often revised designs can help mitigate increases to construction costs. Approximately 70% of change orders overall were for 10% or less of the original contract amount. In terms of average processing times for DCOs, City agencies continued to show progress. In Fiscal 2012 the average processing time decreased by 25%, from an average of 109 days to 81 days.

Agency	Count	Original Contract Value	DCO Value	DCOs as a % of Contracts				Processing Time (Days)			
				Fiscal 2012	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2012	Fiscal 2011	Fiscal 2010	Fiscal 2009
DDC	61	\$137,478,796	\$17,465,926	13%	9%	23%	16%	81	89	196	98
DEP	43	\$362,620,322	\$120,562,506	33%	9%	20%	4%	87	123	158	160
DOT	26	\$174,146,306	\$9,935,390	6%	8%	17%	27%	64	89	156	138
DPR	27	\$37,167,825	\$2,090,384	6%	10%	17%	6%	91	144	97	91
All Others	14	\$111,462,631	\$3,484,747	3%	7%	22%	26%	75	153	93	99
<b>Total</b>	<b>171</b>	<b>\$822,875,879</b>	<b>\$153,538,952</b>	<b>19%</b>	<b>9%</b>	<b>20%</b>	<b>5%</b>	<b>81</b>	<b>109</b>	<b>156</b>	<b>128</b>

For construction change orders, most agencies performed comparably to last year. With the continued economic downturn leading to lower construction prices, City agencies benefitted as the value of construction change orders relative to original contract values remained low, at 4% compared to 3% in Fiscal 2011. Construction change order processing times continued to show improvement in Fiscal 2012, as the Citywide average declined by 16% from an average of 125 days to 105 days. The City strives to maintain low processing times since delays in CCOs registrations result in payment delays for vendors, and may thus contribute to higher bid prices, which the City can ill afford.

<b>Table III-7: Construction Change Order (CCO) Processing</b>											
Agency	Count	Original Contract Value	CCO Value	CCOs as a % of Contracts				Processing Time (Days)			
				Fiscal 2012	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2012	Fiscal 2011	Fiscal 2010	Fiscal 2009
DCAS	102	\$88,512,119	\$11,168,466	13%	5%	3%	15%	100	83	80	98
DDC	573	\$2,144,567,281	\$78,322,696	4%	7%	5%	10%	152	112	105	80
DEP	1185	\$9,459,023,667	\$303,129,217	3%	3%	3%	2%	74	132	179	167
DOT	71	\$2,178,987,290	\$50,138,994	2%	3%	4%	5%	60	76	141	130
DPR	333	\$541,952,867	\$76,589,740	14%	7%	11%	12%	131	155	179	210
DSNY	121	\$658,454,802	\$10,752,344	2%	0%	3%	15%	145	121	81	212
All Others	42	\$89,311,064	\$18,346,823	21%	6%	3%	7%	106	94	108	84
<b>Total</b>	<b>2427</b>	<b>\$15,160,809,090</b>	<b>\$548,448,280</b>	<b>4%</b>	<b>3%</b>	<b>3%</b>	<b>4%</b>	<b>105</b>	<b>125</b>	<b>150</b>	<b>147</b>

There are a number of specific reasons an agency will decide to move forward with a change order, such as field condition, design omission, design error, or administrative change. Many times there are multiple concurrent reasons that an agency must proceed with a change order. In Fiscal 2012, 40% of the change orders were a result of field conditions and 26% were a result of a design omission.

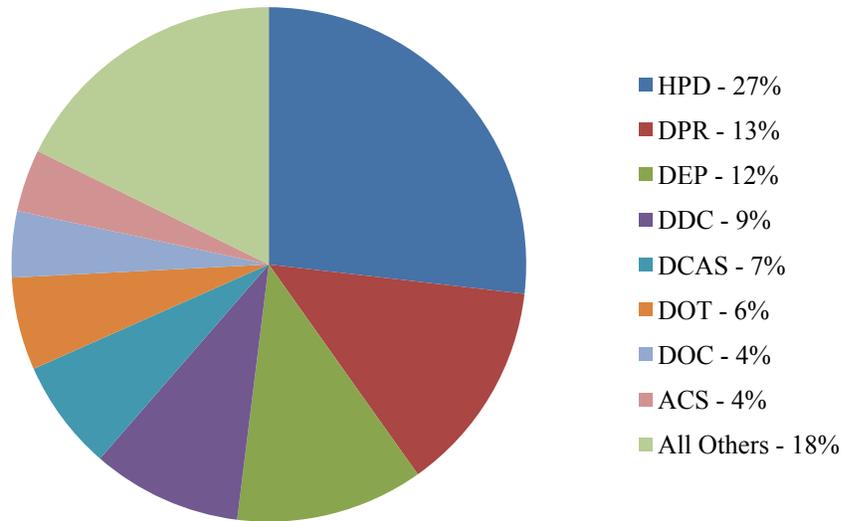
## F. Prevailing & Living Wage Laws



Another important review that agencies undertake is an evaluation of the prospective vendor's compliance with State and City labor laws that secure the wage rights of the vendor's employees. Under the State Labor Law, prevailing wage requirements apply to public work projects and building services.<sup>21</sup> In addition, City law establishes Living Wage requirements for certain types of contracts such as contracts for building services, day care, Head Start programs, home care, food services, temporary workers and services to persons with cerebral palsy. In Fiscal 2012, the City awarded 891 contracts, valued at \$1.6 billion, subject to prevailing wage requirements and 284 contracts, valued at \$144 million, subject to the Living Wage Law. EDC also processed 22 contract actions, valued at \$218 million, for work subject to prevailing wage requirements.

<sup>21</sup> Projects for construction, reconstruction or maintenance on behalf of a public entity are generally considered public work. Building services are defined as work, on behalf of a public entity, which is associated with care and upkeep of an existing building (e.g., cleaners, gardeners and security guards) and valued at more than \$1,500.

**Chart III-4: Prevailing Wage Contracts by Agency**  
**Total Number of Contracts = 891**



Pursuant to Executive Order 102 (EO 102), MOCS and City agencies are required to oversee and ensure compliance by City vendors with prevailing and living wage laws. In particular, EO 102 triggers enhanced agency inspection of bids when the price difference between the apparent low bid and the next lowest responsive bid exceeds specified thresholds. The agency must obtain detailed information from the low bidder to make sure that the low bid has not been made in disregard of the obligation to pay all workers their legally mandated wages. For contract awards subject to this EO 102 “due diligence” requirement, MOCS must review the contracting agencies’ determinations before such contracts can be awarded. MOCS imposes detailed tracking requirements and conducts frequent agency training sessions.

MOCS conducted 23 EO 102 reviews during Fiscal 2012, approving all of the relevant awards. Agencies that have been delegated this responsibility reviewed and approved an additional five awards. Of the 28 approved awards, 19 resulted in registered contracts during Fiscal 2012; the other nine contracts remained pending as of the end of the fiscal year.<sup>22</sup>

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<sup>22</sup> Nine awards were approved in Fiscal 2011 but not reported as registered in last year’s Procurement Indicators Report. Six of these awards were registered in Fiscal 2012, one was cancelled, and two were registered in late Fiscal 2011.

# Faces of Procurement: Labor Law Enforcement

Ongoing prevailing wage enforcement on City construction, maintenance and building services contracts is a team effort that involves many different agency units and staff. Eric Green has been a Labor Law Investigator with the Labor Law Investigations Unit (LLIU) at the New York City Department of Parks and Recreation (DPR) since 2007.

## What does a Labor Law Investigator do?

A Labor Law Investigator monitors construction projects and conducts investigations to ensure contractor compliance with Federal, State and local prevailing wage laws.

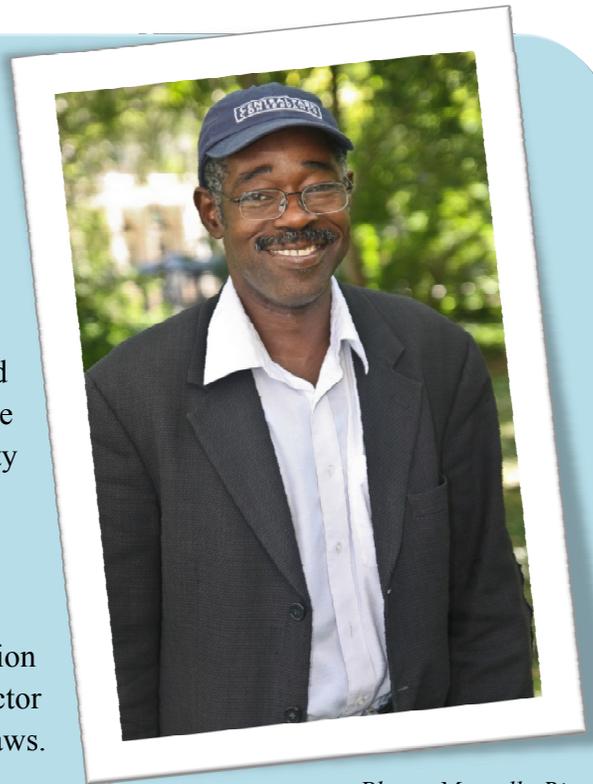
The work involves interaction with agency staff and contractors, interviews with construction workers (on and off site), and handling referrals from various stakeholders when noncompliance with labor laws is suspected. The Labor Law Investigators also review contracts, construction plans, fringe benefit plans, union remittances, worker paychecks and paystubs for contractor compliance with applicable prevailing wage laws. In addition, investigators conduct outreach to educate agency personnel, contractors and construction workers about labor laws.

## How does a Labor Law investigator decide to audit a particular contract?

In most cases, any site visits by the LLIU are conducted at random. On some occasions, a prevailing wage investigator may decide to audit a particular vendor if he or she observes certain patterns in the documentation submitted by that vendor which suggest possible prevailing wage violations. Investigators may also conduct field audits when a referral is received from Agency personnel, the Comptroller's Office, a union representative or a construction worker.

## What does a Labor Law investigator do during a typical field audit?

During a typical field audit, an investigator would interview a sample of all the construction workers on site while checking that workers are wearing compliant ID tags. The investigator would also assess the contractor's compliance with all required labor postings and that daily sign in sheets are properly completed and available for on-site inspection. All non-compliance issues are documented and a notice of noncompliance with contract labor law provisions is sent to the vendor. Subsequently, the investigator schedules a follow-up inspection to check that the vendor has taken corrective action to ensure that the site is in compliance.



*Photo: Marcello Rios*





#### IV. Supporting City Agencies Through Goods and Services

The City of New York provides a world of services through the hard work and dedication of its one hundred and twenty thousand employees. In order to keep City government running, those employees need vital support services, often provided by contracted vendors. These vendors provide the pens and pencils for every office; the ambulances and fire engines; cleaning services for City buildings; maintenance and repair of vital machinery; laboratory testing; specialized legal services; information technology services; and meet many other vital needs. Procurements of this type fall mainly into three industries: **Professional Services**, **Standardized Services**, and **Goods**.

Professional services include contracts for the provision of various kinds of expert advice and consulting services, including legal services, medical services, and information technology consulting. Sometimes, professional services vendors support City initiatives in other areas as well. Consultants help design better, more efficient human service programs and construction management firms assist the City with organizing the complexity of large construction projects.

Standardized services are defined as those services that do not require the exercise of discretion on the part of the vendor. Therefore it is unsurprising that these "commoditized" services are mainly procured through competitions based on price alone. Half of all new procurement for standardized services in Fiscal 2012 was done using competitive sealed bids. The largest purchaser of standardized services in Fiscal 2012 was DSNY, with 26% of the volume in this industry. DSNY made several large procurements for the transportation of municipal solid waste. DoITT and DCAS were also major purchasers of standardized services, each with 13% of the total, led by contracts held by DoITT for IT maintenance and support services, and contracts held by DCAS for the provision of electric power, gas, steam heat, and security services for City-owned buildings.

Possibly the most self-explanatory of all industry classifications is goods. Physical items purchased for the use of City workers are all grouped in this category. Goods procured in Fiscal 2012 include consumables like food and fuel; vehicles including snow plows, street sweepers, and helicopters; concrete barriers and asphalt for road repair; water meters, parking meters, and fire hydrants; computers and software; and office supplies used by City workers.

## **A. Requirement Contracts and Master Agreements**

To acquire necessary goods and services quickly, efficiently, and at the lowest possible cost, the City often enters into a single contract used by one or more agencies on an "as needed" basis.

### *Requirement Contracts*

A requirement contract is entered into by one of the City's two major goods purchasing agencies – DCAS for most types of products and DoITT for some information technology (IT) goods. Each DCAS or DoITT requirement contract is made available to multiple agencies, often including both Mayoral and non-Mayoral agencies. Through this vehicle, a vendor contracts to supply the City's entire "requirement" for a particular good or service. When an item is available through a requirement contract, City policy requires agencies to use that contract, rather than procure that item separately.

On behalf of all City agencies, DCAS purchases most goods valued at more than \$100,000. Mayoral and non-Mayoral agencies used 1,075 requirement contracts in Fiscal 2012, placing orders valued at just under \$1.6 billion.<sup>23</sup> DCAS holds 1,060 contracts and accounted for over 98% of such usage. DoITT holds 15 requirement contracts, accounting for \$28 million. Nearly all such contracts have multi-year terms, and 91% were competitively bid. A total of 218 were registered during Fiscal 2012.

The City benefits from requirement contracts in several ways. First, rather than having each agency perform market research, develop product specifications and release solicitations separately, these

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<sup>23</sup> This total excludes single agency requirement contracts, e.g. specialized chemicals used only by DEP. DCAS holds 155 such single agency use requirement contracts. During Fiscal 2012 agencies made payments totaling approximately \$54 million through single agency requirement contracts.

functions are performed centrally, yielding multi-year contracts that meet all agencies’ needs. Additionally, economies of scale are obtained since requirement contract pricing is based on the total purchases the City expects to make, rather than on smaller single agency totals. Moreover, requirement contracts allow agencies to place orders without going through the more lengthy procurement process that would be required for one-time purchases.

Both DCAS and DoITT maintain a complete online list of all requirement contracts for agencies to use. For purchases against DCAS requirement contracts, agencies use “release orders” to purchase a single product or set of items, or if the agency anticipates multiple purchases from a particular vendor, “blanket orders” for use throughout the year. During Fiscal 2012, agencies created 14,491 orders against multi-agency requirement contracts.

Of the approximately \$1.6 billion in purchasing from multiple agency DCAS and DoITT requirement contracts, 82% was for the purchase of goods, with the largest portion of that going for vehicles and related supplies. As the table below shows, the top 10 most heavily used requirement contracts (by amount encumbered) account for \$560 million, or 34% of all such contract usage. The most frequently used requirement contract (by number of orders) was for office supplies from Staples, with 1,132 orders totaling \$13 million.

<b>Table IV-1: Fiscal 2012 Top 10 DCAS Requirement Contract Encumbrances</b>		
Vendor	Purpose	Orders
Mack Trucks	Truck, Collection, Rear Loading	\$153,194,863
Castle Oil Corp.	Diesel & Biodiesel, Bulk Delivery & Rack Pick-Up	\$97,694,840
Sprague Energy Cor.	Gasoline & Ethanol Blends: Bulk Delivery	\$52,217,167
Allied Barton Security Srves.	Unarmed Security Guards	\$51,579,258
FIA Card Services	Procurement Card	\$36,751,841
Vanguard Direct	Commercial Printing And Direct Mail	\$36,048,482
Parkeon Inc	Multi-Space Parking Meters	\$34,965,492
Ferrara Fire Apparatus	Fire Trucks	\$33,982,089
Sprague Energy Corporation	Fuel Diesel	\$32,489,269
Tilcon New York	Coarse Aggregates For Highways	\$30,930,183

*Master Agreements*

Master agreements allow agencies to use a fast-track solicitation process to obtain specific services from firms that already hold a general or “master” contract with the City, providing flexibility when the scope of a project or task cannot be defined in advance or the nature of services needed cannot be determined at the time the contract is solicited and registered. Single agency master agreements afford flexibility in meeting requirements within an agency, e.g., for small repairs or upgrades.

City procurement rules also provide for multiple agency task order contracts, in which one agency registers and administers a master agreement, assisting user agencies with the processing of individual task orders as their needs arise. Having multiple City agencies utilize the same master agreement to fulfill their collective requirements saves time and resources in the procurement process.

DDC accounted for the largest number of individual master agreements with 115, followed by DoITT with 94; together, the two agencies account for 74% of all master agreements. In Fiscal 2012, agencies processed 958 task orders, with a value of just over \$1 billion, against 284 master agreements (each agreement representing one vendor for one type of service).

Master agreements are often awarded to multiple vendors that provide a similar service. When an agency has a need for this type of service, these vendors re-compete to win the task order for such work. DDC offers agencies the use of master agreements including two pools of design firms (architects and engineers), with one pool targeting smaller-scale projects and the other aimed at larger jobs; a pool for resident engineering services; and a pool for construction management services. DDC's task order structure enabled a pool of smaller design firms to compete for City work. This saves money for the City as additional companies competed for City work, and allows innovative new designers to flourish. DoITT offers agencies master agreements for systems integration, project management and quality assurance services, and IT and telecommunications consulting services. DoITT task orders accounted for 84% of the total volume.

## **B. Shared Services**

Beginning in January 2011, DCAS's Office of Citywide Purchasing (OCP) has worked to create an expanded portfolio of "shared service" contracts that can be accessed by any City agency. This approach allows the City to save money by consolidating and leveraging the City's purchasing power, and realizing administrative savings for both agencies and vendors. In Fiscal 2012, OCP registered shared services contracts projected to save the City a total of \$43 million, including:

- A \$2 million contract with Remi Group LLC for equipment maintenance
- A \$10 million contract with Verrazano Exterminating Corporation for integrated pest management
- A \$38 million contract with Guarantee Records Management Information Services to provide off-site record storage

# **Procurement at Work:**

## **Integrated Pest Management**



In Fiscal 2012, DCAS's Office of Citywide Purchasing registered a \$10.3 million Citywide requirement contract for Integrated Pest Management (IPM) Services with Verrazano Exterminating Corp., a significant accomplishment for the City's M/WBE program (see page 65). MOCS spoke with Steve Delmar, the DCAS procurement officer for these services.

### **What is Integrated Pest Management?**

These services are essential for providing healthy and sanitary working conditions for thousands of City employees and customers. Integrated Pest Management refers to pest management that utilizes a planned program for long-term pest suppression with an emphasis on structural, behavioral and physical modifications to reduce sources of food, water and harborage for pests. Chemical pesticides are used as a "last resort" when a situation warrants it.

### **What considerations played a role in the contract award to Verrazano Exterminating Corp.?**

Verrazano was the lowest responsive and responsible bidder that presented a solid business plan in dealing with the massive undertaking that is a Citywide contract. Verrazano has a long history in the IPM/Exterminating business and holds several other City contracts in which they have been a proven success.

### **What steps were taken to ensure the contract would be successful?**

Early on in the award process we recognized that we had a unique opportunity on our hands; we saw through our normal vetting process that Verrazano was a small minority-owned business. In the past, the likelihood of a small vendor succeeding would not be very strong. So we reached out to our M/WBE officer for her assistance, and we brought the vendor in and put him in contact with the City's Department of Small Business Services and other minority-owned exterminating businesses that he could partner with in case he became overwhelmed with orders from City agencies. So far, Verrazano has explored obtaining a low-interest loan through SBS and training for his office staff to help manage the additional business. We also schedule regular meetings with Verrazano to ensure that any issues with the user agencies get resolved in real-time. This fiscal year alone, Verrazano had 14 purchase orders for IPM services with various City agencies, worth close to \$500,000. The contract began on May 1<sup>st</sup>, and it's a five year contract - do the math. I'm confident that, assisted by the continued support of DCAS and SBS, Verrazano will successfully complete the term of this contract.

## C. IT Contracting

Government increasingly relies on information technology to improve services, connect with citizens, and make operations more efficient. Outside contractors are a key component of the way the City delivers information technology (IT) services – often the City relies on their specialized expertise in the short term to help build a new system that will remain in use by the City for years, or to help maintain hardware and software originally created by that particular vendor.

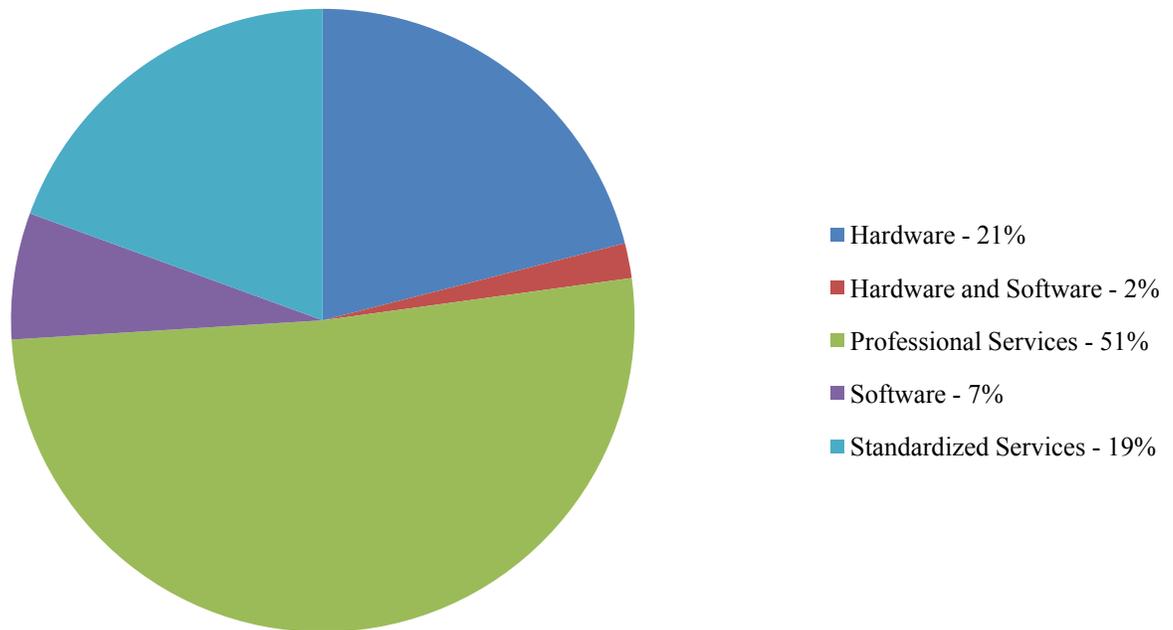
To provide insight into this important area of City purchasing, for the first time this report isolates IT spending to provide information on what the City buys, how the City buys it, and why.

Table IV-2 lists the Top 10 largest IT contracts of Fiscal 2012. Many of these contracts are master agreements (see page 53); the value of the master agreement represents the maximum combined value of anticipated individual purchase orders. Multiple agencies may make smaller purchase orders against these master agreements to procure the services of a vendor for discrete projects. As the table shows, the City's IT procurement includes products like radios and software, maintenance of existing IT infrastructure, and contracts for the design and implementation of whole new systems to support the various agencies' missions.

<b>Table IV-2: Top 10 IT Contracts of Fiscal 2012</b>					
<b>#</b>	<b>Agency</b>	<b>Contract Type</b>	<b>Vendor</b>	<b>Purpose</b>	<b>Value</b>
1	DOITT	Master Agreement	Motorola Solutions Inc.	Radio products and services	\$75,000,000
2	FDNY	Stand-Alone Contract	Purvis Systems Inc.	On-call preventive maintenance	\$61,870,724
3	DSNY	Stand-Alone Contract	Keane Inc.	Systems Integration for SMART system	\$46,863,361
4	DOITT	Master Agreement	Iplogic Inc.	Discounted CISCO support	\$45,509,100
5	DOITT	Master Agreement	Motorola Solutions Inc.	Radio products and services	\$35,000,000
6	DOF	Stand-Alone Contract	CGI Technologies and Solutions Inc.	Data processing and maintenance	\$31,785,717
7	DOITT	Stand-Alone Contract	IBM Corp.	IBM renewal: mainframe upgrade	\$24,979,730
8	DOITT	Master Agreement	CGI Technologies and Solutions Inc.	Citywide systems integration services	\$20,000,000
9	DOITT	Master Agreement	IBM Corp.	Citywide systems integration services	\$20,000,000
10	DOITT	Master Agreement	Accenture LLP	Citywide systems integration services	\$20,000,000

In addition to the Top 25 largest procurements, Chart IV-1 below presents all Fiscal 2012 IT procurements by type: hardware, software, standardized services like maintenance and on-call support, or professional services like systems development.<sup>24</sup>

**Chart IV-1: IT Spending by Type**

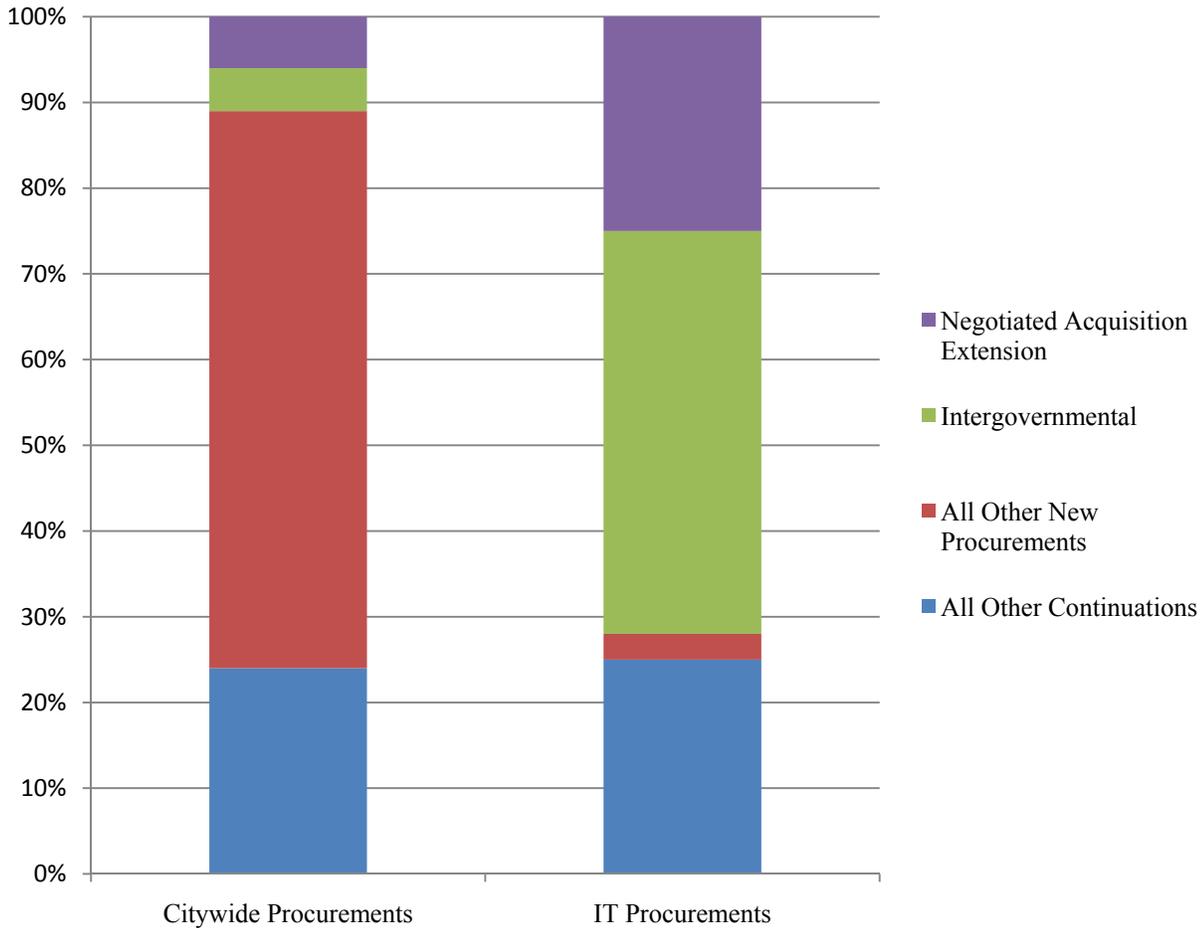


To save time and administrative costs, City agencies often procure IT using the intergovernmental method, “piggy backing” off of an existing State or Federal contract. City agencies issue a solicitation to all of the vendors who hold a relevant contract, and select the proposal that is either the most advantageous to the City, and/or offers the lowest price (depending on the type of solicitation that was issued and the criteria stated in the solicitation). Chart IV-2 on the next page illustrates the procurement methods City agencies used most heavily for IT, compared to the percentage of all City contracts procured through those methods.

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<sup>24</sup> Many IT contracts include multiple types of goods and services. For instance, often software contracts include on-call support services. The data in Chart IV-1 categorizes these procurements according to the primary type.

**Chart IV-2: Citywide Spending by Method vs. IT Spending by Method**

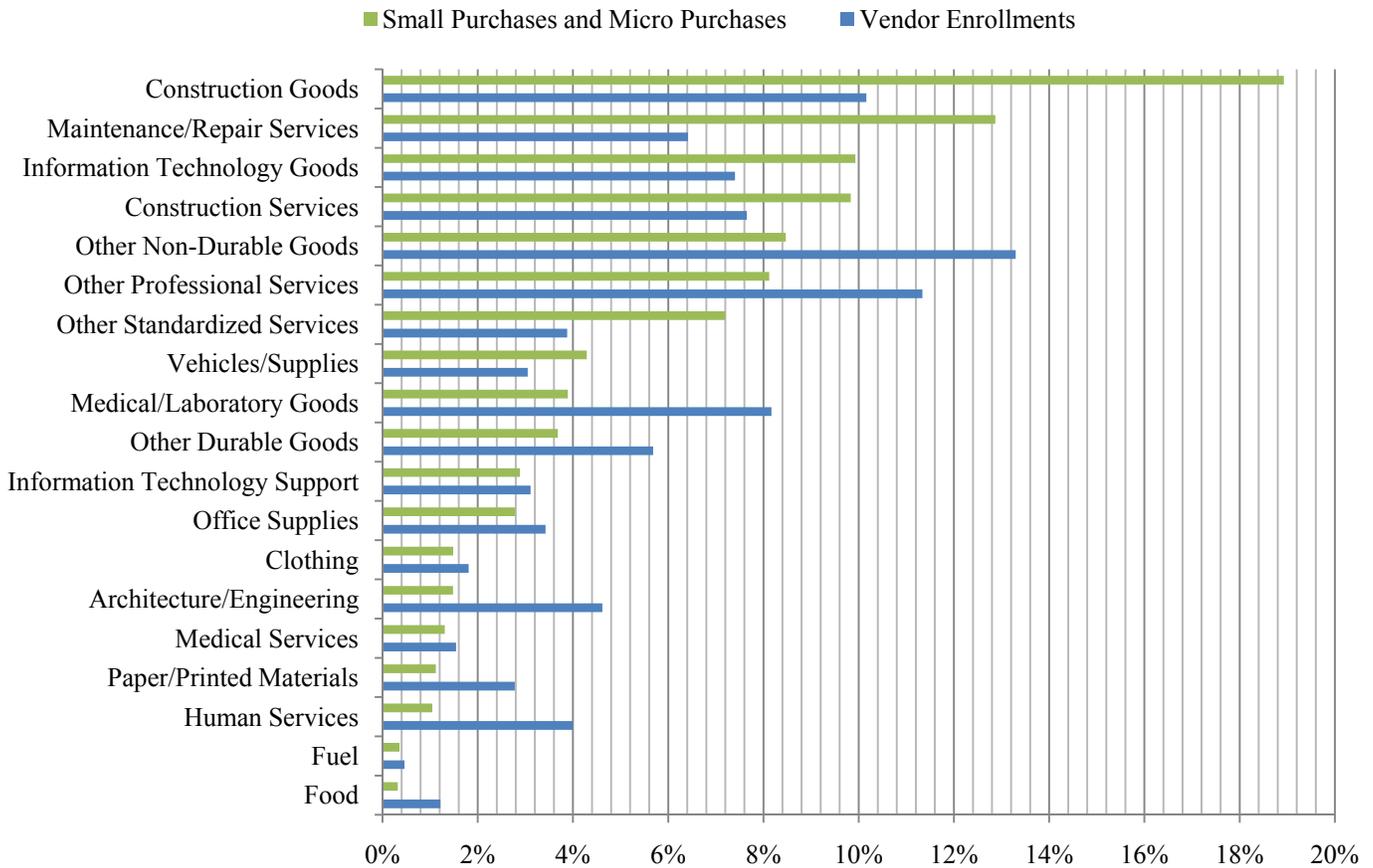


#### **D. Vendor Enrollment**



Attracting vendors for City work ensures the City receives the best quality and the lowest prices from the widest possible range of businesses. The City publicly advertises many procurements and also maintains bidders lists which agencies use to directly notify potential vendors of upcoming opportunities. The Vendor Enrollment Center (VEC) at MOCS enrolls businesses wishing to sell goods or services to the City onto these lists. At the end of Fiscal 2012, there were 66,025 individual vendors enrolled to do business with the City, up from 63,669 enrolled in Fiscal 2011. Vendors sign up for lists that correspond to their respective areas of business. Many vendors offer goods or services in more than one category. The City’s broad buyer base ensures City agencies can meet their needs and provides the basis for robust competition.

**Chart IV-3: Vendor Enrollment by Industry Detail with Small Purchases and Micro Purchases  
Percentage of Total Enrollment**



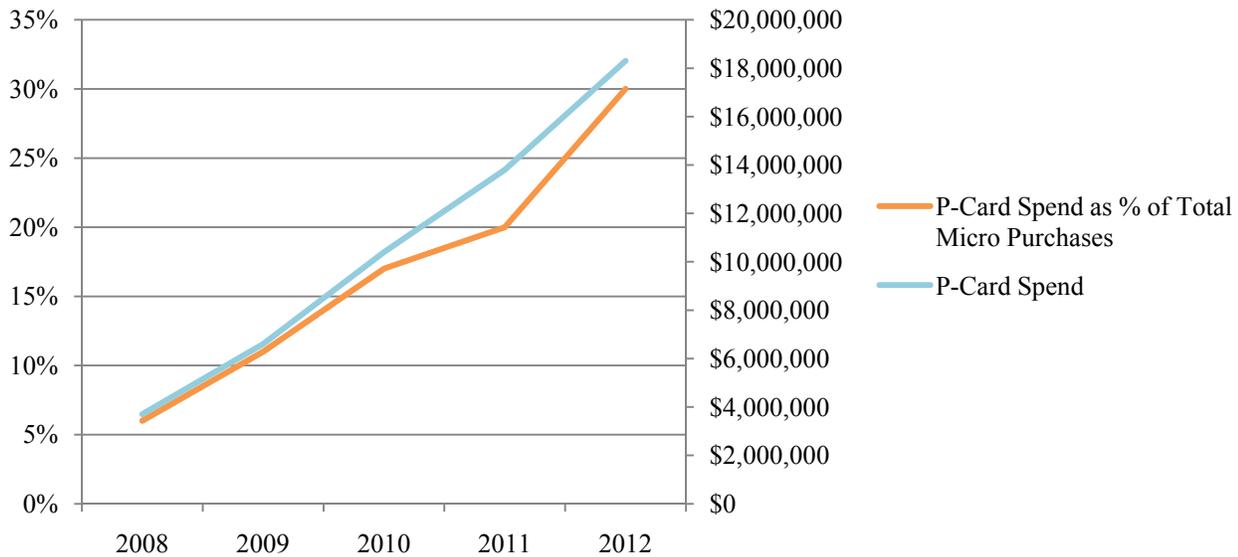
Half of all vendors are enrolled in five areas: other non-durable goods (13%), other professional services (11%), construction goods (10%), medical/laboratory goods (8%), and construction services (8%). As shown above, these areas of high enrollment correspond to many of the top areas reflected in agency small purchase and micropurchase volumes, indicating a match between the products and services vendors are seeking to sell to the City and actual patterns of agency purchasing.

To register with the Vendor Enrollment Center, vendors can complete an online application at <http://www.nyc.gov/html/mocs/html/business/bidderform.shtml> or call 212-857-1683. Once enrolled, vendors should contact agencies directly to make them aware of their interest and capacity to supply the City. Agency contact information is available at [www.nyc.gov/selltonyc](http://www.nyc.gov/selltonyc) or by calling 311.

## E. Purchasing Card Program

In Fiscal 2012 the City's P-card program continued to expand. A purchasing card or "P-card" is an agency-issued credit card that facilitates quick processing of micropurchases at a reduced administrative cost, while providing financial controls, oversight and transparency. An online card management system assists agencies in monitoring and managing card usage, and displays transaction information. This fiscal year, administration of the program moved from MOCS to DCAS's Office of Citywide Purchasing (OCP).

**Chart IV-4: Purchasing Card Usage Rates by Fiscal Year**



At DCAS, the program will continue to explore avenues for expanding P-card use, such as direct purchasing off Requirement Contracts (see page 52) and using P-cards as a direct vendor payment mechanism. The move from MOCS to DCAS allows the program to better coordinate with OCP's efforts to streamline purchasing Citywide.

Over the last five years, the program has grown an astounding 395%. During Fiscal 2012, Mayoral and non-Mayoral agencies made \$18.3 million in purchases with P-cards, an increase of 32% from the prior fiscal year total of \$13.7 million. The City receives a rebate on purchases made using the P-card - in Fiscal 2012 the City received \$114,479, up from \$87,278 in Fiscal 2011

In Fiscal 2012, eight agencies met or exceeded the City's long-term goal of using P-cards for 33% of all micropurchases, up from seven agencies in Fiscal 2011: DHS (74%), DOT (63%), DOB (56%), DORIS (54%), DOI (53%), OEM (41%), and DEP (37%). Another five agencies nearly met the goal: DCAS at 31%, DOP at 30%, DPR at 27%, DOC at 26%, DCA at 25%, and DoITT at 25%. Agencies that met or exceeded the target represented 73% of all P-card spending.

Citywide spending using the card amounted to 30% of total agency micropurchase spending, up significantly from 20% the prior fiscal year. The increased usage of P-cards is reflected in the decline in the volume of traditional micropurchases, which fell 22%. 13 agencies more than doubled their P-card usage, and an additional two agencies increased P-card use by more than 50%. Overall, agencies made 26,373 purchases from 6,195 vendors, representing a 25% and 9% increase, respectively, from Fiscal 2011. Since Fiscal 2008, the first year of the P-card program, the number of vendors used has increased 116% and the number of yearly transactions increased 245%. The total number of P-cards used to make purchases was 559, a nine percent increase from the prior fiscal year (509). Table IV-3 shows the 5 agencies with the highest value of P-card usage in Fiscal 2012.

P-cards continue to be an effective mechanism to introduce new vendors into agency procurement portfolios, and the shift towards using P-cards with more vendors continued in Fiscal 2012. P-card purchases with vendors used no more than ten times represented 53% of all P-card vendors used, down from 59% the prior fiscal year and down from 94% in Fiscal 2010. Agencies use P-cards mostly for small-dollar purchases. Sixty-eight percent of all transactions were for \$500 or less representing 15% of spending. In contrast, transactions valued at \$2,500 and greater accounted for 45% of all spending, but only eight percent of transactions.

**Table IV-3: Top 5 Agencies by P-Card Usage**

#	Agency	Count		Value	
		#	%	\$	%
1	DOT	4,325	15%	\$3,744,083	20%
2	DEP	4,334	16%	\$3,735,563	20%
3	FDNY	3,243	12%	\$2,355,816	13%
4	DOHMH	3,527	13%	\$2,010,155	11%
5	DPR	3,214	12%	\$1,584,462	9%
	All Other Agencies	9,303	33%	\$4,835,133	26%
	<b>Total</b>	<b>27,946</b>	<b>100%</b>	<b>\$18,265,213</b>	<b>100%</b>

P-cards also facilitate entry by vendors new to City business, particularly M/WBE vendors. Agencies are strongly encouraged to use M/WBE vendors for their micropurchases. This fiscal year, 221 M/WBE vendors were used, totaling 3,150 transactions. This represents 20% of all P-card spending and 12% of all P-card transactions. Overall, M/WBE spending using P-cards increased 76%, from \$2.1 million to \$3.7 million. Continuing trends established in prior fiscal years, six of the top ten P-card vendors by dollar value were certified M/WBEs. Two agencies, NYPD and HRA, used M/WBE vendors for more than fifty percent of all their P-card purchases (57% and 55%, respectively) with DCAS using M/WBE vendors for 37% of its P-card purchases. While the average P-card transaction purchase amount was \$683, the average P-card transaction with an M/WBE vendor was almost \$1,200.



Also, during this fiscal year the program held its first official P-card conference attended by more than 110 people, a high number of attendees relative to the size of the program. The conference featured a session on fraud prevention, increasing M/WBE utilization, and an in-depth review of two large agencies' internal P-card administration procedures. Additionally, agencies can now access an internal website featuring current P-card guidelines, memorandums, and other important information. Lastly, work began during Fiscal 2012 on finalizing a new solicitation to prepare for the expiration of the current contract with the City's P-card provider.

## F. Local Law 63

On December 8, 2011, the City Council passed Local Law 63 of 2011 (Local Law 63), which amended the procurement requirements in Section 312(a) of the City Charter that were originally created by Local Law 35 of 1994 (“Local Law 35”).<sup>25</sup> Local Law 35 required agencies to conduct a cost-benefit analysis in the event that entering into a standard or professional services contract would directly result in the displacement of City employees. Local Law 63 greatly expanded the definition of displacement and also changed the types of contracts for which the displacement analysis must be done. Local Law 63 went into effect on March 7, 2012.

Local Law 63 covers all contracts for standard or professional services valued at more than \$200,000, including new procurements, renewals, extensions, and task orders issued pursuant to requirement contracts.<sup>26</sup> Local Law 63 also covers all relevant intergovernmental and preferred source procurements (for more information on the different City procurement methods, [see](#) page 6).

Local Law 63 requires agencies to determine, prior to issuing a new solicitation or entering into a contract renewal or extension, whether the contract is the result of, or would result in, the displacement of any City employee within the agency. Local Law 63 defines “displacement” as the reduction in the number of funded positions, including reduction through attrition; layoff; demotion; “bumping”; involuntary transfer to a new class, title, or location; time-based reductions; or reductions in customary hours of work, wages, or benefits of any City employee.

Local Law 63 also requires MOCS to publish an annual contracting plan and schedule for each agency, detailing agencies’ anticipated contracting actions for the upcoming fiscal year. For new contracting actions, each agency’s plan includes information regarding the nature of the services sought, the term of the proposed contract, the method of solicitation, and the anticipated fiscal quarter of the planned solicitation. For proposed contract renewals and extensions, each agency’s plan lists any modifications sought to the nature of the services performed under the contract, the reason for renewing or extending the contract, and the month and year of the expiring contract. The listing for each action also includes information about civil service or job titles of any agency employees who perform the services sought or services of a substantially similar nature or purpose, and the total number of employees within such titles who perform such services. Although an agency may have employees who perform similar services, an agency may still need additional services under contract. For instance, an agency may not have sufficient personnel to handle a temporary project, or the work may historically have been done by a combination of agency staff and contractors.

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<sup>25</sup> The Mayor vetoed the legislation, but the City Council overrode that veto.

<sup>26</sup> The law specifically excludes emergency procurements, government-to-government purchases, and the procurement of legal services or consulting services in support of current or anticipated litigation, investigative or confidential services.

Since Local Law 63 went into effect, MOCS has overseen agency compliance with the requirements of the law. For each covered procurement, MOCS has helped agencies complete a Local Law 63 Determination Form, on which agencies certify whether or not the contract in question is the result of, or would result in, the displacement of any City employee within the agency. As per the requirements of the law, MOCS compiled and published the first Local Law 63 annual contracting plan and schedule this summer.

## **Packaging Reduction: Local Law 51 of 2011**



Pursuant to Local Law 51 of 2011, MOCS, in collaboration with the Mayor's Office of Long Term Planning, DCAS and DSNY, is working to establish packaging reduction guidelines for contracts entered into by City agencies for the purchase of goods.

Although packaging serves the essential function of protecting, containing and preserving a product, it also contributes to the City's waste stream. The new package reduction requirements will assist the City in better managing and minimizing waste produced by the purchase of goods.





Winners of the M/WBE of the Year Awards. Presented by SBS



**V. Expanding Opportunity for Minority- and Women-Owned Business**

The City created its M/WBE program pursuant to Local Law 129 of 2005 (LL 129). The program, created to expand opportunities for City-certified M/WBEs, has resulted in the awarding of more than \$3 billion in procurements for certified M/WBE firms to date. In Fiscal 2012, 881 M/WBE firms (about one quarter of those certified) were awarded at least one contract or subcontract with City agencies.

Table V-1: Awards to M/WBEs Since LL 129							
	Fiscal 2012	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008	Fiscal 2007	All Years
Prime Contracts	\$400,933,417	\$376,384,185	\$332,453,548	\$306,969,169	\$340,184,159	\$194,840,881	\$1,951,765,359
Subcontracts	\$128,769,973	\$186,473,196	\$381,946,178	\$180,378,560	\$127,505,932	\$59,182,856	\$1,064,256,695
<b>All Contracts</b>	<b>\$529,703,390</b>	<b>\$562,857,381</b>	<b>\$714,399,726</b>	<b>\$487,347,729</b>	<b>\$467,690,091</b>	<b>\$254,023,737</b>	<b>\$3,016,022,054</b>

The City’s overall procurement volume declined by approximately 30% in Fiscal 2012, although the sharpest decline occurred in contracts valued above the one million dollar mark and in human services contracts, i.e., contracts not covered by the M/WBE goals program. As shown in Table V-2 on the following page, the M/WBE goals program covered \$389 million worth of prime contracts in Fiscal 2012, up from \$346 million in Fiscal 2011, despite the overall decrease in contracting value.<sup>27</sup>

<sup>27</sup> See Table V-2, All Industries <= \$5K, >\$5K - \$100K, and \$100K - <\$1M. The table excludes contracts procured with Federal or State goals, and those excluded from the goals program (human services, sole source and emergency contracts).

Prime Contracting Opportunities

**Table V-2: Fiscal 2012 M/WBE Prime Contracts**

Industry / Dollar Range	Total Value	African American		Asian American		Hispanic American		Caucasian Female		Total M/WBE	
		Value	%	Value	%	Value	%	Value	%	Value	%
Architecture/Engineering	\$414,395,254	\$8,000,000	1.9%	\$81,190,183	19.6%	\$0	0.0%	\$14,000,000	3.4%	\$103,190,184	24.9%
<=\$5K	\$35,743	\$0	0.0%	\$0	0.0%	\$0	0.0%	\$0	0.0%	\$0	0.0%
>\$5K, <=\$100K	\$528,419	\$0	0.0%	\$29,500	5.6%	\$0	0.0%	\$0	0.0%	\$29,500	5.6%
>\$100K, <\$1M	\$2,274,112	\$0	0.0%	\$808,000	35.5%	\$0	0.0%	\$0	0.0%	\$808,000	35.5%
>=\$1M	\$411,556,980	\$8,000,000	1.9%	\$80,352,683	19.5%	\$0	0.0%	\$14,000,000	3.4%	\$102,352,684	24.9%
Construction Services	\$1,356,378,994	\$3,605,588	0.3%	\$54,893,273	4.0%	\$10,556,220	0.8%	\$29,904,502	2.2%	\$98,959,582	7.3%
<=\$5K	\$13,793	\$0	0.0%	\$0	0.0%	\$0	0.0%	\$13,793	100.0%	\$13,793	100.0%
>\$5K, <=\$100K	\$10,369,001	\$105,588	1.0%	\$1,853,427	17.9%	\$318,500	3.1%	\$817,947	7.9%	\$3,095,461	29.9%
>\$100K, <\$1M	\$39,983,764	\$0	0.0%	\$3,135,307	7.8%	\$420,854	1.1%	\$2,785,640	7.0%	\$6,341,801	15.9%
>=\$1M	\$1,306,012,436	\$3,500,000	0.3%	\$49,904,539	3.8%	\$9,816,866	0.8%	\$26,287,121	2.0%	\$89,508,526	6.9%
Goods	\$740,982,913	\$5,535,584	0.7%	\$6,676,134	0.9%	\$10,072,843	1.4%	\$17,109,111	2.3%	\$39,393,672	5.3%
<=\$5K	\$18,407,382	\$714,166	3.9%	\$951,966	5.2%	\$896,499	4.9%	\$3,061,020	16.6%	\$5,623,651	30.6%
>\$5K, <=\$100K	\$75,237,059	\$4,034,845	5.4%	\$4,645,920	6.2%	\$4,790,768	6.4%	\$12,874,964	17.1%	\$26,346,498	35.0%
>\$100K, <\$1M	\$85,571,561	\$786,573	0.9%	\$1,078,248	1.3%	\$2,637,695	3.1%	\$1,173,127	1.4%	\$5,675,642	6.6%
>=\$1M	\$561,766,910	\$0	0.0%	\$0	0.0%	\$1,747,881	0.3%	\$0	0.0%	\$1,747,881	0.3%
Professional Services	\$456,127,440	\$714,416	0.2%	\$21,705,484	4.8%	\$153,220	0.0%	\$14,458,601	3.2%	\$37,031,721	8.1%
<=\$5K	\$903,261	\$9,310	1.0%	\$5,000	0.6%	\$0	0.0%	\$17,610	1.9%	\$31,920	3.5%
>\$5K, <=\$100K	\$10,157,279	\$458,673	4.5%	\$560,239	5.5%	\$153,220	1.5%	\$263,598	2.6%	\$1,435,730	14.1%
>\$100K, <\$1M	\$37,052,995	\$246,433	0.7%	\$5,117,745	13.8%	\$0	0.0%	\$6,177,393	16.7%	\$11,541,571	31.1%
>=\$1M	\$408,013,905	\$0	0.0%	\$16,022,500	3.9%	\$0	0.0%	\$8,000,000	2.0%	\$24,022,500	5.9%
Standardized Services	\$1,519,078,351	\$13,471,581	0.9%	\$6,102,448	0.4%	\$10,152,750	0.7%	\$11,672,842	0.8%	\$41,399,621	2.7%
<=\$5K	\$24,660,315	\$497,661	2.0%	\$2,350,329	9.5%	\$632,394	2.6%	\$2,124,837	8.6%	\$5,605,221	22.7%
>\$5K, <=\$100K	\$35,590,813	\$923,097	2.6%	\$1,721,898	4.8%	\$1,613,176	4.5%	\$3,128,621	8.8%	\$7,386,793	20.8%
>\$100K, <\$1M	\$48,236,230	\$190,954	0.4%	\$897,421	1.9%	\$658,088	1.4%	\$2,510,903	5.2%	\$4,257,366	8.8%
>=\$1M	\$1,410,590,992	\$11,859,869	0.8%	\$1,132,800	0.1%	\$7,249,092	0.5%	\$3,908,480	0.3%	\$24,150,241	1.7%
<b>All Industries</b>	<b>\$4,486,962,952</b>	<b>\$31,327,169</b>	<b>0.7%</b>	<b>\$170,567,522</b>	<b>3.8%</b>	<b>\$30,935,032</b>	<b>0.7%</b>	<b>\$87,145,055</b>	<b>1.9%</b>	<b>\$319,974,778</b>	<b>7.1%</b>
<=\$5K	\$44,020,494	\$1,221,137	2.8%	\$3,307,294	7.5%	\$1,528,893	3.5%	\$5,217,261	11.9%	\$11,274,586	25.6%
>\$5K, <=\$100K	\$131,882,571	\$5,522,203	4.2%	\$8,810,985	6.7%	\$6,875,664	5.2%	\$17,085,130	13.0%	\$38,293,982	29.0%
>\$100K, <\$1M	\$213,118,662	\$1,223,959	0.6%	\$11,036,721	5.2%	\$3,716,637	1.7%	\$12,647,063	5.9%	\$28,624,381	13.4%
>=\$1M	\$4,097,941,223	\$23,359,869	0.6%	\$147,412,522	3.6%	\$18,813,839	0.5%	\$52,195,601	1.3%	\$241,781,831	5.9%

As reflected in Table V-3, during Fiscal 2012 M/WBE vendors obtained over 25% of the City's micropurchases, up from almost 20% in Fiscal 2011. M/WBEs also obtained 29% of small purchases, up from 25% in Fiscal 2011. For both types of purchases, City policy and rules strongly encourage agencies to seek out M/WBEs for enhanced opportunities.

**Table V-3: Local Law 129 Prime Contracting Fiscal 2009-2012**

Industry/ Dollar Range	Fiscal 2012			Fiscal 2011		Fiscal 2010		Fiscal 2009	
	Total Value	All M/WBE		Total	% M/WBE	Total	% M/WBE	Total	% M/WBE
		%	Value						
Micropurchase	\$44,020,494	25.6%	\$11,274,586	\$56,077,089	19.7%	\$51,289,921	18.0%	\$53,711,252	14.8%
Architecture/ Engineering	\$414,395,254	24.9%	\$103,190,184	\$249,056,257	17.0%	\$408,793,265	10.1%	\$361,709,262	13.0%
>\$5K, <=\$100K	\$528,419	5.6%	\$29,500	\$878,597	26.2%	\$303,062	41.8%	\$1,630,305	12.6%
>\$100K, <\$1M	\$2,274,112	35.5%	\$808,000	\$7,080,176	54.4%	\$3,300,718	57.0%	\$10,845,043	1.1%
>=\$1M	\$411,556,980	24.9%	\$102,352,684	\$241,029,806	15.9%	\$405,115,325	9.7%	\$349,047,490	13.3%
Construction Services	\$1,356,378,994	7.3%	\$98,959,582	\$1,363,518,902	6.1%	\$5,152,164,039	3.2%	\$2,502,205,913	3.9%
>\$5K, <=\$100K	\$10,369,001	29.9%	\$3,095,461	\$1,930,482	18.8%	\$7,006,285	18.2%	\$19,763,979	15.7%
>\$100K, <\$1M	\$39,983,764	15.9%	\$6,341,801	\$36,327,386	9.6%	\$69,678,971	11.2%	\$112,300,328	15.9%
>=\$1M	\$1,306,012,436	6.9%	\$89,508,526	\$1,325,225,638	6.0%	\$5,075,406,542	3.0%	\$2,370,046,951	3.2%
Goods	\$740,982,913	5.3%	\$39,393,672	\$1,265,896,384	2.9%	\$1,171,742,701	2.0%	\$723,824,878	1.5%
>\$5K, <=\$100K	\$75,237,059	35.0%	\$26,346,498	\$59,516,283	31.1%	\$58,528,269	24.5%	\$59,902,176	10.7%
>\$100K, <\$1M	\$85,571,561	6.6%	\$5,675,642	\$72,411,917	5.5%	\$78,946,614	0.8%	\$66,735,297	0.8%
>=\$1M	\$561,766,910	0.3%	\$1,747,881	\$1,102,891,040	0.5%	\$1,005,631,024	0.1%	\$567,270,551	0.6%
Professional Services	\$456,127,440	8.1%	\$37,031,721	\$152,085,220	6.8%	\$215,693,274	5.6%	\$444,229,271	1.7%
>\$5K, <=\$100K	\$10,157,279	14.1%	\$1,435,730	\$11,512,338	15.2%	\$12,484,128	11.3%	\$17,692,282	6.3%
>\$100K, <\$1M	\$37,052,995	31.1%	\$11,541,571	\$14,315,780	5.3%	\$12,178,139	20.2%	\$25,491,546	8.7%
>=\$1M	\$408,013,905	5.9%	\$24,022,500	\$123,082,754	6.2%	\$187,440,994	4.3%	\$397,499,639	1.0%
Standardized Services	\$1,519,078,351	2.7%	\$41,399,621	\$693,664,714	2.3%	\$1,516,490,008	0.9%	\$1,135,049,977	6.1%
>\$5K, <=\$100K	\$35,590,813	20.8%	\$7,386,793	\$46,327,858	19.2%	\$41,059,048	12.5%	\$40,461,822	8.3%
>\$100K, <\$1M	\$48,236,230	8.8%	\$4,257,366	\$39,837,497	8.5%	\$47,544,995	6.5%	\$68,804,319	8.4%
>=\$1M	\$1,410,590,992	1.7%	\$24,150,241	\$585,776,834	0.3%	\$1,408,969,254	0.2%	\$1,005,816,322	5.8%
<b>All Industries</b>	<b>\$4,486,962,952</b>	<b>7.1%</b>	<b>\$319,974,778</b>	<b>\$3,724,221,476</b>	<b>5.1%</b>	<b>\$8,464,883,288</b>	<b>3.0%</b>	<b>\$5,167,019,301</b>	<b>4.6%</b>
<b>&lt;=\$5K</b>	<b>\$44,020,494</b>	<b>25.6%</b>	<b>\$11,274,586</b>	<b>\$56,077,089</b>	<b>19.7%</b>	<b>\$51,289,921</b>	<b>18.0%</b>	<b>\$53,711,252</b>	<b>14.8%</b>
<b>&gt;\$5K, &lt;=\$100K</b>	<b>\$131,882,571</b>	<b>29.0%</b>	<b>\$38,293,982</b>	<b>\$120,165,559</b>	<b>24.7%</b>	<b>\$119,380,792</b>	<b>18.7%</b>	<b>\$139,450,564</b>	<b>10.1%</b>
<b>&gt;\$100K, &lt;\$1M</b>	<b>\$213,118,662</b>	<b>13.4%</b>	<b>\$28,624,381</b>	<b>\$169,972,756</b>	<b>9.1%</b>	<b>\$211,649,437</b>	<b>7.5%</b>	<b>\$284,176,534</b>	<b>9.3%</b>
<b>&gt;=\$1M</b>	<b>\$4,097,941,223</b>	<b>5.9%</b>	<b>\$241,781,831</b>	<b>\$3,378,006,072</b>	<b>3.9%</b>	<b>\$8,082,563,138</b>	<b>2.5%</b>	<b>\$4,689,680,952</b>	<b>4.0%</b>

For prime contracts between \$100,000 and one million dollars, M/WBEs also won \$28.6 million worth of business in Fiscal 2012, which amounts to 13.4% of that category, up from 9% in Fiscal 2011.

Similarly, for prime contracts over one million dollars (which fall outside of the City’s current M/WBE goals), M/WBEs won nearly 6% of the awards, up from 4% in Fiscal 2011. M/WBEs also won prime contracts – another \$81 million – in areas that for various reasons fell outside of the coverage of the goals programs. Thus, while results in specific categories fluctuated, M/WBEs obtained almost \$530 million worth of City procurements in Fiscal 2012, including almost \$401 million worth of prime contract awards, notwithstanding the significant challenges City agencies face as they strive to meet M/WBE participation goals for such awards.<sup>28</sup> However, encouragingly the portion of the total Fiscal 2012 portfolio covered by the M/WBE program increased to 15%, up from 8% of the total Fiscal 2011 portfolio.<sup>29</sup>

The number of M/WBE vendors certified by SBS increased by 9%, rising to 3,526 from 3,244 at the end of Fiscal 2011.<sup>30</sup> While the City continues to strive for ever-increasing levels of participation, M/WBE procurement success rates to date demonstrate that the goals program has substantially increased opportunities for new firms to participate in City procurement.

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<sup>28</sup> Agency-by-agency tables for prime contracts are included in Appendix G. Year-to-year comparisons of prime contracts for the entire period of the City’s M/WBE program to date (Fiscal 2007 through 2012) are included in Appendix H.

<sup>29</sup> The net amount covered by the program is \$1.6 billion. Because subcontracting goals apply to about \$31 million worth of the prime contracts that are subject to goals, the \$1.6 billion total nets those out, rather than double-counting them.

<sup>30</sup> The data reported reflect City contracts won by *certified* M/WBEs, i.e., approved by SBS. Other “minority-owned” or “women-owned” companies that may qualify to be certified but have not yet sought to do so are not included.

## Assisting M/WBEs: Compete to Win

This year, the City launched a new package of capacity building programs for Minority- and Women-Owned Business Enterprises (M/WBEs). Led by the Department of Small Business Services (SBS), “Compete to Win” is a set of five initiatives designed to help M/WBEs do business with the City.

In partnership with American Express OPEN, **NYC Teaming** helps firms create partnerships that allow them to pursue new contracting opportunities. The program includes a series of workshops focused on joint venturing, marketing to partners, and presenting teamed firms to buyers, followed by a business matching event to find potential partners with complementary skills. To date, 325 businesses have attended workshops and matchmaking events.

The **Technical Assistance** service provides workshops and one-on-one assistance to prepare firms to compete. Workshops provide an in-depth understanding of specific industry requirements and standards for the submission of bids and proposals. The one-on-one assistance provides firms with guidance for submitting bids and proposals for City contracts, as well as aiding unsuccessful bidders and proposers to improve their next submission. SBS has met with more than 125 businesses to provide guidance on how to compete on City contracts.

**Upfront Capital Loans** provide short-term working capital from the New York Business Development Corporation and BOC Capital Corp. to approved M/WBE firms. The loans are designed to help fund startup expenses such as labor and equipment for small businesses awarded contracts with City agencies. Participating agencies currently include DOT, DDC, DPR, DCAS, and DEP. Eligible firms receive pre-approval for a loan, and disbursement of funds once awarded a contract. Seven businesses have been pre-approved for mobilization loans, totaling \$958,800. Three loans have been dispersed, for a total of \$208,800.

**Bond Readiness** helps small businesses, including M/WBEs, secure surety bonds for City construction projects. Services available through this program include workshops on accounting and financial management, insurance requirements, safety management, and credit repair. One-on-one financing assistance is also available to help with bookkeeping, application packaging, and referral to appropriate surety companies. Sixty-three businesses have received one-on-one guidance that will increase their ability to secure a bond.

**NYC Construction Mentorship** provides certified construction firms with greater access to City construction opportunities, a customized growth plan developed with a construction management firm, management classes, and on-the-job training services for contract winners. Businesses can currently pre-qualify for contracts with the Department of Housing Preservation & Development, and the Department of Parks & Recreation. Fifty-nine businesses have applied for this service and 12 have been awarded contracts.

### *Subcontracting Opportunities*

During Fiscal 2012 City agencies registered 220 prime contracts valued at about \$1.2 billion within the industries for which subcontractor goals are authorized: construction, professional and architecture/engineering (A/E) services.<sup>31</sup> This represents an increase in total value from last year's total of \$871 million. Under the City's program, participation goals are set for each individual contract that will generate subcontracts valued below one million dollars for construction, professional or A/E work. City agencies determine the percentage of the prime contract likely to be awarded for those three types of work in subcontracts valued below one million dollars. That amount is termed the "target subcontracting percentage" (TSP). Agencies apply the appropriate M/WBE goals to the dollar value of the TSP, based on the estimated value of the prime contract. To set goals, agencies consider such factors as the scope of work and availability of M/WBEs able to perform the required work. M/WBE participation goals become contract terms in the prime contract.

#### LL 129 Subcontracting on Fiscal 2012 Prime Contracts

Much of the dollar value of prime contracts awarded during Fiscal 2012 (or any given fiscal year) occurs over a multi-year period as the project is built out. For this reason, the subcontracts intended to meet the goals for those prime contracts will typically be awarded incrementally over several years. As shown in Table V-4 below, for the 220 Fiscal 2012 contracts within the universe to which M/WBE participation goals could be assigned, based on the TSPs and goals identified at the time of bid, M/WBE subcontractors are slated to eventually obtain \$56 million, or about 38% of the target subcontracting amounts projected for those prime contracts. This amount is consistent with, and indeed slightly ahead of, the Citywide goals. The TSPs for these contracts average about 12% of the contract value, which falls within industry norms for how much subcontracting typically occurs, how much of that would occur in subcontracts valued below one million dollars and how much would occur in the covered industries, i.e., construction, A/E and professional services.

Prime Contracts with Target Subcontracting Percentage			Target Sub-K % Value	Goals					
Industry	Total Value	#		African American	Asian American	Hispanic American	Caucasian Women	Unspecified M/WBE	Total M/WBE
Architecture/Engineering	\$244,911,115	38	\$32,619,836	\$201,620	\$0	\$112,011	\$363,637	\$13,581,601	\$14,258,869
Construction Services	\$971,720,117	174	\$115,271,368	\$1,950,861	\$741,595	\$1,280,676	\$0	\$37,654,312	\$41,627,443
Professional Services	\$17,996,342	8	\$1,927,227	\$8,946	\$2,217	\$5,908	\$12,909	\$578,230	\$608,210
<b>Total</b>	<b>\$1,234,627,575</b>	<b>220</b>	<b>\$149,818,431</b>	<b>\$2,161,426</b>	<b>\$743,811</b>	<b>\$1,398,595</b>	<b>\$376,546</b>	<b>\$51,814,143</b>	<b>\$56,494,522</b>

<sup>31</sup> The City program treats A/E as a component of professional services. MOCS tracks A/E separately, as utilization rates differ somewhat between A/E and other professional services.

In Fiscal 2012, the vast majority of the \$1.8 billion value of contracts in industries for which participation goals could be established was, in fact, subject to participation goals either under the City’s program (68%) or under applicable Federal and State participation programs (23%). Of the 392 total contracts, some 276 fell into one of those two categories. For the 56% of the Fiscal 2012 contracts covered by the City goals program, the prime contractor must submit a subcontractor utilization plan to meet its goals as part of its bid, proposal or other solicitation response, although the subcontractors to be retained need not be identified until the agency orders work to commence. Thus, most of the 220 prime contracts that were awarded with goals have not yet reached a point where substantial amounts of work are underway, much less reached their full potential to generate subcontracting opportunities.

**Table V-5: Fiscal 2012 Construction, Professional Services, & Architecture/Engineering Contracts >\$100,000**

Industry	Total	Goals Established		No Relevant Subcontracting Anticipated		State/Federal Goals		Waiver/Non Profit/Other		
		#	%	#	%	#	%	#	%	
A/E	#	61	38	62%	11	18%	10	16%	2	3%
	\$	\$382,831,092	\$244,911,115	64%	\$36,645,538	10%	\$92,546,327	24%	\$8,728,112.00	2%
Construction Services	#	248	174	70%	29	12%	42	17%	3	1%
	\$	\$1,325,791,150	\$971,720,117	73%	\$40,895,193	3%	\$300,637,358	23%	\$12,538,482	1%
Professional Services	#	83	8	10%	60	72%	4	5%	11	13%
	\$	\$105,623,581	\$17,996,342	17%	\$52,054,195	49%	\$20,245,093	19%	\$15,327,952	15%
<b>Total</b>	#	<b>392</b>	<b>220</b>	<b>56%</b>	<b>100</b>	<b>26%</b>	<b>56</b>	<b>14%</b>	<b>16</b>	<b>4%</b>
	\$	<b>\$1,814,245,824</b>	<b>\$1,234,627,575</b>	<b>68%</b>	<b>\$129,594,926</b>	<b>7%</b>	<b>\$413,428,777</b>	<b>23%</b>	<b>\$36,594,546</b>	<b>2%</b>

Subcontracting Not Covered by LL 129

Many large contracts are exempt from the City’s M/WBE program, as they are supported by State or Federal funds, which trigger State and Federal goals programs instead. Twenty three percent of the dollar value of Fiscal 2012 contracts in the three covered industries was exempt for this reason. State and Federal programs assign goals for minority- or women-owned business enterprises (MBE or WBE), and/or for “disadvantaged business enterprise” (DBE) firms. Agencies registered \$418 million of prime contracts subject to State or Federal goals. These are projected to generate \$96 million in MBE, WBE or DBE work, about 23% of the total value.<sup>32</sup>

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<sup>32</sup> Some of the contracts shown as subject to state or federal subcontracting goals in Table V-6 (on the following page) belong to categories not covered by the City’s goals program, and thus are not included in Table V-5 above.

<b>Table V-6: Federal &amp; State Goals</b>					
<b>Goals</b>	<b>Fiscal 2012</b>	<b>Fiscal 2011</b>	<b>Fiscal 2010</b>	<b>Fiscal 2009</b>	<b>Fiscal 2008</b>
MBE	\$52,292,810	\$40,870,886	\$232,301,799	\$237,639,669	\$444,000,000
WBE	\$34,493,256	\$29,360,766	\$79,591,744	\$71,897,396	\$131,000,000
DBE	\$9,453,384	\$20,108,175	\$156,067,788	\$18,627,540	\$69,000,000
<b>Total Subcontract Value</b>	<b>\$96,239,449</b>	<b>\$90,339,826</b>	<b>\$467,961,331</b>	<b>\$328,164,605</b>	<b>\$644,000,000</b>
<b>Total Prime Contract Value</b>	<b>\$418,428,777</b>	<b>\$547,081,217</b>	<b>\$2,603,158,839</b>	<b>\$1,570,900,701</b>	<b>\$3,340,779,736</b>
<b>Goals as % of Total Values</b>	<b>23%</b>	<b>17%</b>	<b>18%</b>	<b>21%</b>	<b>19%</b>

For 100 contracts in the covered industries, agencies concluded there would be no relevant subcontracting.<sup>33</sup> These tended to be smaller in value – they amounted to only 7% of the total.

EDC also provides work for many M/WBE subcontractors. While not covered by the City’s M/WBE program directly, EDC implements similar participation goals through its contracts and also supports a significant amount of work subject to State and Federal goals. In Fiscal 2012, EDC had over \$45 million in prime contracts subject to subcontractor participation goals, which generated just over \$7.3 million (16%) in such subcontract awards to City certified M/WBEs. Like those of its City agency counterparts, EDC’s contracts will continue to generate additional M/WBE and DBE subcontracts as work continues on projects begun in Fiscal 2012.

#### Subcontracting on Prime Contracts Awarded in Prior Years

Agencies continue to approve subcontractors on prime contracts that were subject to M/WBE goals set in Fiscal 2007-2012, as work under those contracts progressed. As Table V-7 reflects, for goals-covered prime contracts that were either first awarded and/or remained open during Fiscal 2012, agencies this year approved over \$49 million worth of subcontracts for certified M/WBE firms to perform construction, A/E or professional services work. This amounts to more than 46% of the total subcontracting dollars approved on those contracts within the relevant dollar range and industries.<sup>34</sup> These subcontracts are detailed in Appendix I. Based on an average TSP of 32%, these prime contracts will

<sup>33</sup> Types of contracts which typically do not result in subcontracting are litigation support; medical services and other specialized professional services; street lighting installation and maintenance; and tree planting. Agencies may not set M/WBE goals for anticipated subcontracts for goods or standardized services, even if the prime contract falls within the construction or professional services arena.

<sup>34</sup> Within that universe of prime contracts, certified M/WBEs obtained over \$1 million worth of subcontracts in non-covered industries (primarily standardized services) and \$22 million worth of subcontracts valued at or above one million dollars, although the City’s M/WBE program does not provide for goals for those categories. In addition, \$7.3 million of the \$49 million total does not count toward the City’s M/WBE goals, as the program does not authorize subcontractor participation goals for all race and gender groups in all industries.

eventually yield about \$780 million worth of subcontract work in the categories to which the M/WBE goals apply. Many of these, particularly the large construction contracts, will generate work for as long as a decade.

**Table V-7: Fiscal 2012 Subcontracting Subject to LL 129 on All Primes with TSP (By Industry)**

Prime Industry	Total Value of Primes	Avg. TSP	Sub. Industry	Total Value of Subs	African American			Asian American		Hispanic American		Caucasian Women	
					\$	%		\$	%	\$	%	\$	%
A/E	\$792,309,102	27%	A/E	\$770,841	\$378,376	49%	\$0	0%	\$0	0%	\$0	0%	
			Const.	\$8,831,318	\$4,121,506	47%	\$930,721	11%	\$42,018	0%	\$1,840,386	21%	
			Prof.	\$1,905,789	\$0	0%	\$69,726	4%	\$488,952	26%	\$524,269	28%	
Const.	\$1,644,290,490	35%	A/E	\$872,000	\$0	0%	\$800,000	92%	\$0	0%	\$0	0%	
			Const.	\$90,032,381	\$14,835,209	16%	\$10,510,619	12%	\$8,878,254	10%	\$4,461,052	5%	
			Prof.	\$873,923	\$77,085	9%	\$7,500	1%	\$0	0%	\$405,000	46%	
Prof.	\$5,443,392	18%	Prof.	\$652,229	\$10,000	2%	\$149,600	23%	\$0	0%	\$36,400	6%	
<b>Total</b>	<b>\$2,442,042,984</b>	<b>32%</b>	<b>Total</b>	<b>\$103,938,482</b>	<b>\$19,422,176</b>	<b>19%</b>	<b>\$12,468,167</b>	<b>12%</b>	<b>\$9,409,225</b>	<b>9%</b>	<b>\$7,267,107</b>	<b>7%</b>	

Finally, to provide a more comprehensive picture of the rate of progress the City is achieving in providing procurement opportunities to certified M/WBEs, we present data on subcontractors newly approved during Fiscal 2012 for all prime contracts open during Fiscal 2012. The table below includes both contracts covered by the City’s M/WBE goals program and the many contracts that fall outside its purview. It presents information on all of the subcontracts approved for certified M/WBEs for all City contracts – including those under State or Federal participation goals and those that are not subject to any goals program. Certified M/WBEs won 31% of *all* subcontracts approved during Fiscal 2012. For subcontracts below one million dollars in the construction, professional services and A/E industries targeted by the City’s goals program, that proportion rose to 45% for M/WBEs.

**Table V-8: All Subcontracts Approved in Fiscal 2012 (Grouped by Relevance to Goals Program)**

Subcontract Size	Prime/Sub Industry	Value	African American		Asian American		Hispanic American		Caucasian Women		All M/WBEs (%)
			\$	%	\$	%	\$	%	\$	%	
<\$1M	Goals Industry	\$176,654,907	\$24,376,604	14%	\$23,490,394	13%	\$12,983,875	7%	\$18,370,629	10%	<b>45%</b>
	Non-Covered	\$28,266,909	\$1,574,531	6%	\$650,601	2%	\$1,511,677	5%	\$2,219,316	8%	<b>21%</b>
	<i>Subtotal</i>	\$204,921,816	\$25,951,135	13%	\$24,140,995	12%	\$14,495,553	7%	\$20,589,945	10%	<b>42%</b>
\$1M & Over	Goals Industry	\$203,939,117	\$9,224,593	5%	\$15,441,701	8%	\$9,557,000	5%	\$9,369,052	5%	<b>21%</b>
	Non-Covered	\$7,772,181	\$0	0%	\$0	0%	\$0	0%	\$0	0%	<b>0%</b>
	<i>Subtotal</i>	\$211,711,298	\$9,224,593	4%	\$15,441,701	7%	\$9,557,000	5%	\$9,369,052	4%	<b>21%</b>
All Sizes	Goals Industry	\$380,594,024	\$33,601,197	9%	\$38,932,095	10%	\$22,540,875	6%	\$27,739,681	7%	<b>32%</b>
	Non-Covered	\$36,039,090	\$1,574,531	4%	\$650,601	2%	\$1,511,677	4%	\$2,219,316	6%	<b>17%</b>
	<b>Grand Total</b>	<b>\$416,633,114</b>	<b>\$35,175,728</b>	<b>8%</b>	<b>\$39,582,696</b>	<b>10%</b>	<b>\$24,052,553</b>	<b>6%</b>	<b>\$29,958,996</b>	<b>7%</b>	<b>31%</b>

As the table below indicates, the M/WBE share of the City’s total subcontracting volume below \$1 million has continued to steadily increase each year since the program was created. Fiscal 2012 showed the highest level of M/WBE subcontract awards (valued under \$1 million) at 42%. Similarly, the total subcontracting volume regardless of value has also continued to increase since the program was created. In addition, in Fiscal 2012, M/WBEs achieved their highest level ever of subcontracting participation, receiving 31% of all subcontracts, regardless of size.

**Table V-9: M/WBE Subcontracting**

Dollar Range	Fiscal 2012			Fiscal 2011			Fiscal 2010			Fiscal 2009		
	Total	M/WBE		Total	M/WBE		Total	M/WBE		Total	M/WBE	
		%	\$		%	\$		%	\$		%	\$
<\$1M	\$204,921,816	42%	\$85,177,627	\$247,429,327	38%	\$93,973,366	\$268,342,772	33%	\$89,575,033	\$283,525,634	28%	\$78,774,883
>=\$1M	\$211,711,298	21%	\$43,592,346	\$796,996,083	12%	\$92,499,830	\$984,746,997	30%	\$292,371,145	\$659,756,886	15%	\$101,603,677
<b>Total Subs</b>	<b>\$416,633,114</b>	<b>31%</b>	<b>\$128,769,973</b>	<b>\$1,044,425,411</b>	<b>18%</b>	<b>\$186,473,196</b>	<b>\$1,253,089,769</b>	<b>30%</b>	<b>\$381,946,178</b>	<b>\$943,282,520</b>	<b>19%</b>	<b>\$180,378,560</b>

## Faces of Procurement: M/WBE Success Stories

Freddie Brooks founded Binding Products, Inc. in 1992 by “hitting the pavement” with only \$5,000 in the bank. Today, Binding Products is a leading manufacturer and provider of binding equipment, supplies, printing services, and repairs, operating throughout the United States, in the United Kingdom, and in China.

While Binding Products, Inc. had bid on and won several city contracts, it wasn’t until a procurement officer at HRA, Kenneth Font, encouraged the company to get certified as an M/WBE that business with the City really took off. “Certification helped a great deal in getting exposure and access to opportunities with New York City,” says Freddie Brooks. “After we learn about an opportunity, we visit and find out how the equipment is set up, and get introduced to additional agency personnel...we actively build our network and relationships with the agencies and have been included on more bids.”

Since the City’s M/WBE program started in Fiscal 2007, Binding Products, Inc. has won over 145 contracts with seventeen City agencies, ranging from a few hundred dollars to \$50,000. The company has steadily increased their revenues, growing from a staff of one to a staff of twenty-five, and is looking to continue its national and international expansion.



## Large-Scale Contract Approvals

Local Law 129 requires City agencies to obtain MOCS approval before they solicit procurements anticipated to be valued at over \$10 million, in order to evaluate whether they are designed to maximize competition and M/WBE participation. In Fiscal 2012, there were 92 registered contracts for which MOCS conducted such large-scale procurement reviews.<sup>35</sup> Of these, 10 were both solicited and awarded in Fiscal 2012; the other 82 were registered in Fiscal 2012 based on approvals that occurred earlier. The value of the 92 registered contracts is almost \$3 billion dollars. Approximately 60% were solicited via competitive sealed bid and accelerated procurements, and 40% via competitive sealed proposal.

**Table V-10: Fiscal 2012 Large-Scale Procurements**

Basis of Determination	# of Contracts	Dollar Value	% of Total
Human Services	28	\$969,500,995	33%
Indivisible purchase/project/service	19	\$636,492,956	21%
Large-scale construction project	8	\$163,967,200	6%
Multiple site contract	1	\$10,304,300	< 1%
Requirements contract	15	\$456,510,904	15%
PLA	11	\$142,772,149	5%
Unique/unusual goods/services	10	\$593,147,230	20%
<b>Total</b>	<b>92</b>	<b>\$2,972,695,736</b>	<b>100%</b>

Almost one third of the approvals were for human services contracts with anticipated awards to nonprofit providers, which are not covered under LL 129. About 15% of the total dollar value of large-scale approvals was for various requirement contracts for DCAS (e.g., trucks and liquefied petroleum). These approvals were for projects in which separate and smaller contracts would not enhance M/WBE opportunities and would not be practical based on cost

considerations. Approximately 21% of the large-scale approvals were for indivisible projects or services, which, due to the nature of the projects, could not be broken up into smaller contracts.

## Waivers, Modifications and Complaints

Vendors may seek waivers – an application to do less subcontracting than the solicitation has projected – during the pre-bid or pre-proposal stage. Agencies and MOCS then evaluate the extent to which a vendor’s history of subcontracting construction and professional services is consistent with the request. Full waiver requests indicate the vendor will do no qualifying subcontracting; partial waiver requests indicate they will subcontract, but less than the agency’s Target Subcontracting Percentage (see “Subcontracting Opportunities” on page 70). To qualify for a full or partial waiver, a vendor must show both the capacity to execute the contract with less subcontracting than projected, and legitimate reasons to

<sup>35</sup> A full list of these determinations is included in Appendix K. Approvals that occurred in Fiscal 2012 but have not yet resulted in the release of any solicitation are reported only after the contract is awarded, in order to protect the integrity of the bidding/proposal process.

do so. In Fiscal 2012, only 6 contracts were awarded to vendors that qualified for full waivers, and 8 were awarded to vendors that qualified for partial waivers.<sup>36</sup> The total dollar value of contracts subject to a full waiver was about \$20 million. Vendors filed 220 requests for waivers in Fiscal Year 2012. Of those, 71 were denied, 34 were approved as full waivers, 114 were approved as partial waivers, and one waiver was withdrawn. However, the vast majority of the vendors who received waivers did not win the contracts for which they were bidding. Some of the waivers involved repeated requests from the same firms; of the 148 full or partial waivers that were granted, 106 waivers went to a total of only 17 individual firms. Waiver determinations are detailed in Appendix K.

Unlike waivers, which are granted or denied before contract award, modifications occur after a contract is already in place, where the vendor finds itself unable to meet the M/WBE participation goals due to circumstances encountered in the life of the contract, such as limited M/WBE availability. Vendors seeking modifications must show that they have made reasonable, good faith efforts to meet the goals set by agencies, and must detail why those efforts have been unsuccessful.

MOCS approved three modifications during Fiscal 2012. In each case, to support the modification the prime contractors demonstrated good faith efforts to award subcontracts to M/WBEs, and demonstrated specific obstacles outside the prime contractor's control. In one DEP contract, the prime contractor had difficulty finding City-certified M/WBEs with which to subcontract because the work to be performed was located in Putnam County. Though the prime contractor solicited bids from many City-certified firms, the firms were either unwilling or did not find it cost-effective to take contracts far away from New York City due to the travel time associated with the project. Accordingly, the contractor subcontracted some work to a vendor that, while City-certified, was women-owned and the agency could therefore not credit the prime contractor (since LL 129 does not include subcontracting goals for women-owned construction firms). Additionally, though the prime contractor could not find City-certified M/WBE firms to perform construction work, it did award non-qualifying subcontracts to other M/WBEs (either City-certified firms for standard services or State-certified firms).

In two DPR contracts, the agency eliminated from the project most of the work the prime contractor had planned to award to M/WBEs. In one case, the prime contractor identified other work to subcontract to M/WBEs and solicited bids from both City-certified M/WBE and non-certified firms. No certified firms submitted a bid and the prime contractor ultimately awarded the work to a non-M/WBE firm.

In the second case, not only was there a drastic reduction by DPR of the work that the prime contractor initially identified for its M/WBE subcontractors to do, but the subcontractor selected was unable to perform the work at the last minute due to other commitments. Ultimately, in a demonstration of

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<sup>36</sup> Full waivers are those in which vendors provide documentation that they plan to do no subcontracting. Partial waivers allow firms to do less subcontracting than the target subcontracting percentage and thus retain partial M/WBE goals.

good faith effort, the prime contractor awarded a non-qualifying subcontract to a City-certified M/WBE for supplies.

During Fiscal 2012, no complaints were made regarding compliance of LL 129 by certified M/WBE vendors. The only complaint received was from a firm not certified by the City questioning why no M/WBE subcontracting goals had been set on a DPR contract for tree removal and planting. A review of the procurement yielded no indication of non-compliance by DPR, since there was no subcontracting anticipated for this contract, and therefore, pursuant to LL 129, no M/WBE subcontracting requirements established.

The NYPD made two findings of LL 129 non-compliance against prime contractors for failure to make good faith efforts to meet M/WBE subcontractor goals. Ultimately, however, no enforcement actions were issued because in each case issuing an enforcement action was not in the best interest of the City and would not have furthered the goals of LL 129. Specifically, in one case the prime contractor was itself a certified M/WBE firm; in the other the contractor would have qualified for a pre-award waiver since it performed all work itself and did not utilize any subcontractors.

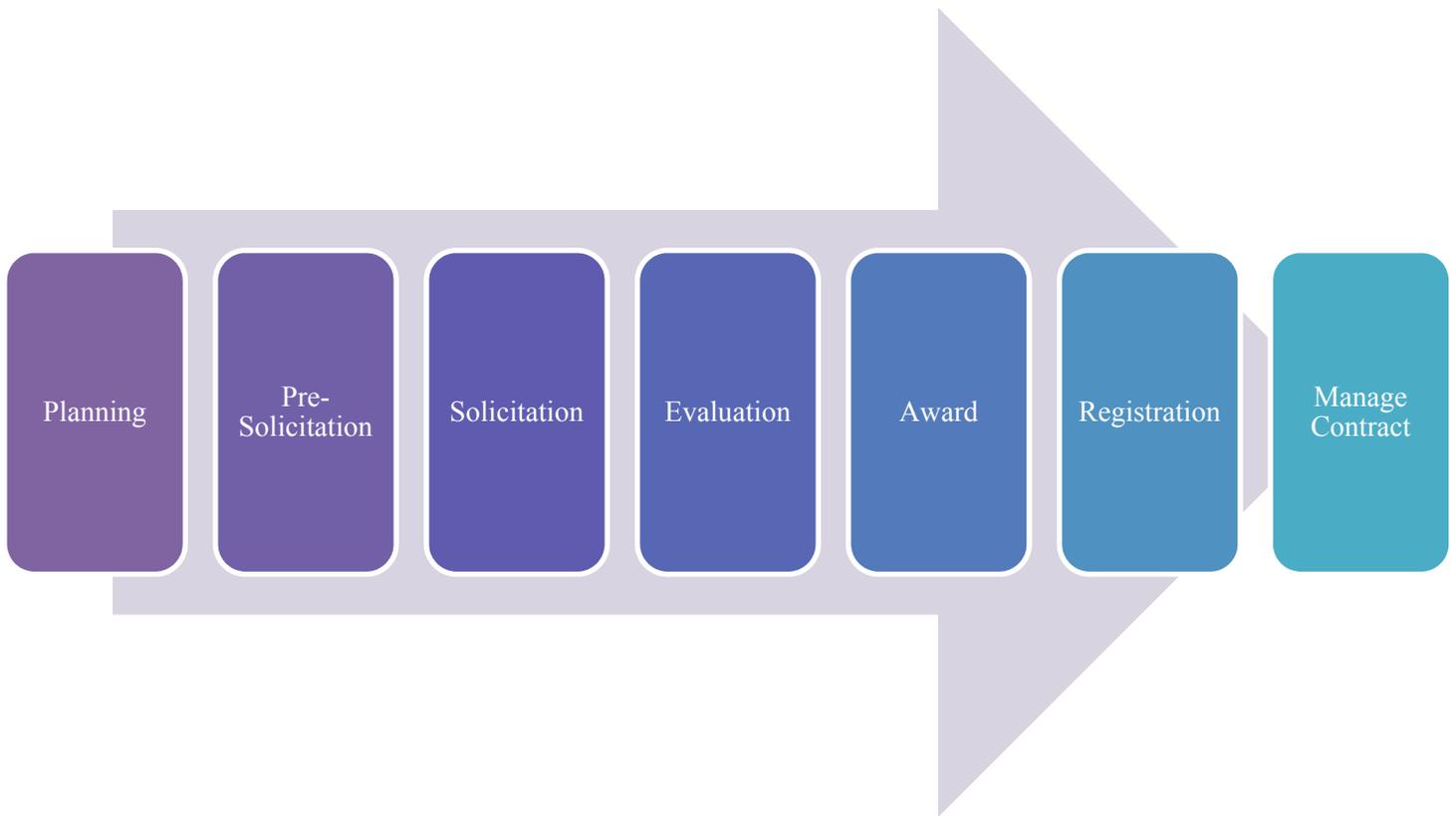
## **Faces of Procurement: Contracting with M/WBEs**

Ira Elmore joined DEP in 2002, where he currently serves as the Deputy Agency Chief Contracting Officer responsible for the agency's small and micro purchases. Before DEP, Ira worked at ACS as the director of purchasing, and DoITT, where he was a purchasing supervisor.

Ira says he likes procurement because it “gives agencies the tools they need...What we do as procurers affect what the agency does and the services it provides.” With Ira's efforts, DEP has implemented a robust M/WBE purchasing plan; as a result DEP consistently awards one of the City's highest percentages of small and micro-purchase contracts to M/WBEs. Ira credits two separate initiatives for DEP's success. The first is providing education to M/WBE vendors on how to do business with the City - DEP has conducted more than 400 one-on-one and group training sessions with M/WBEs. Procurement officers connect with vendors in three ways: (1) through the SBS M/WBE Directory; (2) at procurement trade shows hosted by SBS; and (3) when M/WBE vendors reach out directly to DEP.

Second, Ira credits success to friendly competition among DEP units. DEP has sixteen different bureaus that make their own micropurchases. The central office sends monthly reports to all of the bureaus with bureau-by-bureau breakdowns of M/WBE statistics. According to Ira, “Reporting the bureaus efforts and sharing the information provides for a collaborative environment and a greater incentive to put out their best efforts.”





## VI. The Procurement Process: Balancing Thoroughness and Efficiency

As this report illustrates, a well-functioning procurement system is critical to the operation of the City as a whole. The procurement process is designed to achieve three main goals:

- Provide necessary goods and services on time, and at the best value for the taxpayer.
- Operate fairly and transparently.
- Ensure the responsibility of our vendors, including their business integrity.

Because each of these goals is vital, MOCS and City contracting agencies strive to maintain the optimal balance between these imperatives.

### A. Professional Training

The procurement planning process begins with making sure City agencies are equipped with a well-trained staff. MOCS assists in this effort by delivering courses on best practices and compliance through the Procurement Training Institute. In Fiscal 2012, 534 people attended one or more of the 17 classes offered. The curriculum ranged from topics such as “Procurement Law for Non-Lawyers” to “Prevailing Wage for Procurement and Contract Administrators.” By the end of Fiscal 2012, 104 Agency

Chief Contracting Officers and other upper-level procurement staff had received full certification under the City's professional development program.

## **B. Public Hearings**

Agencies hold public hearings on proposed contract awards to provide transparency and give the public an opportunity to comment on the pending action. Agencies are required by Section 326 of the City Charter and by PPB Rule 2-11 to hold public hearings on proposed contracts for more than \$100,000. The major exception to the hearing requirement is contracts that are awarded as a result of competitive sealed bids, or by accelerated procurements, which are a type of competitive bid. In those cases, agencies make contract award decisions based solely on which responsive and responsible bidder offers the lowest price. All told, during Fiscal 2012 City agencies awarded approximately 1,255 contracts that were subject to hearings, representing \$9.4 billion of procurement. In an effort to streamline the procurement process, MOCS has delegated authority to agencies to hold their own public hearings. However MOCS also administers public hearings on behalf of agencies as necessary. During Fiscal 2012, MOCS administered public hearings for 372 contracts, worth a total of \$3.9 billion. MOCS scheduled and held these hearings during twenty separate sessions throughout the year; these sessions were attended by 308 people, with 47 written and oral testimonies.

## Faces of Procurement: Gathering Public Input

Jacqueline Galory, Assistant Director for the Public Hearings Unit at MOCS, answers questions about Public Hearings for contracts below:

### **What is the role of the Public Hearings unit in the contracting process?**

*We administer and conduct public hearings. Agencies must submit materials for contracts that are over \$100,000 in order to schedule a public hearing. After approval, the Public Hearings Unit prepares advertisements to be printed in The City Record. Agency liaisons are notified that their contract has been scheduled for a requested hearing.*



Photo: Marcello Rios

### **How are the public and other interested stakeholders made aware of public hearing dates and details?**

*In addition to the City Record advertisements, the Public Hearings Unit prepares a schedule of hearings for the year, sends it to agency staff and posts it on MOCS's public website. A calendar is also prepared, printed, and distributed at hearings. Advance copies of the printed calendar are provided to all City elected officials, community boards and a cross-section of daily and community newspapers. Additionally, City agencies make draft copies of contracts or contract abstracts available for public inspection.*

### **From your perspective, why is it important for the public to have an opportunity to comment on City contracts?**

*Public hearings give the public an opportunity, in an open forum, to express their views on proposed City projects and contracts, either positive or negative, before an agency representative so that testimony received will be considered prior to the agency making its final contract award.*

### **Finally, how long have you worked at MOCS and what's your favorite part of your job?**

*I have been at MOCS since September 1990 and have enjoyed day-to-day contact with City agency personnel, arranging, administering and conducting Public Hearings, as well as listening to lively public comments at the hearings.*

## C. Performance Evaluations

Documenting how a vendor performs is critical to successful contract management, as well as determining whether a vendor should receive future contract dollars. Under the City's procurement rules, a prospective vendor that has performed unsatisfactorily in the past is presumed to be non-responsible. The vendor will not receive any future contracts unless the agency determines either that the circumstances surrounding the unsatisfactory performance were beyond the vendor's control, or that the vendor has appropriately corrected the problems.

The PPB Rules require that all open contracts must be evaluated for performance at least once per year. The three major performance evaluation (PE) criteria are 1) timeliness of performance; 2) fiscal administration and accountability; and 3) overall quality of performance. Agencies complete evaluations online through the VENDEX system, and MOCS distributes the evaluations to vendors. Once the vendor has been given time to review and respond to the evaluation, MOCS posts the evaluation to the VENDEX system as a resource to agencies in determining prospective contracting actions.

Overall performance across all of the City's vendors in Fiscal 2012 matched last year's level, with 97% receiving an overall rating of satisfactory or better. Approximately 94% of those vendors received such a rating with no underlying problems reported. 8% vendors had at least one sub-criterion rating of less than satisfactory, and the most frequently identified shortcoming was financial administration.

### *Using Performance Evaluations to Manage Contracts*

Agencies use performance evaluations (PEs) to monitor, document, and improve vendor performance. For instance, a vendor received an overall evaluation of "Unsatisfactory" on their contract with DOT to install bicycle racks throughout the city, so DOT reached out to the vendor to discuss corrective actions to improve performance. In consultation with DOT, the vendor changed installation procedures and replaced a supplier who had provided poor quality materials. As a result, although the vendor's subsequent formal performance evaluation has not been finalized, DOT has documented improved performance during interim evaluations. Recently, DOT released a competitive sealed bid for bicycle racks, and this vendor submitted the lowest-priced responsive bid. As noted above, typically a City agency cannot award a contract to a vendor with a negative performance evaluation. However, since DOT was able to work with this vendor to improve performance, the City is able to save money by benefiting from this vendor's competitive pricing.



Another example of effective performance management comes from a DHS contract for management of housing for the mentally ill. The vendor had prior experience managing housing for other populations, and had performed well. The first six months of the six-year contract were spent hiring staff and finding suitable residents for the residence. When DHS evaluated the facility, they found that the vendor had only hired one case worker, not the three caseworkers needed to provide sufficient service.

Billing and reporting were inadequate, and staff shifts were irregular, so residents never knew who would be working at a particular time. As a result, in 2009 the vendor received an overall PE of Poor.

To address the issues, DHS initiated a full-scale audit, and recouped \$50,000 through reductions in future contract payments, following a payment plan agreed to by the contractor and DHS. DHS helped the vendor staff properly, often rewriting job postings, and met with new staff to set expectations and establish proper procedures. The site director was very responsive to DHS's suggestions once the formal audit began. The vendor's overall rating rose to Fair, and then again to Good.

DHS's review process allowed the agency to rigorously evaluate and document the vendor's performance. In this case, DHS was able to help a well-meaning and receptive vendor improve staffing and expand its services to meet the needs of a new group of residents.

#### **D. Vendor Responsiveness and Responsibility**

City agencies may only make awards to responsive and responsible vendors – those that meet the terms of the City's solicitation, and who have the requisite capacity and business integrity.

##### *Responsiveness*

In addition to checking bid or proposal packages to ensure that vendors have submitted any required subcontractor participation plans under the City's M/WBE program, City agencies carefully review each bid or proposal once it is opened to determine if it is "responsive," i.e. it meets all of the applicable specifications and complies with all procedural requirements. This process both protects the City's interests and maintains a level playing field for all vendors. Reasons for non-responsiveness determinations may range from technical issues like late submittal to substantive issues such as failing to meet minimum experience standards. Once an agency finds a bid or proposal non-responsive, that submission is no longer under consideration and the agency moves on to the next submission in line.

Agencies made 340 non-responsiveness determinations during Fiscal 2012, down from 451 in Fiscal 2011. These determinations were made due to lack of required bonding or insurance (5% of the total); lack of required experience or capacity (6%); failure to comply with M/WBE subcontracting requirements (9%); unrealistic prices (2%); failure to comply with material terms, conditions and requirements of the solicitation (47%); procedural flaw(s) in the submission (21%); or more than one of the above factors (9%). If a bid or proposal is determined to be non-responsive, the vendor may appeal to the Agency Head. Agency Heads received a total of 94 appeals during Fiscal 2012; of these, the Agency Heads upheld 75 non-responsiveness determinations and reversed 19.

##### *Responsibility*

Pursuant to the PPB Rules, Concession Rules and the New York City Charter, the City may award contracts only to responsible vendors. A responsible vendor is defined as one that has the technical

capability and financial capacity to fully perform the requirements of the contract, as well as the business integrity to justify the award of public tax dollars. Prior to the award of each contract, the contracting agency must make a determination of vendor responsibility based on factors such as integrity, financial resources, technical qualifications and performance history.

Determinations of responsibility or non-responsibility are made by each Agency Chief Contracting Officer (ACCO) on a contract-by-contract basis. If a vendor is found responsible, the contract award may proceed. If the vendor is found non-responsible, the agency may either reissue the solicitation or choose another vendor by following the selection procedure of the relevant procurement method. When considering a vendor's responsibility, agencies are required to review and evaluate information from a variety of sources, consider the context of the particular solicitation and make a responsibility determination appropriate for that solicitation.

Negative information, whether self-disclosed by the vendor on a VENDEX questionnaire, provided by DOI in its "Vendor Name Check" letter,<sup>37</sup> or uncovered by an agency's own research, does not automatically result in an agency finding that the vendor is not a responsible business partner. Assessing vendor responsibility requires the awarding agency to balance the seriousness of the negative information, the evidence (if any) that the vendor has remedied the problem and the City's own needs for particular expertise the vendor may bring to a particular project. In some circumstances, DOI, MOCS and the contracting agencies protect the City's interest in vendor integrity by negotiating detailed responsibility agreements with vendors to permit them to receive contract awards, while providing for monitoring and other specific protections for the City.

However, agencies retain the discretion – and indeed the obligation – to find bidders or proposers for City contracts to be non-responsible when the facts warrant such a finding. A vendor may appeal an ACCO's determination of non-responsibility to the respective Agency Head within 10 days of receipt of the ACCO's decision. If an Agency Head upholds the ACCO's determination of non-responsibility, the vendor may appeal to the City Chief Procurement Officer (CCPO) within 10 days of the receipt of the Agency Head's decision. The CCPO, who is also the Director of MOCS, is the final administrative appeal available for a finding of non-responsibility.

Agencies made 12 non-responsibility findings within Fiscal 2012, citing issues including performance history, financial capability, and business integrity. In total, vendors appealed one decision to the CCPO during Fiscal 2012, with the CCPO determination still pending at the close of Fiscal 2012. The CCPO issued one determination with regard to an appeal initially filed prior to Fiscal 2012; this determination upheld the agency's non-responsibility finding. See Appendix P for a breakdown by agency.

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<sup>37</sup> When an agency is preparing to make an award, the VENDEX system generates a referral to DOI for a "Vendor Name Check," commonly referred to as a "VNC." DOI determines whether the prospective vendor or those affiliated with it have been the subject of a DOI investigation, and summarizes any relevant information in a response letter sent to the agency for consideration when making a responsibility determination.

## **E. Whistleblower Legislation**

Employees of City contractors are often in the best position to recognize fraud. In Fiscal 2012, Mayor Bloomberg signed two laws providing information and support to employees of City contractors who report information about people and companies alleged of defrauding the City.

Local Law 30 of 2012 requires any company awarded a City contract or subcontract valued over \$100,000 to post a notice at work sites, in a visible and accessible place, that lets employees know how to report to the City allegations of corruption, fraud, conflict of interest, gross mismanagement, or abuse of authority. Local Law 33 of 2012 expands whistleblower protections against retaliation to include employees of these City contractors.

Taken together, these laws will ensure employees know how to report allegations to the City, and guarantee their protections, including the right to file a lawsuit against their employer for retaliation.

## **F. Vendor Rehabilitation**

The City of New York is required to do business only with responsible contractors, which means that a contractor must have the capability in all respects to fully perform the contract requirements and must also have the business integrity to justify the award of public tax dollars.<sup>38</sup> If a vendor has any cautionary information in the VENDEX database that might cause doubt as to its business integrity, MOCS is permitted to note in the VENDEX database any corrective actions that the vendor has taken in order to rehabilitate itself, and to address the issues to the satisfaction of the City. This process allows the City to address responsibility issues, while also being able to retain the valuable services of particular vendors.

Corrective actions taken can include: retaining an auditor, monitor, technical consultant, or independent private sector inspector general (“IPSIG”) to review the vendor’s business practices, oversee its performance, or develop specific remedies with respect to the cautionary information in VENDEX; dismissing employees whose actions were the subject matter of the cautionary information in VENDEX; or entering into a certification agreement with the Department of Investigation (DOI) prescribing corrective actions or otherwise remedying the subject matter of the cautionary information in VENDEX. Vendors in varying business areas, such as construction, professional services, and human services, engaged in these types of corrective actions during Fiscal 2012 in response to cautionary information in the VENDEX database. For example:

- A construction company had previously entered into a Non-Prosecution Agreement with the U.S. Attorney's Office for the Eastern District of New York to resolve an investigation regarding the firm's utilization of disadvantaged and minority- and women-owned business enterprises

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<sup>38</sup> PPB Rule 2-08(b)(1)

("M/W/DBEs") on four construction projects. However, over the past two years, the construction company has taken significant steps to achieve compliance with all M/W/DBE requirements, including the addition of a full time Ethics and Compliance Officer, the development and implementation of an M/W/DBE Contractor Compliance Manual, a Code of Business Ethics, a Code of Conduct, and mandatory training for its employees. During Fiscal 2012, the construction company entered into an agreement with the City in connection with two contracts with DEP, which satisfactorily documented how the company would address all M/W/DBE compliance issues.

- An IT services firm entered into a settlement agreement with the City during Fiscal 2012 to resolve a DOI investigation regarding possibly improper Systems Integrator Compensation (also known as marketing assistance fees or referral fees) that was paid to the firm by other technology vendors. The DOI investigation stemmed from a federal False Claims Act lawsuit that was filed against the IT services firm in U.S. District Court for the Eastern District of Arkansas. The IT services firm asserted to DOI that it did not receive any improper payments, but the company agreed to pay the City approximately \$600,000 in exchange for the City releasing and discharging the firm from any City claims related to System Integrator Compensation. As a result of this settlement agreement, the IT services firm was able to continue its work on City projects, while the City was able to satisfactorily close the investigation.
- A human services provider with a long-standing positive track record as a City vendor, entered into a Corrective Action Plan ("CAP") with the City during Fiscal 2012 to address a DOI investigation regarding excessive executive compensation and other financial irregularities at the organization. Pursuant to the CAP, the human services provider agreed that it would no longer employ the Executive Director who had refused to testify to DOI regarding the excessive compensation. The Board of Directors also agreed to take other corrective measures, such as maintaining and enforcing auditable timekeeping procedures for all employees; completing the CBO Nonprofit Vendor Review process (see page 32); and continuing to cooperate and comply with all audit-related requests from the City. As a result of this CAP, the City was able to continue contracting with the provider, an organization whose extensive services to the residents of its community could not be easily replaced.

#### *DYCD Capacity Building programs*

DYCD provides capacity building services for nonprofits in an effort to maximize the impact of its funding and deliver high quality services. Hundreds of organizations have benefited from a range of technical assistance services that DYCD provides which include organizational development, trainings, and the creation of resources for front-line staff and supervisors.

In cases where a City-funded organization is experiencing significant organizational challenges that may negatively impact program services, DYCD engages a technical assistance provider with expertise in organizational development to provide intensive on-site support to the organization.

For instance, DYCD received a request from a multi-service agency in Brooklyn receiving contract funding from DYCD. They needed help strengthening their infrastructure to manage their government contracts, improve youth program quality, and more effectively engage their board of directors. DYCD technical assistance providers worked with them on each of these setbacks and their overall VENDEX rating for the 19 contracts has improved over the three year period since the beginning of DYCD's capacity building intervention.

## **Streamlining the Contracting Process: VENDEX Processing Reforms**

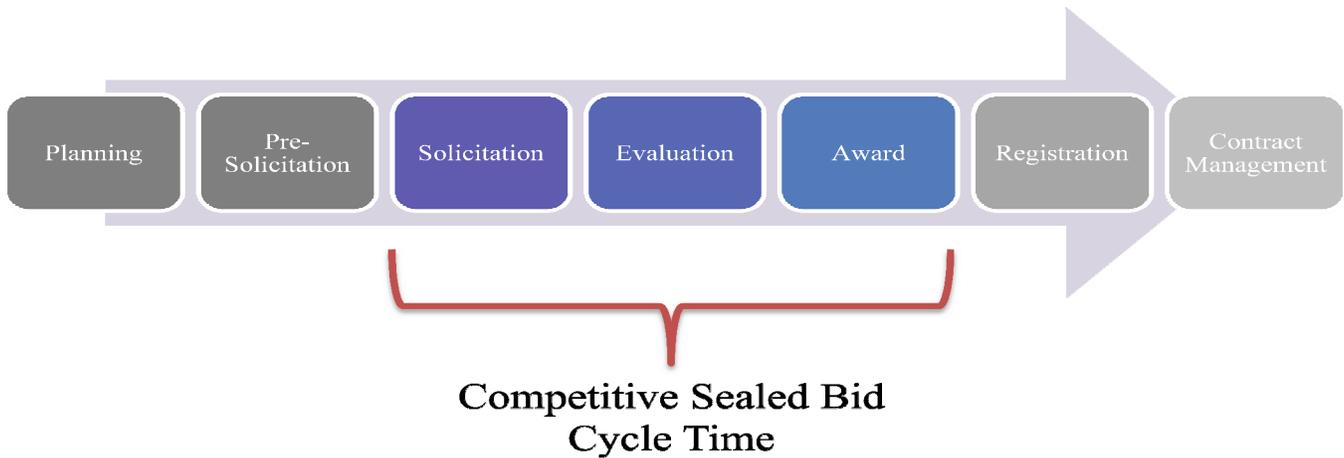
To assist agencies making contract award decisions, the City requires vendors with an aggregate of \$100,000 or more in total contract value to complete a VENDEX submission,<sup>39</sup> providing detailed background information on the vendor, and its principal owners and officers. In July 2012, MOCS announced the following improvements that will speed up processing of VENDEX forms, so that key vetting information will be available to agencies quickly, accelerating the contracting process:

- MOCS now will only process vendor submissions that an agency has prioritized because the submission is for a pending contract award. Submissions without an agency request (nearly half the submissions received each day) will be held at MOCS but not reviewed. This change will allow MOCS to process the highest priority submissions more quickly.
- MOCS has created protocols for agency staff to assist with accelerating VENDEX processing.
- Incomplete VENDEX submissions slow down the review process. MOCS will now require vendors to respond within five business days of MOCS's request for missing information. This policy change will reduce the time it takes a vendor to complete the VENDEX review process.
- In the upcoming fiscal year, MOCS also plans to streamline the VENDEX Questionnaires and move them online, allowing vendors to submit their information electronically. These steps will make it easier for vendors to complete their submission, reduce the need for data entry, and improve the quality of information received by the City.

These efforts will improve the VENDEX process for both the City and its vendors.

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<sup>39</sup> VENDEX questionnaires must also be filed by vendors receiving any sole source award valued at \$10,000 or more.



## G. Cycle Time

In this section, we present data on “cycle time” – how long agencies take to process competitive sealed bids, which are typically used for goods, standardized services, and construction.<sup>40</sup>

The Fiscal 2012 data derives from the Automated Procurement Tracking (APT) system, which provides detailed procurement milestones. This year, MOCS is able to use this data to tie the “start” of the procurement cycle time directly to the bid release date, providing a more accurate and consistent measurement of average cycle time. As Table VI-1 shows, in Fiscal 2012, the average cycle time for competitive bids was 176 days,<sup>41</sup> compared to 165 days in Fiscal 2011. Although quicker cycle times remain a goal, roughly half of the rise this fiscal year is due to increased processing times for large contracts (over \$10 million) which may take agencies additional time to finalize. The other half of the increase stems from the fact that large bid contracts made

<b>Table VI-1: Competitive Bid Cycle Time</b>				
<b>Agency</b>	<b>Average Number of Days</b>			
	<b>Fiscal 2012</b>	<b>Fiscal 2011</b>	<b>Fiscal 2010</b>	<b>Fiscal 2009</b>
ACS	221	310	N/A	218
DCAS	163	168	135	116
DDC	166	141	150	151
DEP	187	169	130	154
DHS	145	136	139	120
DOC	263	199	176	144
DOHMH	151	153	121	N/A
DOT	197	167	150	127
DPR	136	98	124	140
DSNY	215	190	162	192
FDNY	210	220	157	188
<b>Citywide</b>	<b>176</b>	<b>165</b>	<b>137</b>	<b>136</b>

<sup>40</sup> In order for this indicator to reflect only typical processing times and provide a meaningful average, information is included only where the agency handled more than three contract actions for the method reported. The aggregate cycle time for contracts awarded from “atypical” procurements, such as those delayed by litigation or investigations, is also excluded.

<sup>41</sup> Because not all bids had cycle time information available in APT, the value of the Fiscal 2012 Citywide cycle time average has a margin of error of ±10 days at a 95% confidence level.

up 14% of the contracts in the Fiscal 2012 Citywide average, compared to only 5% in Fiscal 2011. For contracts valued at less than \$10 million, the average cycle time in Fiscal 2012 was 166 days, up only slightly from an average of 165 days in Fiscal 2011.

Cycle times may be affected by various factors, such as complicated vendor integrity issues, insurance requirements, labor law compliance, and budget challenges that delay final contracting decisions. MOCS works with City agencies to help address these issues, balancing the overall goal of efficient procurement processing with the need to resolve these vendor issues with care and thoroughness. In addition, MOCS continues to advance operational improvements in the City's procurement system – see VENDEX Processing Reforms on page 87, and Streamlining the Contracting Process: Division of Labor Services on page 19.



## GLOSSARY – AGENCY PROCUREMENT INDICATORS FISCAL 2012

***Accelerated Procurement.*** A procurement method used to buy commodities, such as fuel, that must be obtained quickly due to significant shortages and/or short-term price fluctuations.

***Amendment.*** A change made to a contract. For purposes of this report, amendments are considered to be changes to contracts that add or subtract funds to reflect programmatic needs, and do *not* extend the contract's term. See *Amendment Extension*).

***Amendment Extension.*** A procurement method to continue a contract for up to one year, most often for a human services program, that would otherwise expire but has no renewal provisions available. These extensions ensure that services can continue without interruption.

***Apprenticeship Programs.*** Apprenticeship agreements appropriate for the type and scope of work to be performed that have been registered with and approved by the New York State Commissioner of Labor. The City mandates that contractors and subcontractors required to use apprentices show that such programs have three years of current, successful experience in providing career opportunities.

***Architecture/Engineering Services.*** A class of services specifically related to the preparation of plans and specifications for construction projects. This category does not include construction management or construction management and build contracts, nor the preparation of environmental studies. Contracts to hire licensed architects or professional engineers are included.

***Assignment.*** An agreement to transfer from one vendor to another the right to receive payment and the responsibility to perform fully under the terms of the contract. For purposes of this report, assignments are considered to be such transfers that occur under circumstances such as when a vendor defaults, fails to fulfill its responsibilities or otherwise becomes unable to continue, and *not* transfers that occur when a vendor undergoes a corporate change such as a merger, acquisition or name change.

***Buy-Against.*** The process by which an agency may obtain from a successor vendor, selected with competition to the maximum practical extent, the goods and services needed to fulfill its requirements after a vendor defaults or fails to fulfill its contract responsibilities.

***Change Order.*** An agency-authorized, written modification of a contract that adjusts price or time for performance. A change order permits the vendor to complete work that is included in the scope of the contract and permits the agency to make non-material changes to the scope.

***City Chief Procurement Officer (CCPO).*** Position delegated authority by the Mayor to coordinate and oversee the procurement activity of mayoral agency staff, including ACCOs. The Mayor has designated the Director of MOCS as the CCPO.

**Competitive Sealed Bid (CSB).** The most frequently used procurement method for purchasing goods, construction and standardized services, as well as concessions. CSBs are publicly solicited. Contracts are awarded to the responsive and responsible vendor that agrees to provide the goods or services at the lowest price, or in the case of concessions, the highest amount of revenue to the City.

**Competitive Sealed Proposal.** Also known as a Request for Proposals (RFP), this method is used when an agency must consider factors in addition to price, such as the vendor's experience and expertise. RFPs are most frequently used when procuring human services, professional services, architecture/engineering services; RFPs are also used for some concessions, where the agency, in determining which proposal is most advantageous to the City, wishes to consider both the revenue to the City and such other factors or criteria as are set forth in the RFP. RFPs are publicly solicited.

**Competitiveness.** Competitiveness is achieved when multiple vendors contend for a contract. For competitive sealed bids, requests for proposals and competitive innovative procurements a contract is competitive when the agency receives three or more responses.

**Concept Report.** City agencies are required to issue a detailed concept report prior to the release of a Request For Proposals (RFP) that establishes a new client services programs or a substantial reorganization of an existing program. These reports must describe anticipated changes in the number or types of clients, geographic areas to be served, evaluation criteria, service design, price maximums and/or ranges per participant. Concept reports, together with the comments received from the public, are used by agencies to draft the subsequent RFP.

**Concession.** Income generating contract for the *private* use of City-owned property to serve a public purpose. Examples include pushcarts, recreational facilities such as golf courses and tennis courts, parking lots, etc. Concessions do not include franchises, revocable consents or leases.

**Construction Change Order.** Amendments to construction contracts, used to implement necessary changes to ongoing construction projects, e.g., unanticipated conditions discovered in the field.

**Construction Services.** Construction services provide construction, rehabilitation and/or renovation of physical structures. This category includes Construction Management and Build contracts as well as other construction related services such as: painting, carpentry, plumbing and electrical installation, asbestos and lead abatement, carpet installation and removal, and demolition.

**Construction Trades.** This term refers to classifications of work in construction that have historically defined by the labor unions. New York State defines trades for both the purposes of prevailing wage classifications and apprenticeship program qualifications similarly but not always identically. For example, operating engineers cover a wide variety of work in operating and maintaining equipment, timber persons are a type of carpenter associated with heavy/highway construction, ornamental iron workers do work with metal that is not a structural component of a building and cement masons do formwork and finishing associated with poured concrete.

**Contract Dispute Resolution Board (CDRB).** Pursuant to the PPB Rules, CDRB panels arbitrate and resolve most types of disputes that arise under contracts between vendors and City agencies. A CDRB panel is made up of the City Chief Procurement Officer, an Administrative Law Judge from the Office of Administrative Trials and Hearings (OATH) and an independent panel participant chosen from a pre-qualified list reflecting persons with expertise. The CDRB makes final administrative determinations of City contract disputes in cases where vendors' claims have been rejected by the contracting agency and the City Comptroller.

**Cycle Time.** The length of time it takes agencies to process competitive sealed bids and RFPs.

**Default.** Inability of a contractor to fulfill the requirements of a contract, usually a result of poor performance, inability to perform, unreasonable delays, loss of insurance or bond or other deviation from the contract.

**Demonstration Project.** A short-term, carefully planned pilot exercise to test and evaluate the feasibility and application of an innovative product, approach or technology not currently used by the City. At the conclusion of the contract term, based upon the documented results of the project, the agency determines whether to competitively acquire or to discontinue the use of the product, approach or technology.

**Design Change Order.** An amendment to a design consultant contract, e.g., architecture or engineering.

**Discretionary Award.** See *Line Item Appropriation*.

**Emergency Procurement.** Method of procurement used to obtain goods and services very quickly, in many instances without competition, when an agency must address threats to public health or safety, or provide a necessary service on an emergency basis.

**Emerging Business Enterprise (EBE).** Local Law 12 of 2006 establishes participation goals for EBEs, defined as businesses owned and operated by individuals who have experienced social disadvantage as a result of causes not common to those who are not disadvantaged, and whose ability to compete in the market has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. EBE goals for prime contracts and subcontracts apply to the same industries as M/WBE goals. DSBS certifies participating businesses as EBEs.

**Encumbrance.** An action to earmark budgeted funds for a stated purpose.

**Environmentally Preferable Purchasing Laws (EPP).** Local Law 118 of 2005 establishes a Director of Citywide Environmental Purchasing (DCEP) to implement the City's EPP program. Mayor Bloomberg appointed the City's Chief Procurement Officer as DCEP. Local Law 119 of 2005 requires energy-using products purchased by the City to comply with ENERGY STAR<sup>®</sup> requirements, and meet the federal Energy Management Program energy and water efficiency standards. The law also requires that the City purchase more energy efficient lighting. Local Law 120 of 2005 requires City agencies to follow the Comprehensive Procurement Guidelines established by the federal EPA to ensure the use of products with recycled content. Local Law 121 of 2005 requires the City to purchase electronic equipment and fluorescent lighting with low levels of potentially hazardous substances. Local Law 123 of 2005 authorizes the City to develop a pilot program to test environmentally preferable cleaning products and establish standards requiring the purchase and use of such "green cleaning" products.

**Fiscal Year.** The City's fiscal year runs from July 1<sup>st</sup> of the preceding year to June 30<sup>th</sup> of the given year. Fiscal 2012 runs from July 1, 2011 through June 30, 2012.

**Franchise.** An income generating contract that confers the right to occupy or use City property, such as streets or parks, to provide a *public* service, such as telecommunications or transportation services.

**Franchise and Concession Review Committee (FCRC).** FCRC has six members: two appointees of the Mayor, one each of the Corporation Counsel, Office of Management and Budget and the Comptroller, and one voting seat shared by the five Borough Presidents, who rotate voting control based on the location of the item under consideration. MOCS oversees agency compliance with the applicable laws and regulations on behalf of the Mayor. Concession awards solicited by competitive sealed bid require neither a hearing nor a FCRC approval vote. For concessions other than those procured by CSB, the awarding agency and FCRC hold joint public hearings for any award that has a total potential term of at least ten years *or* will result in annual revenue to the City of more than \$100,000 *or* is considered to have major land use impacts. Concessions awarded by RFP do not require an approval vote. Concessions awarded pursuant to methods such as a sole source or negotiated concession typically require two FCRC approvals, one to authorize the agency to proceed with the concession and one to approve the resulting agreement.

**Goods.** This category includes all purchases of physical items. Most purchases of goods above the small purchase limit of \$100,000 are made by the Department of Citywide Administrative Services (DCAS).

**Government to Government Procurement.** The procurement of goods, services, construction or construction-related services directly from another governmental entity.

**Green Buildings Law.** Local Law 86 of 2005 sets standards designed to reduce the City's electricity consumption, air pollution and water use, as well as improve occupant health and worker productivity for certain capital projects. Capital projects that cost \$2 million or more and entail new buildings, additions to existing buildings and/or substantial reconstruction, must achieve Leadership in Energy and Environmental Design (LEED®) Silver certification from the United States Green Building Council (USGBC). In addition, the law requires higher standards for energy and water consumption depending upon the project type or other alternations.

**Green Cleaning Products.** Environmentally preferable cleaning products.

**Human Services.** A class of services that are provided directly to clients in various at-need groups. This category includes homeless shelters, counseling services, youth programs, after-school programs, homes for the aged, home care and other similar services. Vendors in this category are primarily nonprofit; some services, such as home care, also have for-profit providers.

**Innovative Procurement.** Agencies are permitted by the PPB Rules to experiment with new procurement methods. They may test any new method on a limited number of procurements. Once the tested methods are evaluated, PPB determines whether to codify the new methods for future use.

**Intergovernmental Purchase.** A fast-track method that enables City agencies to buy goods or services using pre-existing contracts between vendors and other government agencies, typically New York State.

**Job Order Contracts (JOCS).** A type of requirement contract for repair and building renovation where contractors bid a cost multiplier that applies to a whole book of unit items of work. It is distinct from unit price requirement contracts where a price is given for each item specified.

**Joint Bidding.** This term applies to the letting of public work by the City for infrastructure work such as streets, water mains and sewers, where the work of private utilities such as electricity, steam and telecommunications is in one contract, along with the City work, and the winning bidder is responsible for all of the work, public and private.

**Line Item Appropriation.** As part of the City's budget process, the City Council and Borough Presidents provide funding to specific vendors, typically community-based human services organizations, cultural institutions or other nonprofit groups. The contracts through which those funds flow are classified as line item or discretionary appropriations.

**Living Wage Law.** New York City establishes a pay rate requirement for certain types of contracts for building services, day care, Head Start, home care, food services, temporary workers and services to persons with cerebral palsy. See NYC Administrative Code 6-109.

**Master Agreement.** See Task Order Contract.

**Mayor's Management Report (MMR).** The MMR provides elected officials, oversight entities and the public with information about agency performance at key points in the planning and budgetary process.

**Micropurchase.** A method used to buy goods, services or construction valued at up to \$5,000. Agencies may buy from any available vendor at a fair price, without formal competition.

**Minority- and Women-Owned Businesses (M/WBEs).** Local Law 129 of 2005 establishes citywide participation goals by race, ethnicity and gender for vendors that are certified to be owned by women and/or minorities for contracts less than \$1 million dollars. The citywide goals for Black Americans, Hispanic Americans, Asian Americans and Caucasian Women represent the anticipated percentage of contracts by dollar value between City agencies and M/WBE firms during the course of the year. Prime contract participation goals exist in four industry categories: construction, professional services, standardized services and goods. Local Law 129 also establishes participation goals for subcontracts under \$1 million for construction and professional services. Each City agency that does at least \$5 million in procurement annually is responsible for developing an M/WBE utilization plan and meeting the citywide participation goals. DSBS certifies participating businesses as M/WBEs through an application process in order to prevent fraudulent claims under this program.

**Negotiated Acquisition.** A method of contracting used when only a few vendors are available to provide the goods or services needed, when there is limited time available to procure necessary goods or services or when a competitive procurement is otherwise not feasible. This method is often used for a variety of litigation support services.

**Negotiated Acquisition Extension.** The only option to extend a contract when renewal terms have been exhausted or are unavailable, and after the one year maximum amendment extension has been used, in order to provide an agency sufficient time to draft, issue and make new awards under an RFP. These extensions ensure that services may continue uninterrupted. Negotiated acquisition extensions are also used to ensure the completion of ongoing construction projects that are not finished by the contract's expiration date, and may extend the amount of time, money or both allocated to complete a project.

**Negotiated Concession.** A method of soliciting concessions generally used only when use of a CSB or RFP is not practicable and/or advantageous due to the existence of a time-sensitive situation, where an agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to proceed via a competitive award method. In addition, DCAS may award a negotiated concession to an owner of property that is adjacent to the concession property, or to a business located on such adjacent property, where due to the layout or some other characteristic of the property, or because of some unique service that can be performed only by the proposed concessionaire, it is in the best interests of the City to award the concession to the adjacent owner.

***Non-Responsible.*** A vendor that lacks the business integrity, financial capacity and/or ability to perform the requirements of a particular contract will be determined by the ACCO to be a “non-responsible bidder/proposer” and thus ineligible for a contract award. A vendor that is found non-responsible may appeal that determination to the head of the City agency responsible for the contract, and if the determination is upheld by the agency head, the vendor may appeal again to the CCPO.

***Non-Responsive.*** A vendor that submits a bid or proposal that fails to conform to the requirements for documentation/information specified in a Request for Bids or Proposals for a particular solicitation will be determined to be “a non-responsive bidder/proposer” and will not be considered for the contract. A vendor may appeal a finding of non-responsiveness to the head of the agency responsible for the contract.

***Prequalification.*** Process used by agencies to evaluate the qualifications of vendors for provision of particular categories of goods, services, construction or construction-related services, based on criteria such as experience, past performance, organizational capability, financial capability and track record of compliance and business integrity.

***Prevailing Wages.*** Wage schedules mandated by New York State Labor Law (§220 and §230) that define the wages to be paid for certain types of work under construction and building service contracts and subcontracts.

***Procurement.*** The City’s purchasing process, which includes vendor selection, contract registration, payment, performance evaluation and contract administration.

***Procurement Policy Board (PPB).*** Pursuant to the New York City Charter, the PPB establishes the rules that govern the methods of selecting procurement types, soliciting bids and proposals, awarding and administering contracts, determining responsibility, retaining records and resolving contract disputes. The PPB must review its rules, policies and procedures on an annual basis and submit a report to the Mayor, Comptroller, and City Council with recommendations on agency organization and personnel qualifications in order to facilitate efficient procurement. The PPB consists of five members, three of whom are appointed by the Mayor and two of whom are appointed by the Comptroller.

***Procurement Training Institute.*** The Procurement Training Institute (PTI) of DCAS’s Citywide Training Center (CTC) is responsible for the training and certification of NYC procurement professionals ensuring they are well trained to meet their complex responsibilities. PTI is overseen by MOCS. The PTI develops a full curriculum of classes on best practices and compliance with City procurement laws and regulations; schedules classes on various topics; assists agencies with registration; and, tracks the certification of those requiring certification.

***Project Labor Agreement.*** An agreement between an owner of real property and building trades unions that provides for common labor provisions applicable to all bidders (contractors) and their subcontractors.

**Protest.** Vendors that object to any aspect of a procurement and/or the resulting award, such as the qualifications of the winning vendor, may file a vendor protest with the head of the City agency responsible for the contract. This does not apply to accelerated procurements, emergency procurements and small purchases.

**Public Hearing.** Public hearings are held on contract awards to make the process transparent and give the public an opportunity to comment on proposed terms. The City conducts hearings on most contracts valued above \$100,000. Agencies may cancel a public hearing if, after notice is published, no member of the public indicates an interest in testifying. For concessions procured through a method other than CSB, the awarding agency and FCRC hold joint public hearings on any proposed concession that has a total potential term of at least ten years *or* will result in annual revenue to the City of more than \$100,000 *or* is considered to have major land use impacts as determined by the Department of City Planning.

**Purchasing Card (P-Card).** An agency-issued credit card that facilitates quick processing of micropurchases at a reduced administrative cost, while providing financial controls, oversight and transparency.

**Public Work.** Public work is defined as construction, reconstruction or maintenance work done by a public entity that takes place on public property with the primary objective of benefiting the public.

**Registration.** The process through which the Comptroller (1) encumbers or holds funds to insure payment to the vendor on successful completion of the contract; (2) records all City contracts and agreements; (3) tracks City payments and revenue associated with each contract or agreement; and (4) objects if there is evidence of corruption related to the procurement process itself or with the selected vendor. After a City agency submits a contract package the Comptroller has 30 days to either register or reject the contract.

**Renewal Contract.** Method used to continue operation of a registered contract beyond its initial terms, as stipulated in the original contract.

**Request for Proposals (RFP).** See *Competitive Sealed Proposal*.

**Required/Authorized Source or Method.** On occasion, a state or federal agency or a private entity (such as a nonprofit) that is funding a particular purchase through a City agency mandates either the specific vendor to be used for the provision of goods or services, or a specific process for selecting a vendor. In other instances, state law provides a “preferred source” procurement method for particular types of vendors, e.g., those employing disabled New Yorkers.

**Requirement Contract.** A contract entered into by a City agency, usually DCAS or DoITT, with a vendor that agrees to supply the City’s entire requirement for a particular good.

**Responsible Bidder or Proposer.** A vendor that has the capability in all respects to perform all contract requirements, and the business integrity and reliability that will assure performance in good faith.

**Responsive Bidder or Proposer.** A vendor whose bid or proposal conforms to the terms set out by the City in the solicitation.

**Retroactive.** A retroactive contract is one registered by the Comptroller after the contractual start date.

**Revocable Consent.** Grant for the private use of City-owned property for purposes authorized in the City Charter (e.g., for cafés and other obstructions), which may be revoked at the City's discretion.

**Small Purchase.** Method used for buying goods, services and construction valued at up to \$100,000.

**Sole Source.** For contracts, this procurement method may only be used when only one vendor is available to provide the required goods or services. This method is also used to "pass through" funds that support the NYC Economic Development Corporation and the capital construction projects of City-owned cultural institutions. For concessions, agencies may award without competition when it is determined that there is either only one source for the required concession or that it is to the best advantage of the City to award the concession to one source.

**Solicitation.** A solicitation is the process of notifying potential vendors that an agency wishes to receive bids or proposals for furnishing goods, services or construction. The process may include public advertising, mailing invitations for bids and requests for proposals, posting notices and/or delivery of telephone or fax messages to prospective vendors.

**Subscription.** A method used by agencies to purchase periodicals, off-the-shelf trainings, or memberships in professional organizations. Pursuant to PPB Rule 1-02, this method does not require agencies to perform a competition (as there is usually only one possible provider), however the procurement is subject to review and approval by MOCS.

**Standardized Services.** Standardized services typically do not require the provider to have experience in a specialized field or hold an advanced degree. A standardized service is clearly defined and highly commoditized; procurements for these services are generally awarded based on the lowest price. Examples include: security, janitorial, secretarial, transportation, collection and food related services. Contracts for services such as plumbing, electrical and HVAC for maintenance and repair not related to new construction also fall into this category.

**Task Order Contract.** A type of requirement contract under which a vendor or pool of vendors hold a master agreement defining a general scope of services, with specific assignments determined through subsequently-issued work orders.

**Vendor Enrollment Center (VEC).** Any business wishing to sell goods or services to the City may complete an enrollment form and be added to the citywide bidder lists used by all Mayoral agencies to distribute notices of City procurement opportunities.

***Vendor Information Exchange System (VENDEX).*** A computerized citywide system providing comprehensive information on vendors. Data is added to the VENDEX system from questionnaires completed by vendors. Vendors are required to file both Business Entity Questionnaires and Principal Questionnaires every three years if they have done \$100,000 or more worth of business with the City (contracts, franchises and concessions) during the preceding twelve months, or if they have sole source contracts totaling more than \$10,000.

***Vendor Rehabilitation.*** An administrative proceeding available to vendors that have negative information indicated in VENDEX, but can demonstrate that they have adequately addressed those problems and can prove their readiness to be awarded new contracts.

***Vendor.*** An actual or potential contractor.

<b>List of Mayoral Agencies and Acronyms</b>	
<b>Acronym</b>	<b>Agency</b>
ACS	Administration for Children's Services
BIC	Business Integrity Commission
CCHR	City Commission on Human Rights
CCRB	Civilian Complaint Review Board
CJC	Criminal Justice Coordinator
DCA	Department of Consumer Affairs
DCLA	Department of Cultural Affairs
DCAS	Department of Citywide Administrative Services
DCP	Department of City Planning
DDC	Department of Design & Construction
DEP	Department of Environmental Protection
DFTA	Department for the Aging
DHS	Department of Homeless Services
DOB	Department of Buildings
DOC	Department of Correction
DOF	Department of Finance
DOHMH	Department of Health and Mental Hygiene
DOI	Department of Investigation
DoITT	Department of Information Technology & Telecommunications
DOP	Department of Probation
DOT	Department of Transportation
DPR	Department of Parks & Recreation
DSBS	Department of Small Business Services
DSNY	Department of Sanitation
DYCD	Department of Youth & Community Development
FDNY	Fire Department
HPD	Department of Housing Preservation & Development
HRA	Human Resources Administration
Law	Law Department
LPC	Landmark Preservation Commission
NYPD	Police Department
OATH	Office of Administrative Trials and Hearings
OEM	Office of Emergency Management
TLC	Taxi & Limousine Commission