

# City of New York

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## OFFICE OF THE COMPTROLLER

**Scott M. Stringer**  
**COMPTROLLER**



## **MANAGEMENT AUDIT**

**Marjorie Landa**

Deputy Comptroller for Audit

Audit Report on the Department of Housing Preservation and Development's Controls over the Prequalification and Awarding of Open Market Orders to Prequalified Vendors for Its Emergency Repair Program

MD18-079A

**May 13, 2019**

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

May 13, 2019

To the Residents of the City of New York:

My office has audited the New York City Department of Housing Preservation and Development (HPD) to determine whether HPD's selected contractors meet Procurement Policy Board (PPB) requirements and HPD's criteria for prequalification, and whether Open Market Orders (OMOs) are awarded in accordance with HPD's established criteria. We perform audits such as this to ensure that City resources are adequately protected.

The audit determined that HPD does not have adequate controls over the prequalification vendor application process or over its awards of OMOs to prequalified vendors for its Emergency Repair Program. HPD did not solicit the minimum number of vendors required by the PPB Rules for a significant number of OMOs and failed to remove unresponsive vendors from the prequalified list (PQL) as required by the PPB Rules. In addition, HPD did not maintain evidence that vendors accepted onto their PQL for construction work have satisfactorily met the requirements for inclusion. Furthermore, the audit also determined that HPD does not adequately enforce its requirement that OMOs do not exceed 10 percent of the estimated cost for the contracted work. Finally, the audit found that OMOs were awarded to vendors that were in pending status—awaiting submission of required licensing and/or insurance documentation—and that HPD lacked adequate computer system documentation.

The audit made 21 recommendations including that HPD should develop written policies and procedures to help ensure compliance with the PPB Rules; track and monitor vendor responses; modify its computer system functions to require additional authorization and justification for approving OMOs greater than 10 percent of the estimated cost; implement process controls in its computer system to prevent pending vendors from being solicited for bids and from being awarded OMOs; and create and distribute a user manual for the computer system it utilizes to process OMOs.

The results of the audit have been discussed with HPD officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in blue ink that reads "Scott M. Stringer".

Scott M. Stringer

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# CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

## Audit Report on the Department of Housing Preservation and Development's Controls over the Prequalification and Awarding of Open Market Orders to Prequalified Vendors for Its Emergency Repair Program

MD18-079A

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### EXECUTIVE SUMMARY

The New York City Department of Housing Preservation and Development (HPD) is the largest municipal housing preservation and development agency in the nation. The agency's mission is to promote the construction and preservation of housing for low- and moderate-income New Yorkers in neighborhoods across the city.

HPD's Division of Maintenance (DOM)<sup>1</sup> is responsible for taking action to correct emergency violations issued to property owners, under their Emergency Repair Program (ERP), when residential owners do not remediate the conditions relating to those violations.<sup>2</sup> The cost of these repairs are billed to the property owner by the New York City Department of Finance. HPD generally utilizes vendors, rather than City employees, to conduct emergency repairs.

The City's Procurement Policy Board (PPB) Rules allow for prequalification of vendors for construction or construction-related services where the need for advance screening of vendors' qualifications outweighs the benefits of broader competition. In addition, HPD has its own *Contractor Compliance Unit's Eligibility Procedures for Acceptance to Prequalified Contractor Lists* (PQL Procedures) to provide further guidance to its staff. HPD currently maintains lists of prequalified contractors from which it can draw to perform different types of emergency maintenance and repair work in residential buildings up to the \$100,000 small purchase limit set forth in the PPB Rules. Eligibility criteria for becoming prequalified are set out in the PPB Rules and HPD's fact sheet and application form. The DOM Contractor Compliance Unit (CCU) approves and maintains lists of prequalified contractors. Contractors on the Prequalified List (PQL) are prequalified to perform work in various trades, including plumbing, electrical, general carpentry, and extermination. According to the 2018 Mayor's Management Report, the total

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<sup>1</sup> The Division of Maintenance Unit was recently renamed the Emergency Operations Division.

<sup>2</sup> Emergency violations are issued by HPD's Division of Code Enforcement for conditions that affect the health and safety of the tenant and general public.



amount spent on emergency repairs (excluding demolitions and the Alternative Enforcement Program) in Fiscal Year 2017 was \$10,009,946.

The objective of this audit was to determine whether: 1) selected contractors meet the PPB requirements and HPD's criteria for prequalification; and 2) Open Market Orders (OMOs, also known as work orders) are awarded in accordance with HPD's established criteria.

## **Audit Findings and Conclusions**

We found that HPD does not have adequate controls over the prequalification vendor application process or over its awards of OMOs to prequalified vendors for its ERP. Specifically, HPD did not solicit the minimum number of vendors required by the PPB Rules for a significant number of OMOs, thereby denying vendors the opportunity to bid on work relating to more than 6,300 OMOs. In addition, HPD failed to remove unresponsive vendors from the PQL as required by PPB Rules, which also had the effect of denying vendors an opportunity to bid in instances where unresponsive vendors were improperly given an opportunity to bid in their place. Furthermore, HPD did not maintain evidence that vendors accepted onto the PQL have satisfactorily met the requirements for inclusion, increasing the risk that vendors that do not have sufficient insurance protection or do not have sufficient experience may nevertheless have been awarded OMOs.

We also found that HPD does not adequately enforce its requirement that OMOs do not exceed 10 percent of the estimated cost for the contracted work. Over 25 percent of the OMOs for the period of January 1, 2017 through June 30, 2017 were awarded at greater than 10 percent of the estimated cost. Further, we found no evidence that a cost estimate was even prepared for 14 OMOs totaling \$35,909. In addition, we found that OMOs were awarded to vendors that were in pending status—awaiting submission of required licensing and/or insurance documentation. Contributing to the problems identified in this audit, we found that HPD lacked written policies and procedures over the awarding of OMOs using prequalified vendors for its ERP.

Finally, HPDInfo is the system by which OMOs are processed, approved and payments are rendered to vendors. However, we found that HPD lacked adequate HPDInfo systems documentation, raising concerns about its functionality and user access rights.

## **Audit Recommendations**

Based on the audit, we make 21 recommendations, including:

- HPD should develop written policies and procedures to help ensure compliance with the PPB Rules and it should enforce the implementation of those procedures.
- HPD should develop reports in HPDInfo to track and monitor vendor responses and ensure management reviews these reports regularly.
- HPD should remove vendors who do not respond to three consecutive bid solicitations from the PQL as required by PPB rules.
- HPD should ensure that an adequate file review is conducted, and such reviews are documented, to ensure that no vendors are added to the PQL that have not met all requirements and that any waivers are approved.
- HPD should ensure that standard operating procedures are created for the processing and awarding of OMOs, including the necessary steps to take before an OMO can be

awarded that is more than 10 percent above the estimated cost, and that staff and management are trained on these procedures.

- HPD should consider modifying HPDInfo functions to require: (1) additional authorization and justification for approving OMOs greater than 10 percent of the estimated cost; and (2) an estimated cost amount to be entered.
- HPD should implement process controls in HPDInfo to prevent pending vendors from being solicited for bids and being awarded OMOs. If this cannot be done, HPD should implement a compensating control to prevent vendors in pending status from being solicited and awarded OMOs.
- HPD's Management Information Systems (MIS) unit should create an HPDInfo user manual and distribute it to all DOM personnel.
- HPD should ensure that standard operating procedures are created for bid solicitations and the awarding of OMOs.

## Agency Response

Of the audit's 21 recommendations, HPD agreed in principle with 11—although it believes that it already complies with 3—partially agreed with 2, and will take 3 under consideration. HPD also disagreed with one recommendation and did not clearly address four recommendations. HPD also disagreed with the audit's overall conclusion. After carefully considering HPD's arguments, we find no basis to change any of the audit's findings or conclusions.

# AUDIT REPORT

## Background

Established in 1978, HPD is the largest municipal housing preservation and development agency in the nation. The agency's mission is to promote the construction and preservation of affordable, high-quality housing for low- and moderate-income New Yorkers in thriving and diverse neighborhoods across the city.

HPD's DOM is responsible for taking action to correct emergency violations issued to property owners, under its ERP, when residential owners do not remediate the conditions relating to those violations. HPD is authorized to conduct emergency repair work to address HPD Class C violations and Orders,<sup>3</sup> Department of Buildings Orders and Declarations of Emergency, Department of Health and Mental Hygiene Commissioner's Orders, and violations of other housing-related conditions. HPD generally utilizes vendors to conduct emergency repairs rather than City employees.

The City's PPB Rules allow for prequalification of vendors for the provision of particular categories of goods, services, construction or construction-related services. The PPB Rules state that prequalification should only be used where the need for advance screening of vendors' qualifications outweighs the benefits of broader competition, including categories of procurement where the time between the occurrence of the need and the award of the contract must often be reduced to respond to an emergency.

Emergency violations that building owners fail to correct in a timely manner are referred from HPD's Division of Code Enforcement to the Emergency Repair and Environmental Hazard (EREH) Unit, a division of DOM. EREH Unit inspectors are responsible for assessing the violation and determining the repair work required to remediate the cited hazardous conditions. All work performed by HPD vendors is charged to the owner of the building where the emergency violations exist. The City, through the Department of Finance, bills the owner for the cost of the emergency repair plus related fees and/or for the cost of sending a contractor to attempt to make repairs. If the owner fails to pay, the City will file a tax lien against the property for the bill amount.

HPD currently maintains lists of prequalified contractors from which it can draw from to perform different types of emergency maintenance and repair work in residential buildings up to the \$100,000 small purchase limit set forth in the PPB Rules. Eligibility criteria for becoming prequalified are set out in the PPB Rules and HPD's fact sheet and application form. The DOM Contractor Compliance Unit (CCU) approves and maintains lists of prequalified contractors. Contractors on the PQL lists are prequalified to perform work in various trades, including plumbing, electrical, general carpentry, and extermination.

If repairs are required to correct emergency conditions, EREH inspectors are responsible for creating an OMO, also referred to as a "work order," in HPD's computer database HPDInfo.<sup>4</sup> For severe emergency conditions, EREH may contact a vendor on their 24-hour standby list to commence work immediately. The OMO will identify the condition that must be addressed, a

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<sup>3</sup> According to HPD's violation class, Class C violations are classified as immediately hazardous and require that owners take corrective actions within 24 hours.

<sup>4</sup> HPDInfo is a workflow system that is used to track most of the steps involved in code enforcement from the inception of a complaint through payment to a vendor for emergency repairs.

description of the work required to remediate the condition, and an estimate of the cost. OMOs are received by DOM's procurement supervisor, who allocates the OMOs to HPD employees known as "issuers." These issuers are responsible for reading the OMO Job Description to obtain an understanding of the work required and generating a bid sequence designed to result in a vendor being selected to perform the work. As part of the process of generating a bid sequence, issuers are responsible for estimating how long the repair work may take, creating the bid start and end dates for vendors to respond (generally three business days), and selecting vendors for the bid.<sup>5</sup> Utilizing HPDInfo, issuers are supposed to randomly select eight active vendors from the PQL for a bidding sequence. Once bids are received from the vendors, the issuer is supposed to review all documentation to determine whether the bids appear responsible, note bid prices in HPDInfo, and recommend/award the work to a vendor.<sup>6</sup>

According to the 2018 Mayor's Management Report, the total amount spent on emergency repairs (excluding demolitions and the Alternative Enforcement Program) in Fiscal Year 2017 was \$10,009,946.

## Objective

To determine whether: 1) selected contractors meet the PPB requirements and HPD's criteria for prequalification; and 2) OMOs are awarded in accordance with HPD's established criteria.

## Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The primary scope of this audit was July 1, 2015 to June 30, 2017.

## Discussion of Audit Results with HPD

The matters covered in this report were discussed with HPD officials during and at the conclusion of this audit. A preliminary draft report was sent to HPD and discussed at an exit conference held on March 19, 2019. On April 15, 2019, we submitted a draft report to HPD with a request for comments. We received a written response from HPD on April 29, 2019.

This audit makes 21 recommendations to HPD. In its response, HPD agreed in principle with 11 recommendations (#s 1, 4, 5, 7-9, 11-13, 16, and 17)—although it believes that it already complies with three of them (#s 4, 7, and 12)—partially agreed with two (#s 2 and 14), and will take three (#s 18, 20, and 21) under consideration. HPD disagreed with one recommendation (#15) and did not clearly address the remaining four (#s 3, 6, 10, and 19), but rather for three of these

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<sup>5</sup> For emergency conditions that must be addressed immediately, (e.g., no heat or window guards), the bidding sequence may be shorter than the standard three business days.

<sup>6</sup> Issuers can award OMOs for values not exceeding \$500 and can recommend, for supervisor approval, OMOs with values greater than \$500.



recommendations (#s 3, 6 and 10) indicated that it would in some way seek to change or clarify the rules or policy upon which the recommendations were based.<sup>7</sup>

HPD disagreed with the audit's overall conclusion stating,

We disagree with the finding that the agency's controls are inadequate, as described in this Audit Report. HPD has established controls in place to ensure that emergency repairs are made by qualified vendors, that those vendors are afforded a fair opportunity to bid on work orders, and that the costs are not excessive for the emergency repair work necessary to ensure the safety of New York City residents. The Emergency Repair Program's (ERP) work complies with the Procurement Policy Board (PPB) Rules, or HPD has requested the necessary waivers or has facilitated PPB Rules changes from the Mayor's Office of Contract Services (MOCS) prior to this Audit Report in order to perform its work more efficiently and more promptly.

We do not disagree that HPD has established a number of controls over this process; our audit is an assessment of those controls. Unfortunately, our audit found HPD's controls are inadequate. For example, regarding HPD's claim that work is performed by qualified vendors, we found that HPD did not consistently ensure that vendors submitted required insurance documents and references. In addition, we found that two PQL vendors failed their technical interview and that 50 percent of the sampled vendors did not have the minimum experience needed for an assessment to be made regarding their record of protecting the health and safety of their workers, as required by the PPB Rules. As a result of these deficiencies, HPD's ability to confirm the qualifications of these vendors is reduced.

Regarding HPD's claim that vendors were afforded a fair opportunity to bid on OMOs, the report notes that for over a year, HPD incorrectly selected five instead of eight vendors, resulting in the possibility that responsive vendors were excluded from the bidding process in 18,975 instances. HPD has also not recognized that its failure to remove several vendors from the PQL although they had extremely high rates of non-responsiveness to bid solicitations has denied other responsive vendors the opportunity to bid on OMOs.

After carefully reviewing HPD's arguments, we find no basis to alter any of the report's findings or conclusions.

The full text of HPD's response is included as an addendum to this report.

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<sup>7</sup> With regard to recommendation #3, HPD stated that it would seek a "policy change" from MOCS with regard to following the rule underlying the recommendation. With regard to recommendation #6, HPD stated that it would seek clarification from MOCS of the rule the recommendation is based on. Lastly, with regard to recommendation #10, HPD stated that it is considering revising its own rule that underlies the recommendation.

## FINDINGS AND RECOMMENDATIONS

We found that HPD does not have adequate controls over the prequalification vendor application process and its awards of OMOs to prequalified vendors for its ERP. Specifically, HPD did not solicit the minimum number of vendors required by the PPB Rules for a significant number of OMOs, which denied vendors the opportunity to bid on work relating to more than 6,300 OMOs. In addition, HPD failed to remove unresponsive vendors from the PQL as required by PPB Rules which also resulted in vendors being denied an opportunity to bid on work because unresponsive vendors were improperly given an opportunity to bid in their place. Furthermore, HPD did not maintain evidence that vendors accepted onto the PQL had satisfactorily met the requirements for inclusion, increasing the risk that vendors that do not have sufficient insurance protection or experience may nevertheless have been awarded OMOs.

In addition, we found that HPD does not adequately enforce its requirement that OMOs do not exceed 10 percent of the estimated cost for the contracted work. We found that over 25 percent of the OMOs for the period of January 1, 2017 through June 30, 2017 were awarded at an amount that was greater than 10 percent of the estimated cost. Further, we found no evidence in HPDInfo that a cost estimate was prepared for 14 OMOs totaling \$35,909. In addition, we found that OMOs were awarded to vendors that were in pending status—awaiting submission of required licensing and/or insurance documentation. Additionally, we found that HPD needs to strengthen controls to ensure that OMOs requiring management approvals receive them. In addition, contributing to the problems identified in this audit, we found that HPD lacked written policies and procedures over the awarding of OMOs using prequalified vendors for its ERP.

Finally, as stated previously, HPDInfo is the system by which OMOs are processed, approved, and payments are rendered to vendors. However, we found that HPD lacked adequate HPDInfo systems documentation, including a user manual and complete user defined functions.<sup>8</sup>

As a result of these deficiencies, HPD is unable to reasonably ensure that all vendors met the requirements for prequalification and were eligible to perform work, that lowest bids were obtained, and that the amounts paid to vendors were reasonable. The details of our findings are discussed in the following sections of this report.

### Non-Compliance with PPB Rules

#### *Incorrect Number of Vendors Randomly Selected and Solicited*

PPB Rule 3-10(i) provides that when the procurement of services is made using the prequalification method, an agency may select bids from fewer than all of the vendors on the PQL through a process known as “selective solicitation.” When selective solicitation is used, bids or proposals shall be solicited from a minimum of eight vendors selected at random from the PQL.<sup>9</sup> By soliciting bids from multiple vendors, there is a greater assurance that competition will result in HPD obtaining the best price for the repairs.

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<sup>8</sup> User defined functions are programming shortcuts that perform specific tasks within a larger system, such as a database or spreadsheet program.

<sup>9</sup> Selective solicitation is the solicitation of bids or proposals from fewer than all the vendors on a PQL. This method may be used where time is of the essence or the benefits of additional competition are outweighed by the administrative cost of soliciting more than a minimum number of bids.

However, HPD selected only five vendors for solicitations instead of eight vendors as required by the PPB Rules. Based on a review of 6,382 OMOs awarded from July 1, 2015 through August 17, 2016, we estimated that vendors were excluded from the bidding process in 18,975 instances.<sup>10</sup>

HPD did not solicit the minimum number of bids because it was unclear about the requirements relating to the number of required vendors from which to solicit bids. As a result, the Business Rules setup in HPDInfo were inconsistent with the City's PPB Rules.<sup>11</sup> HPD stated that the selection had been programmed to select five vendors until HPD identified the error and adjusted the selection to eight vendors in Fiscal Year 2017 based on clarification of the PQL rules. In addition, as discussed later in the report, HPD lacks any internal written policies and procedures to help ensure that personnel are aware of their responsibilities so as to help ensure compliance with the City's PPB rules.

By failing to solicit the minimum number of bids required, there is an increased risk that HPD may have forgone an opportunity to procure the contracted services at a more economical price.

#### *Non-Responsive Vendors Not Removed from the PQL*

Per PPB Rules Section 3-10(l) (3), a prequalified vendor that fails to respond to three consecutive solicitations shall be deemed to have withdrawn from the PQL.<sup>12</sup> However, vendors who do not consistently respond to bid solicitations continue to remain active on the PQL. In order to avoid being removed from the PQL, vendors would have to respond to every third solicitation and therefore have a non-response rate of no more than 66 percent. Of the 141 vendors who received bid solicitations during January 1, 2017 through June 30, 2017, we identified 38 vendors on the PQL who received 50 or more bid solicitations and failed to respond to over 85 percent of the solicitations but were not removed from the list.<sup>13</sup> The results of our review are shown below in Table I.

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<sup>10</sup> In order to come up with the estimated number of vendors, we first extracted only Small Purchase Construction OMOs. Next, we multiplied this number of OMOs by three vendors (8 minus 5); however, we adjusted the number from three vendors to two or one, in instances where the number of vendors on the PQL was less than eight.

<sup>11</sup> Business Rules help to provide a more concrete set of parameters for an operation or business process.

<sup>12</sup> A response of "no bid" or "no proposal" shall be considered a response to a solicitation.

<sup>13</sup> In HPDInfo, the OMO bid status for the vendors was "No Response."

**Table I****Vendors with an 85 Percent Non-Response Rate to 50 or More Bid Solicitations**

<b>Vendor Number</b>	<b>Number of Bid Solicitations</b>	<b>Number of Non-Responses</b>	<b>Percentage of Non-Responses</b>
1	486	480	98.80%
2	484	473	97.70%
3	431	422	97.90%
4	373	367	98.40%
5	357	349	97.80%
6	351	313	89.17%
7	333	302	90.70%
8	323	287	88.85%
9	292	283	96.90%
10	290	284	97.90%
11	281	255	90.70%
12	246	232	94.30%
13	245	226	92.20%
14	237	234	98.70%
15	215	207	96.30%
16	202	199	98.50%
17	178	175	98.30%
18	172	169	98.26%
19	154	150	97.40%
20	148	147	99.32%
21	147	135	91.84%
22	131	119	90.84%
23	126	111	88.10%
24	128	112	87.50%
25	108	107	99.07%
26	102	88	86.27%
27	93	88	94.62%
28	91	79	86.81%
29	90	82	91.11%
30	83	77	92.77%
31	74	71	95.95%
32	72	71	98.61%
33	63	63	100.00%
34	59	58	98.31%
35	60	57	95.00%
36	59	56	94.92%
37	55	55	100.00%
38	54	51	94.44%

As shown in Table I above, we identified 7 vendors (numbers 1 through 7) that did not respond to over 300 bid solicitations. Two vendors (numbers 33 and 37) did not respond to any of their bid solicitations.

This occurred because HPD has not designated any staff or devised a mechanism to help ensure that non-responsive vendors are removed from the PQL. CCU officials stated that it is not CCU's responsibility to track PQL vendor responses to bid solicitations; however, HPD has not identified any staff who *are* designated to monitor vendor responsiveness. Additionally, HPD has not devised a monitoring tool (e.g., standardized reports in HPDInfo) to help monitor vendor responsiveness to bid solicitations, which reduces the likelihood that the agency will identify non-responsive vendors that should be removed from the PQL in accordance with the PPB rules. At the exit conference, HPD officials stated that they have recognized this as an issue and have reached out to the Mayor's Office of Contract Services (MOCS) to request that the language in the PPB Rules be changed from the word "shall" to "may" with regard to the requirement that states "a prequalified vendor that fails to respond to three consecutive solicitations shall be deemed to have withdrawn from the PQL." HPD did not provide any evidence of its request to MOCS. However, even assuming such a request had been made, the rule requiring removal of vendors from the PQL after they fail to respond to three solicitations is and remains in effect.

Failure to remove non-responsive vendors from the PQL results in an inflated number of vendors deemed eligible, which increases the risk that responsive vendors could be denied opportunities to bid on HPD solicitations because bids are instead being solicited from non-responsive vendors. This, in turn, results in decreased competition and an increased risk that HPD may not be paying the most competitive prices for services procured.

#### *Application Completion Dates Not Documented*

According to PPB Rules Section 3-10(g), the Agency Chief Contracting Officer (ACCO) shall have 90 days from the date of submission of a properly completed prequalification questionnaire to approve or deny prequalification. To facilitate compliance with this requirement, HPD's PQL Procedures state that the reviewer is to use a hard copy Application Processing Quick Reference sheet (Application Reference form, also known as a hardcopy log) to track the application. HPD's procedures also state that the reviewer is responsible for checking the date that the final document required as part of the application is received and entering that date on the Application Reference form, which is to be maintained with the application.

However, HPD did not document the date the application was deemed complete on 13 (65 percent) of 20 sampled Application Reference forms because the agency did not originally design the form to include a section to document the application complete date. (HPD amended the Application Reference form to document the completion date sometime around September 2016.) Consequently, for these 13 applications, we are unable to ascertain whether HPD complied with the 90-day requirement for approving or denying prequalification. The approvals for the remaining seven forms sampled (four of which were documented on the old Application Reference form) were granted within the 90-day threshold.

HPD does not require that supervisors review the Application Reference forms—and document their reviews—to ensure that staff record the dates that the applications are received and the dates they are deemed to be complete. As a result, eligible vendors may not be placed on the PQLs in a timely manner, limiting the pool of vendors to be solicited to perform needed emergency repair work. The smaller the pool of PQL vendors, the less competition there will be and the



greater the risk that HPD may not select a vendor that will provide the best value with regard to quality, cost, and efficiency.

## Recommendations

1. HPD should develop written policies and procedures to help ensure compliance with the PPB Rules and it should enforce the implementation of those procedures.

**HPD Response:** HPD agreed with this recommendation, stating, “[i]n response to the specific issue that the Comptroller’s Office cited, HPD wants to reiterate that, as of August 16 of 2016, it proactively revised the number of PQL vendors from whom bids were solicited. This change occurred in FY17 during the period covered by the audit (e.g., before the matter was raised by the Comptroller’s audit); HPD provided documentation of this change to the Comptroller’s audit team, including permission copy of the signed waiver granted by MOCS to implement the new policy before the audit began. HPD’s ACCO’s Office conducts monthly meetings with all procurement teams within the agency to keep them apprised of changes to PPB Rules and other procurement rules and processes; the agency will create additional written guidelines and policies and procedures to help further ensure compliance with PPB Rules.”

**Auditor Comment:** The document that HPD refers to in its response as indicating MOCS approval for reducing the number of bidders was actually MOCS’ approval for HPD to utilize random selective solicitation. The rule requiring solicitation of a minimum of eight vendors has been in effect as early as 2014. Nevertheless, we are pleased that HPD has agreed to create additional written guidelines to help ensure compliance with PPB rules.

2. HPD should develop reports in HPDInfo to track and monitor vendor responses and ensure management reviews these reports regularly.

**HPD Response:** HPD partially agreed with this recommendation, stating, “[u]ntil such time as HPD and MOCS can finalize discussions regarding the number of consecutive bids that would justify HPD removing a vendor from the PQL (see Recommendation 3), HPD will not monitor vendor responses for the purpose of removing vendors from the PQL. Once such an understanding is reached and vendors are notified about the applicable rule, HPD will monitor compliance appropriately.”

**Auditor Comment:** Notwithstanding HPD’s request to MOCS regarding a change, the current requirement as stated in the PPB Rules regarding the removal of non-responsive vendors from the PQL is still in effect and HPD is responsible for compliance with that requirement. Regardless of whether MOCS grants HPD’s request or leaves the rules unchanged, it is imperative that HPD track and monitor vendor responsiveness to ensure that it complies with PPB Rules regarding this issue.

3. HPD should remove vendors who do not respond to three consecutive bid solicitations from the PQL as required by PPB rules.

**HPD Response:** HPD states that, “[d]uring the audit period, HPD initiated an average of over 300 bid sequences per day for emergency repair work required to ensure the health and safety of tenants. [HPD also indicated in a footnote that not all 300 were bid solicitations to the PQL.] Given the high number of bids requiring response and the size of the companies which are on the PQL, it is unreasonable to expect a 33% rate for our PQL vendors. (For example, a vendor who is not available to bid on a single given day may be eliminated from the list.) The implementation of this rule as written would significantly reduce the number of vendors available to bid, limiting competition to those companies large enough to maintain staff just for responding to bids, and increasing the risk of HPD having to pay non-competitive prices. Acknowledging this, HPD proactively requested that MOCS grant the agency a policy change in recognition of its unusual volume of procurements and size of individual procurements; the agency took this action before the matter was raised by the Comptroller’s audit.”

**Auditor Comment:** HPD states that it is seeking a change to the policy that underlies this rule from MOCS, but does not mention whether it will start following the existing policy in the event that MOCS does not agree to the change HPD has sought. Further, HPD fails to mention that most ERP bids are open for three business days, giving vendors an opportunity to respond with a quote or a “no bid,” which is considered responsive. In addition, as shown in Table I above, we identified 38 vendors with an 85 percent non-response rate to bid solicitations. Fifteen vendors have ignored over 200 bid solicitations each during our scope period. These vendors do not appear to have interest in performing work on behalf of the City and therefore should be removed from the PQL in order to give other responsive vendors the opportunity to bid. We therefore urge HPD to reconsider its response and implement this recommendation.

4. HPD should ensure that the application completion date is documented on the Application Reference form and a decision on prequalification is rendered within 90 days by the ACCO.

**HPD Response:** HPD agrees and argues that it already complies with this recommendation, stating, “HPD asserts, and has demonstrated to the audit team, that the practice of documenting the application complete date on the Application Reference form is already in place and that the required documentation is present. The findings may be an issue of timing; as part of the period covered by this audit pre-dates this change, files from the earlier portion of the audit period would not reflect the change. Files from the latter portion of the audit period should reflect the change. HPD has always met the requirement that the ACCO render a decision on prequalification within 90 days of the agency’s receipt of a completed application.”

**Auditor Comment:** While HPD claims that it has always met the 90-day requirement, it lacks evidence to support this assertion; as noted in our audit, completion dates for 13 (65 percent) of the 20 applications we sampled were not documented.

## Non-Compliance with Eligibility Procedures for Acceptance to Prequalified Contractor Lists

According to HPD's PQL Procedures, vendors are required to submit the following insurance documentation with an application for the PQL:

- General liability insurance—complete insurance policies with a combined single limit of no less than \$1 million per occurrence and \$2 million annual aggregate and original signed certificates as proof that the contractor holds the required insurance when working on behalf of the City. This is required to help ensure that the City is protected in instances where a vendor is negligent.
- Workers compensation—contractors' Experience Modification Rate (EMR) for the past three years must not exceed 1.0 to ensure that the applicant does not have a high rate for risk of injury as compared to other similar companies.<sup>14</sup>
- Auto insurance—a combined single limit of no less than \$500,000 per accident for bodily injury and property damage. This is required to ensure the City is appropriately protected in cases of auto accidents when vendors are performing work on behalf of the City.

In addition, the PQL Procedures require that the insurance policies include specific language to ensure the City is appropriately covered by that policy. To ensure this coverage, HPD requires that the insurance policy include the following language to identify the insurance certificate holder: "The City of New York, c/o Housing Preservation and Development, Contractor Compliance Unit" along with the HPD address. The additional insured endorsement must read "City of New York, including its officials and employees, as additional insured. All locations, All operations." We considered the certificate holder and additional endorsement statements valid if evidence was present showing this information was in the actual policy and the required wording was correct. HPD's PQL Procedures do not identify any insurance policy types that are exempt from the additional endorsement language requirement. However, at the exit conference, HPD officials explained that this endorsement is only applicable to general liability insurance and that a vendor's workers compensation and auto insurance policies would not cover HPD employees.

HPD procedures also require the following:

- three references which are to be reviewed and verified to ensure that the vendor has completed jobs in New York City within the previous 12 months to obtain an independent endorsement that the vendor has performed satisfactory work in the relevant trade; and
- a completed and signed Doing Business Data Form, which provides information on entities and individuals considered to be doing business with the City of New York in accordance with Local Law 34 of 2007 (LL 34). LL 34 limits contributions to candidates for municipal office from individuals listed in the Doing Business Database.<sup>15</sup>

After all the required documents are received, reviewed, and verified, the vendor is scheduled for a technical interview with qualified agency personnel. The purpose of the interview is to evaluate the vendor's knowledge of applicable techniques and regulations to ensure that the vendor is

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<sup>14</sup> An EMR is a measure used by insurance companies to gauge both past cost of injuries and future chances of risk and is compared to other businesses in the same industry, within the same state. The PPB Rules require that criteria for prequalification include a record of protecting the health and safety of workers as demonstrated by the vendors' EMR for each of the last three years.

<sup>15</sup> PQL applicants are required to submit this form to the CCU who will in turn submit this form to MOCS.

qualified to perform the trade work for which it is applying.<sup>16</sup> If a vendor fails the technical interview, the vendor must reschedule within a fixed time as determined by the CCU director, but not beyond six months from date of notice. If the vendor does not schedule a follow-up interview within six months, its application is considered withdrawn and it would need to reapply, if still interested.

Our review of the application files, however, revealed that the files for 18 of the 20 sampled PQL applicants lacked at least one required document. The results of our review are shown in Table II, where an X indicates that a required item was missing from a vendor's application file.

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<sup>16</sup> Technical interviews are not required for certain licensed trades (e.g. plumbing) since their license is deemed sufficient evidence of their knowledge within the trade.

**Table II**  
Documentation Missing from  
Sampled Vendor Application Files

VENDOR	WORKERS COMPENSATION		GENERAL LIABILITY INSURANCE		AUTO INSURANCE	TECHNICAL INTERVIEW		OTHER		TOTAL DEFICIENCIES
	EMR	Valid Cert. Holder Stmt	Valid Cert. Holder Stmt	Valid Add'l Endors Stmt	Valid Cert. Holder Stmt	None	No evidence of 2 <sup>nd</sup> Interview <sup>1</sup>	Three (3) Refs	Doing Bus. Data Form	
1										0
2			X					X <sup>2</sup>		2
3	X									1
4	X		X	X	X					4
5								X <sup>3</sup>		1
6			X							1
7 <sup>4</sup>		X	X							2
8	X		X		X					3
9	X									1
10	X		X						X	3
11	X				X				X	3
12						X		X		2
13		X	X							2
14	X			X						2
15										0
16	X		X	X	X		X			5
17	X		X		X		X		X	5
18									X	1
19			X	X	X					3
20	X									1
Totals	10	2	10	4	6	1	2	3	4	42

<sup>1</sup> These vendors failed their first technical interview and HPD emailed them the questions they answered incorrectly during those interviews. The vendors responded to these questions via email; there is no evidence they sat for a second technical interview.

<sup>2</sup> Three references were provided, but one was for a different trade.

<sup>3</sup> Three references were provided but all were for work done outside of the City.

<sup>4</sup> Although an EMR was provided for this vendor, it was greater than 1.0.

As shown in Table II, the files for three of the sampled vendors (#s 4, 16, and 17) were missing at least 4 (33 percent) of the 12 required documents. In addition, there were two sampled vendors (#s 16 and 17) that failed the technical interview and for which we did not see evidence of a second technical interview. Rather, HPD emailed these vendors the questions they originally answered incorrectly during the first interview and allowed them to respond via email to these questions.

We also identified some concerns with regards to requirements stated in HPD's written PQL Procedures and fact sheet. Although both require that vendors submit evidence of workers



compensation limits of \$1 million, HPD officials at the exit conference stated that there is no limit for liability for workers compensation insurance, which we verified. The terms of the unlimited liability endorsement are applicable in situations where an employee is subject to the New York Workers' Compensation Law and such employee's injuries are within the scope of such law. HPD officials were unable to provide an explanation as to why its procedures reference a liability limit for workers' compensation of \$1 million.

The other insurance deficiencies identified primarily occurred because HPD has not implemented or enforced a system for verifying all insurance policy submissions, including required minimums and valid certificate holder and additional insured endorsement statements. In addition, in many instances, HPD accepted insurance certificates as evidence of insurance requirements and the complete insurance policies with the required information were not found in the files as required. Further, there was a lack of adequate oversight by HPD officials to ensure that required documents were submitted prior to PQL acceptance; as stated previously, although HPD uses an Application Reference form to document the required submissions, it does not enforce the requirement that supervisors review the forms to ensure that vendor submissions are complete.

Finally, HPD's justifications for waiving certain requirements are not documented in the case files. We found that the application files for 10 of the 20 vendors lacked an EMR. For these 10 vendors a letter was provided from the insurance company indicating that the applicant did not qualify for an EMR, because they did not have either the required premium or number of years' experience. Without an EMR, HPD does not know the applicant's record of protecting the health and safety of its workers. And notwithstanding the letters, Section 3-10(d)(9) of the PPB Rules, as well as HPD's internal policy, both *require* an EMR.

With regard to the applicant who did not have a technical interview and was missing references, HPD stated that since the applicant had previously done work with HPD, a technical interview and references were not required. However, the previous work performed by this vendor was not in the trade for the PQL list to which the vendor was applying.

As a result of the deficiencies we found in HPD's enforcement of its PQL eligibility procedures, vendors without required prerequisites may be awarded OMOs, which could increase the risk that emergency repairs will be substandard and that the City might face unnecessary financial liability. For example, in the absence of evidence that an applicant vendor passed a technical interview, there is an increased risk that the vendor may be awarded an OMO that requires work for which it is not qualified to perform. In addition, if a contractor does not have adequate insurance coverage, the City has an increased risk of having to pay out on a claim for problems arising from the vendor's work. Of the 19 sampled vendors with insufficient insurance documentation, HPD awarded 151 OMOs valued at \$689,947 to 12 of them during Fiscal Years 2016 and 2017. HPD sent 1,536 solicitations to bid on OMOs to 10 of these vendors during the period covering January 1 through June 30, 2017.

## Recommendations

5. HPD should update its PQL Procedures and fact sheet to clearly indicate the required insurance limits and additional insured endorsements for each type of required insurance policy.

**HPD Response:** "HPD agrees with this recommendation. The PQL Procedures and fact sheet will be updated to indicate the required insurance limits and additional insured endorsements for each type of required insurance policy."

6. HPD should consider requesting a waiver from the PPB if a significant number of applicants cannot meet the PPB Rule criteria for prequalification.

**HPD Response:** HPD did not clearly address this recommendation, stating, “HPD does not agree that a significant number of applicants cannot meet any of the PPB Rule criteria. The primary issue raised by the Comptroller’s report (in addition to the Recommendation 5, which HPD has already agreed to implement) concerns the EMR requirements. HPD does not agree with the Comptroller’s interpretation of those requirements, which would eliminate new companies from being able to participate in the PQL, and which would, in turn, decrease vendor competition and increase the risk that HPD must pay higher prices unnecessarily. However, HPD will seek clarification from MOCS regarding those vendors without enough experience to obtain an EMR.”

**Auditor Comment:** HPD makes no mention of whether it will request waivers if MOCS were to confirm the requirements as stated in the PPB Rules. As stated in those rules, a vendor must meet all criteria in the section including a record of protecting the health and safety of workers on public works projects and job sites as demonstrated by the vendor’s EMR for each of the last three years. Pertaining to this and any other requirements stated in the PPB Rules, we urge HPD to implement this recommendation if a significant number of applicants cannot meet such criteria.

7. HPD should ensure that an adequate file review is conducted, and such reviews are documented, to ensure that no vendors are added to the PQL that have not met all requirements and that any waivers are approved.

**HPD Response:** HPD agrees and asserts that it already complies with this recommendation, stating, “HPD maintains that its files regarding vendor applications are adequate and disagrees with the presentation of certain findings in this report to the contrary. As a specific example, HPD does consider all of the criteria listed in Section 3-10(d) of the PPB Rules, plus additional criteria as required. In all cases, HPD performs due diligence to ensure PQL vendors satisfy the requirements, and in the case of a vendor without an EMR rating (a rating acquired at three years), HPD bases its acceptance of the PQL vendor’s qualifications on its in depth review and background investigation of the vendor; this follows both the letter and spirit of the law, and encourages new, well-prepared vendors to enter the market.”

**Auditor Comment:** Notwithstanding HPD’s assertions, we found that vendors were accepted to the PQL without evidence that all requirements were met. The audit found that certain documentation required for acceptance to the PQL was missing from vendor files, including proof of required insurance, references, and evidence of passing a technical interview.

8. HPD should update its Application Reference form to include steps for reviewing insurance submissions.

**HPD Response:** “HPD agrees with this recommendation. The Application Reference Form will be updated to list the insurance requirements for PQL inclusion.”

9. HPD should ensure that all applicants who fail the technical interview are rescheduled for another interview and pass the second interview before being added to the PQL in accordance with its policies and procedures.

**HPD Response:** “HPD agrees with this recommendation. HPD will ensure that all applicants applying for trades where an interview is a necessary component of the approval process will be required to pass an interview prior to being added to the PQL.”

## Estimated Cost Threshold Was Not Followed When Awarding OMOs

According to HPD officials, its issuers may reject all bids made in response to an OMO that are deemed excessive. To be deemed excessive, the bid must be at least 10 percent above HPD’s estimate. Issuers may then be directed to re-bid the OMO to a new selection of vendors. According to HPD officials, after three solicitation attempts where the bids are deemed excessive, OMOs are referred to the EREH Unit for evaluation of the cost estimates in light of the repeated excessive bids. An exception to this process can be made under extreme emergency circumstances and/or where the work required by the OMO is outside regular business hours. The EREH Unit may determine that the estimate was too low and modify the estimate or that the bids are too high. The decision whether or not to re-bid is made by weighing cost considerations versus the time sensitivity of the work.

We found that 885 (27 percent) of the 3,260 OMOs awarded during January 1, 2017 through June 30, 2017 were awarded at above 10 percent of their estimated costs.<sup>17</sup> The monetary consequences of these “excessive” awards are illustrated in the following chart:

**Chart I**

Number of OMOs awarded above 10% of the estimated cost	885
Total estimated cost	\$649,939
Total cost with permitted 10% allowance	\$714,932
Actual cost of award	\$907,761
Amount in excess of allowance	\$192,829

Specifically, with regard to the awards reflected in Chart I:

- Of the 885 awarded OMOs above 10 percent of the estimated cost, 760 (86 percent) of them valued at \$688,879 were awarded after only one round of bidding without any referrals to EREH. The remaining 125 were re-bid anywhere from two to four times.
- Of these 885 OMOs, each vendor on average was awarded 12 OMOs. However, one vendor was awarded 98 OMOs totaling \$60,861, \$20,226 of which was in excess of the estimated cost plus 10 percent. According to HPD officials, this vendor was the only vendor on the iron PQL. However, it is unclear why HPD did not try to obtain bids using

<sup>17</sup> The 885 OMOs do not include single bid solicitations of \$2,000 and under.

other solicitation methods in order to obtain competitive bids more in line with the estimated cost.

- 650 (73 percent) of these 885 OMOs were awarded at 20 percent or more than the estimated cost.

We randomly selected and reviewed 25 of the OMOs that were awarded at 20 percent or more than the estimated cost and found that none contained a referral note in HPDInfo documenting an evaluation of the cost estimate or any notes indicating why the amount awarded was significantly greater than the estimated cost.

We identified an additional 13 OMOs totaling \$35,897 where no cost estimates were recorded in HPDInfo by EREH inspectors. We therefore have no evidence that HPD prepared a cost estimate prior to soliciting bids for these OMOs. The cost for these OMOs ranged from \$274 to \$18,000 (average cost was \$2,761).

This occurred because HPD has not adequately established and documented its procedures for awarding OMOs, including the procedures for awarding OMOs at 10 percent or more above the estimated cost. We also found that although the estimated cost is critical to the solicitation and the award decision, the estimated cost field in HPDInfo is not a required field and so can be left blank. Further, HPDInfo lacks standardized reporting capabilities to track and monitor the number of OMOs awarded and to compare award amounts with estimated costs. Lastly, HPD's *Determination of Award* form does not include a section documenting the estimated cost of an OMO. Consequently, management may not be aware of all instances in which the actual award amount for an OMO exceeds the accepted 10 percent allowance above the estimated cost.

By allowing employees wide latitude over the awarding of OMOs and by not establishing standard operating procedures for staff to follow, HPD has reduced its ability to ensure that "excessive" OMOs are not improperly awarded. Also, for those solicitations without an estimated cost, HPD issuers have no basis for determining whether a vendor's bid is reasonable, which in turn increases the risk that the City may overpay for emergency services.

## Recommendations

10. HPD should ensure that standard operating procedures are created for the processing and awarding of OMOs, including the necessary steps to take before an OMO can be awarded that is more than 10 percent above the estimated cost, and that staff and management are trained on these procedures.

**HPD Response:** HPD does not clearly address this recommendation, stating "The 10%-above-the-estimated-cost standard, which triggers additional review, is an ERP standard that is under review at the current time. Given the generally low value of the work orders under consideration, 10% may not be the appropriate threshold. When HPD revises this threshold, staff and management will be appropriately advised and trained regarding the appropriate threshold."

**Auditor Comment:** While HPD indicates that staff and management will be advised and trained once the agency's estimated cost guidelines have been revised, it is unclear whether HPD plans to create standard operating procedures as we recommend. We encourage HPD to create written standard operating procedures to help ensure proper requirements are appropriately communicated to personnel.

11. HPD should update their *Determination of Award* form to include the OMO's estimated cost.

**HPD Response:** "HPD agrees with this recommendation. HPD will include the OMO estimated cost on the Determination of Award."

12. HPD should ensure that reports are designed in HPDInfo to track and adequately monitor OMO awards.

**HPD Response:** HPD appears to indicate that it already complies with this recommendation, stating "Supervisors are responsible for adequately monitoring award amounts against estimated costs in real time, and the implementation of Recommendation 11 will assist supervisors with making this determination. HPD already has master reports used for budget purposes which can be utilized for the purpose of periodic reviews of estimated and awarded amounts."

**Auditor Comment:** During the course of the audit, although requested, we were never provided with or told of any master reports for reviews of estimated and awarded amounts. As stated in this report, more than one quarter (27 percent) of awarded OMOs exceeded the allowed estimated cost.

13. HPD should develop written policies and procedures detailing management's responsibilities and the steps that should be taken to monitor and review report data.

**HPD Response:** HPD agreed with the recommendation, stating, "HPD will create written guidelines as applicable to help further ensure compliance with PPB rules."

14. HPD should consider modifying HPDInfo functions to require: (1) additional authorization and justification for approving OMOs greater than 10 percent of the estimated cost; and (2) an estimated cost amount to be entered.

**HPD Response:** HPD partially agreed with the recommendation, stating, "[a]s indicated in response to Recommendation 10, HPD is reviewing the cost estimate threshold. Although the number of OMOs processed without estimated costs was extremely low, HPDInfo has been modified to require an estimated cost for OMOs being solicited to the PQL."

**Auditor Comment:** We are pleased that HPDInfo has been modified to require an estimated cost be entered for OMOs; however, HPD has not indicated whether additional authorization will be required for OMOs greater than the established cost estimate threshold.

## Non-Compliance with Random Selective Solicitation Procedures

### *Plumbing OMOs Inappropriately Awarded Using Single Bid*

According to HPD's *Random Selective Solicitation Procedure of Prequalified Contractors Electricians and Plumbers*, every two weeks, CCU implements a rotational selective solicitation



of vendors performing electrical and plumbing emergency work that HPD estimates to have a value of \$2,000 or less. Per HPD officials, plumbing and electrical OMOs greater than \$2,000 are required to be bid out to eight PQL vendors utilizing HPDInfo.

We reviewed 25 OMOs valued between \$2,000 and \$3,000 (meaning that bidding was required), and identified 6 plumbing OMOs totaling \$15,011 awarded utilizing single bid solicitations instead of the required selective solicitation method with 8 vendors. We did not find any OMOs valued greater than \$3,000 that were awarded utilizing single bid solicitations. According to HPD officials, these OMOs were awarded as single bids because they were heat-related emergencies and had to be addressed immediately. However, we found that three of the six OMOs were for heat-related work and that three were not. Moreover, without written policies and procedures for utilizing random selective solicitation, it is unclear whether the circumstances under which any exceptions to random solicitation are acceptable and whether the OMOs in question fell under those circumstances. Absent competitive bidding, HPD's ability to ensure that it is not overpaying for these services is hampered.

### *OMOs Inappropriately Awarded to Vendors in Pending Status*

Vendors are placed in pending status when updated license and insurance documentation is pending. According to HPD officials, only active vendors are to be awarded OMOs; vendors placed in pending status should not be solicited for bids until CCU receives relevant documentation from vendors to satisfy the requirement.

However, we identified 11 instances where OMOs totaling \$6,635 were awarded to three vendors whose PQL status was pending. In addition, one of these vendors was solicited 148 times while in a pending PQL status.<sup>18</sup>

A feature in HPDInfo that is intended to prevent vendors in a pending status from being awarded OMOs is not functioning. As a result, ineligible vendors are solicited and awarded OMOs for which they otherwise would not be qualified, limiting opportunities for otherwise eligible vendors. In addition, when vendors in pending status, due to lack of required insurance information or licensing credentials, are selected, the City may not be covered if a claim is filed against the vendor for work performed for the City.

## Recommendations

15. HPD should ensure that standard operating procedures are created detailing bidding guidelines so that eight randomly selected PQL vendors are solicited for plumbing OMOs with an estimated cost over \$2,000.

**HPD Response:** HPD disagreed with this recommendation, stating, "PPB Rules state no competition is required for micro-purchases. On that basis, single bids are allowable in all micro-purchases described in this section of the report. HPD management staff are authorized to use discretion when determining the contracting method to use in these cases."

**Auditor Comment:** HPD's "no competition" argument contradicts the procedure established by the agency for soliciting multiple PQL vendors and undermines the basis for having an established PQL for such purchases.

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<sup>18</sup> We were only able to review solicitations for one of the three vendors for a six-month period because we did not have the solicitation data for the period in which the other two vendors were pending.

16. HPD should implement process controls in HPDInfo to prevent pending vendors from being solicited for bids and being awarded OMOs. If this cannot be done, HPD should implement some type of compensating control to prevent vendors in pending status from being solicited and awarded OMOs.

**HPD Response:** HPD agreed with the recommendation, stating, “[a]lthough the Comptroller’s Office identified only a handful of OMOs bid in error to pending vendors, HPDInfo has been modified to prevent any pending vendors from being solicited.”

## Inadequate Segregation of Duties over the Solicitation Process

Comptroller’s Directive #1, *Principles of Internal Control*, provides guidelines to minimize the risk of error and fraud by separating key elements of those functions among staff members to enable each to serve as a check on the others. Directive #1 specifically states,

Key duties and responsibilities need to be divided or segregated among different staff members to reduce the risk of error or fraud. This should include separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets.

Directive #1 also states that control activities should exist at all levels and functions of an agency and include the creation and maintenance of related records that provide evidence of the execution of these activities. Accordingly, with regard to the use of the random selective solicitation method for awarding OMOs to electricians and plumbers, the tasks of randomizing the listing and authorizing (reviewing) that listing should be separated among different persons, and the execution of these functions should be documented.<sup>19</sup>

Our review of the random selective solicitations conducted by HPD for the period of July 20, 2015 through July 8, 2017 found that the former CCU director was solely responsible for the randomization process and performed the random selective solicitation on 110 out of 112 instances. In the remaining two instances, another staff member, a principal administrative associate (PAA) assigned to CCU, performed the random selective solicitations. A review of the random selections determined that there was no evidence that any other employee witnessed or monitored any of the 112 random selections. It should be noted that in September 2017, shortly following the commencement of this audit, HPD provided us with its 2017 *Random Selective Solicitation Procedure of Prequalified Contractors-Electricians and Plumbers*. According to these procedures, selective solicitation should be performed by the CCU’s PAA and monitored by the agency attorney in order to help ensure adequate segregation of duties and supervisory oversight. While HPD’s procedure references the agency attorney, HPD officials informed us at the exit conference that the monitoring is being performed by the CCU Director. The policy also requires that the selective solicitation documents are printed and signed by the person who performed the randomization (the PAA) and by the witness (the agency attorney) who is required to watch the

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<sup>19</sup> Randomizing the list includes generating a list of active vendors within the trade from HPDInfo, cross-matching the vendors to CCU’s active PQL List, reviewing any discrepancies, using an Excel formula to generate random numbers for vendors, and sorting the vendor numbers from smallest to largest.

process. It also requires that CCU send the randomized listing to the deputy ACCO. According to HPD officials, this policy only took effect in September 2017, after the scope period of our audit.

Failure to adequately segregate the responsibilities pertaining to the vendor selection increases the risk that the selection process may be performed inappropriately or unfairly and that such may go undetected. Such weaknesses in the selection process, in turn, increase the risk that vendors may be shown favoritism in exchange for benefits provided to those involved in the selection and that such may go undetected. In addition, without evidence that a witness monitored or reviewed the process and the resulting active trade population results<sup>20</sup>, neither we nor HPD has reasonable assurance that the HPDInfo active trade search was properly conducted and that any discrepancies between HPDInfo's listing and CCU's listing were thoroughly investigated.

## Recommendation

17. HPD should ensure that going forward it complies with its policy for the selective solicitation process to ensure proper segregation of duties and supervision.

**HPD Response:** HPD agreed with the recommendation, stating, “[a]s explained to the audit team, the operations described in this report were accurate to the period covered by the audit but are no longer the standard operating procedure for this process. Organizational and workflow changes improved the segregation of duties prior to the start of the audit.”

## Lack of Adequate HPDInfo Systems Documentation

According to the Financial Integrity Statement Checklist section on IT Controls and Procedures, issued under Comptroller's Directive #1, *Principles of Internal Control*, technical documentation should be maintained for all operating and software systems.

However, HPD was unable to provide an HPDInfo User Manual and associated Business Rules. In addition, it took HPD 10 months to provide us with the *HPDInfo DOM Active Functions Definitions* which included the function, function description, and basic rights/functionality for users. When we reviewed the HPDInfo tables that should contain information about HPDInfo's data fields, we found that they were incomplete in that they did not include which data fields are required fields and inaccurate because they cite the incorrect number of vendors to be solicited.<sup>21</sup>

Also, the *HPDInfo DOM Active Functions Definitions*, which contained descriptions of the privileges associated with each user role, lacked descriptions of key user functions. We compared the ERP HPDInfo Functions listing with the HPDInfo DOM Active Functions Definitions to ascertain whether we had a complete list of functions and identified 37 functions that were not located in the HPDInfo DOM Active Functions Definitions. At the exit conference, HPD officials stated that a complete *HPDInfo DOM Active Functions Definitions* list was not provided, but rather they provided only the functions that they deemed relevant to the audit. However, in fact, our request had specifically been for the descriptions of the privileges associated with each ERP user role. Moreover, regardless of HPD's initial misinterpretation, this issue was shared with HPD officials in December 2018, yet the agency has not provided us with a complete *HPDInfo DOM Active Functions Definitions* list, so we have no assurance that it maintains such a list. In addition, based on our review of the HPDInfo DOM Functions documents, numerous key functions were

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<sup>20</sup> In HPDInfo, the PAA will query the active vendors from the appropriate trade and print out a screenshot of the results.

<sup>21</sup> A table is a collection of related data held in a structured format within a database.

missing: random vendor selection; the e-mailing of bid invitations to vendors; data entry of vendor bid information; the awarding of OMOs up to and including \$500; recommendation for award of OMOs over \$500; authorization of manual overrides; and the processing of OMO change orders.

Without a user manual, users of the system do not have a source to reference when questions arise, which reduces the staff's ability to utilize the full functionality of the system. That risk is increased in the event that key MIS employees with knowledge of the systems leave the agency. In addition, HPD has limited assurance that the tables and Business Rules utilized for randomly selecting vendors are accurate and appropriate. Further, without complete rights and functionality, neither we nor HPD have reasonable assurance that HPDInfo users have the appropriate rights and functionality based on their job responsibilities, increasing the risk that inappropriate activity (e.g., OMOs being fraudulently modified) may occur without detection.

## Recommendations

18. HPD's MIS should create an HPDInfo user manual and distribute it to all DOM personnel.

**HPD Response:** HPD indicated that it will take this recommendation under consideration, stating, "HPD will assess the costs and benefits of creating this document given competing priorities for technological resources."

**Auditor Comment:** We strongly urge HPD to create an HPDInfo user manual and distribute it to all DOM personnel to help ensure that users of the system are properly trained in its use and so that it can be utilized as a resource guide.

19. HPD should ensure that HPDInfo system documentation, including tables, Business Rules, and user rights and functionality, is properly maintained, accurate, and complete.

**HPD Response:** HPD did not clearly address this recommendation, stating, "HPD will review the definitions of existing relevant functions to ensure that the key functionalities identified by the audit are associated with the appropriate functions. Doing so will ensure clarity of the definitions of those functions for future audits."

**Auditor Comment:** Notwithstanding HPD's statement that it will review various definitions and functions of HPDInfo to ensure that they are appropriate, it does not indicate whether it will address our recommendation that it ensure that it maintain *documentation* of the system and that such documentation is accurate and complete. We therefore urge HPD to implement this recommendation.

## Lack of Written Policies and Procedures

According to Comptroller's Directive #1, *Principles of Internal Control*, internal controls should be documented in management administrative policies or operating manuals.

However, we found that HPD lacked written policies and procedures for the process of bidding out and awarding OMOs. As a result, we had to learn most of the process through interviews with HPD employees, including: the criteria for the different types of awards; the levels of approval and approval hierarchy for work order awards; the responsibilities of the issuers and the supervisors

and what information each is responsible for recording in HPDInfo; the steps that need to be taken when no responsible bids are received; and the instructions on when to utilize the “5+10 methodology,” a selection method promulgated by MOCS by which HPD can utilize New York City’s Financial Management System to randomly select five vendors not classified as Minority & Women-Owned Business Enterprises (MWBE) vendors plus 10 MWBE vendors for bid solicitations for work under \$100,000.

HPD officials believe that their informal procedures currently in place are sufficient. According to HPD officials, they do not require written policies and procedures because they follow PPB rules and HPDInfo reflects the standard operating procedures for these processes. However, while the PPB Rules outline basic procurement requirements, they do not establish the specific operational steps HPD employees need to take to ensure compliance with these rules.

Agency procedures are needed to, among other things, clearly define expectations of employees, provide a source of reference for employees to ensure they are meeting expectations, and help to ensure compliance with rules and laws. For example, written procedures would help ensure that employees appropriately use HPDInfo and that actions performed outside of HPDInfo are correctly performed.

The failure to develop and implement written standard operating procedures that properly document specific HPD employee roles and responsibilities increases the risk that employees can act outside their level of authority and fail to adhere to and even circumvent PPB and HPD rules in the awarding of OMOs to vendors.

## Recommendation

20. HPD should ensure that standard operating procedures are created for bid solicitations and the awarding of OMOs.

**HPD Response:** HPD indicated that it will take this recommendation under consideration, stating, “HPD will review the need for procedures for bid solicitations and the awarding of OMOs to complement the PPB rules.”

**Auditor Comment:** We continue to urge HPD to implement this recommendation and create written standard operating procedures for personnel training, guidance, and supervision on bid solicitations and OMO awards.

## Controls to Ensure That Managers Approve OMOs Require Strengthening

According to the Comptroller’s Directive #1, *Principles of Internal Control*, transactions and other significant events should be authorized and executed only by persons acting within the scope of their authority. Additionally the *Identity Management Security Policy* issued by the City’s Department of Information Technology & Telecommunications states, “[a]ccess permissions must be defined in accordance with a user’s actual functional work requirements.”

According to HPD officials, OMOs greater than \$500 require the approval of the issuer, supervisor, and director or deputy director of procurement. For OMOs greater than \$5,000, the approval of either the DOM assistant commissioner or director of operations is also required. However, in practice, the approval of a recommendation of award in HPDInfo by the supervisor constitutes the approval of the OMO.



In order for the transaction to be accepted in HPDInfo, the system requires only the approvals of the issuer and supervisor for awards greater than \$500. We found that the approvals of the Deputy Director or Director of Procurement and the DOM Assistant Commissioner or Director of Operations are not required in HPDInfo in order for the system to process the transaction. Rather, the approvals are instead recorded only on a hardcopy *Determination of Award* form.

This weakness exists because HPD did not ensure that the appropriate access controls for the approval of OMOs were programmed into HPDInfo. As a result, there is an increased risk that OMOs may be inappropriately awarded to vendors without management's approval and that such awards may go undetected.

## Recommendation

21. HPD should ensure that the appropriate access controls are established in HPDInfo including creating and assigning additional profiles based on management's levels and responsibilities.

**HPD Response:** HPD appears to disagree with the finding associated with this recommendation while indicating that the agency will take the recommendation under consideration, stating, "HPD notes that the audit report does not cite any cases in which an award of over \$5,000 was made without supervisor approval. HPD maintains that sufficient controls are in place. HPD will assess the costs and benefits of creating this functionality in HPDInfo given competing priorities for technological resources."

**Auditor Comment:** As stated in the report, OMOs are functionally approved in HPDInfo and the system requires only the approvals of the issuer and supervisor in order for the transaction to be accepted, including OMOs valued at \$5,000 or more. This recommendation is intended to remedy that deficiency. Therefore, we urge HPD to implement this recommendation.

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was July 1, 2015, through June 30, 2017.

To obtain an understanding of HPD's prequalification and awarding of contracts for its ERP, we reviewed and, where applicable, used as audit criteria the following documents:

- The New York City Charter;
- DOM ERP PQL Fact Sheet;
- HPD Organizational History, Mission and Objectives;
- HPD ERP Summary;
- HPD Business Process Summary;
- PPB Rules;
- HPD OMO Bid Terms and General Conditions;
- CCU PQL Eligibility Procedures;
- HPD CCU Technical Interview Form;
- Procurement Services Division Organizational Chart;
- DOM CCU Electricians and Plumbers Random Selection Process;
- ERP Vendor Application Documentation Flowchart;
- DOM CCU Organizational Chart;
- DOM Bureau of Maintenance and Procurement Organizational Chart;
- HPD PQL Applicants Report FY2016;
- HPD PQL Applicants Report FY2017;
- HPD PQL Randomization Selection Method;
- HPD DOM Change Order Process User Manual ;
- HPD Change Order Request Sample;
- HPD DOM Annual Contractor Information Sheet Sample;
- Inactive PQL Vendor List for Fiscal Year 2016 and Fiscal Year 2017;
- HPDInfo DOM Active Functions Definitions;
- 2018 Mayor's Management Report;

- DOITT's *Identity Management Policy*; and
- Comptroller's Directive #1, *Principles of Internal Control*.

To obtain a general understanding of the HPD policies, procedures, and internal controls over the prequalification and awarding of contracts for its ERP, we interviewed the DOM Assistant Commissioner and the Deputy Commissioner for Enforcement and Neighborhood Services.

To obtain an understanding of how HPDInfo is used in the ERP PQL application and vendor selection process, we met with two representatives from HPD's Information Technology department (recently renamed "HPD Tech"), the Deputy Commissioner, the DOM Assistant Commissioner, and the CCU Director.

To obtain a better understanding of OMO's awarded using the PQL, we held a meeting with the supervisor of procurement. To obtain an understanding about the day-to-day duties of issuers, separate meetings were held with two of the issuers who process OMOs using the PQL.

To obtain an understanding of the PQL application reviews and approvals, a meeting was held with the ACCO, DOM Assistant Commissioner, and CCU Director.

To obtain an understanding of the EREH unit's role in evaluating emergency field conditions and creating OMOs, we interviewed the EREH Director and Supervisor.

To determine whether vendors were appropriately added to the PQL, we reviewed the application files of the 20 vendors who were accepted to the PQL during Fiscal Years 2016 and 2017. We reviewed the application files for submission of required documentation, including evidence of required insurances references, licenses and a technical interview. In addition, in order to determine whether vendors were added to the PQL timely, we calculated the number of days between the application complete date and the approval date.

We received a file of OMOs awarded during the period of July 1, 2015 through June 30, 2017. Once we realized that HPD was soliciting the incorrect number of vendors for the ERP OMOs prior to August 18, 2016, we used this information to estimate the number of vendors that were excluded from bid solicitations by first isolating small purchase construction OMOs. Next, for OMOs with eight or more vendors on the PQL, we multiplied this number of OMOs by three vendors (8 minus 5). We adjusted the number from three vendors to two or one, in instances where the number of vendors on the PQL was less than eight.

To determine whether OMOs were awarded to vendors in pending status, we reviewed data in HPDInfo and PQL documentation maintained by the CCU to determine whether vendors were in pending status. For those in pending status, we looked to see whether they received any awards during the time they were pending.

In addition, to determine whether the random selective solicitation process of selecting electrical and plumbing vendors was adequately segregated and supervised, we reviewed documentation for 112 random selective solicitations for the period of July 20, 2015 through July 8, 2017.

In August 2018, we received an ERP listing of 7,635 OMO bid solicitations for the period of January 1, 2017 through June 30, 2017. Of the 7,635 OMO solicitations, 3,675 were awarded small purchase construction related OMOs. From the 3,675, we removed 415 awarded OMOs with an FMS Document Type where the Estimated Cost was N/A, Mini RC, and RC for a remainder of 3,260 awarded OMOs. The 3,260 OMOs stemmed from 4,157 bidding sequences with 28,797 invitations to bid to 141 vendors. From the 3,260 OMOs, we determined how many OMOs were

awarded at greater than 10 percent of HPD's estimated cost. From the 3,260 OMOs, 650 were awarded at 20% and greater than 10 percent of HPD's estimated cost. From the 650 OMOs, we randomly selected and reviewed 25 of the OMOs to determine whether HPDInfo or the hardcopy payment package contained a referral note documenting an evaluation of the cost estimate or any notes indicating why the amount awarded was significantly greater than the estimated cost.

In order to determine whether HPD removed non-responsive vendors from the PQL, we reviewed bid solicitations for the period of January 1, 2017 through June 30, 2017 and identified vendors who failed to respond to over 85 percent of the solicitations with a bid status of "No Response."

From the 3,260 OMOs, we identified 8 electrical and plumbing OMOs greater than \$2,200 (\$2,000 plus \$200 for the 10 percent allowance) and determined whether a single bid solicitation method was used to award the OMOs or whether vendors were randomly selected via HPDInfo. From the 3,260 OMOs, we identified 26 OMOs cancelled as "Canceled, Only One Response" and determined whether HPD improperly rejected a vendor's responsible bid solely on the basis that one vendor responded to a solicitation.

From the trade populations with 30 or more vendors, with OMOs issued, we identified 28 OMOs with repeating vendors solicited within the bidding sequences and determined whether a manual override was conducted to reselect vendors or if the vendors were randomly selected by HPDInfo.

In order to determine whether any vendors submitted a large number of change orders, we reviewed 68 ERP related change orders for 58 OMOs awarded from January 1, 2017 through June 30, 2017.

Although the results of our sampling were not statistically projected to their respective populations, these results, together with the results of our other audit procedures and tests, provide a reasonable basis for us to determine whether selected contractors meet HPD's criteria for prequalification and whether OMOs were awarded in accordance with established criteria.



City of New York  
DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT  
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Eric Enderlin  
Acting Commissioner

April 29, 2019

Marjorie Landa  
Deputy Comptroller for Audit  
Office of the New York City Comptroller  
One Centre Street, Room 1100  
New York, New York 10007

Re: Audit Report on the Department of Housing Preservation and Development's Controls over the Prequalification and Awarding of Open Market Orders to Prequalified Vendors for its Emergency Repair Program, MD18-079A

Dear Deputy Comptroller Landa,

Thank you for the opportunity to respond to your Audit Report on the Department of Housing Preservation and Development's Controls over the Prequalification and Awarding of Open Market Orders to Prequalified Vendors for its Emergency Repair Program (the "Audit Report").

We disagree with the finding that the agency's controls are inadequate, as described in this Audit Report. HPD has established controls in place to ensure that emergency repairs are made by qualified vendors, that those vendors are afforded a fair opportunity to bid on work orders, and that the costs are not excessive for the emergency repair work necessary to ensure the safety of New York City residents. The Emergency Repair Program's (ERP) work complies with the Procurement Policy Board (PPB) Rules, or HPD has requested the necessary waivers or has facilitated PPB Rules changes from the Mayor's Office of Contract Services (MOCS) prior to this Audit Report in order to perform its work more efficiently and more promptly.

ERP responds to hundreds of violations per day, issued for hazardous and life-threatening conditions, including collapsing ceilings, lack of heat or hot water, lead hazards, or broken plumbing. These repairs require that critical work be performed as rapidly as possible while taking into account the unique and specific conditions of the subject buildings and apartments. Moreover, because most of the contracts are at a low cost, the agency may utilize the PPB Rules governing micro-purchases, which sets it outside of many of the other requirements in the PPB Rules. The findings described in this report fail to recognize and appreciate how HPD utilizes its expertise to balance the need to perform this high volume of critical work in the most effective

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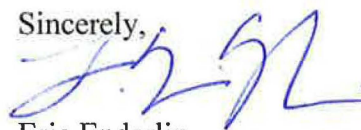


way possible while using various contracting methods to ensure that the Agency adheres to the underlying principles of the PPB Rules regarding fostering competition.

We do agree with some of technical recommendations made in the Audit Report regarding updating specific forms and written policies to make certain internal practices more clear. HPD has, in fact, already revised or reinforced several procedures mentioned in the Audit Report, some of which were actually made during the audit period itself while others were addressed prior to the issuance of the Audit Report (in certain instances prior to the issuance of the report or before the period of the audit).

Once again, thank you for providing the opportunity to comment on the Audit Report. I would be happy to discuss our response with you further.

Sincerely,



Eric Enderlin





**Agency Response:**

**NYC Department of Housing Preservation and Development to NYC Comptroller  
HPD's Controls over the Prequalification and Awarding of Open Market Orders to  
Prequalified Vendors for its Emergency Repair Program**

Audit Number: MD18-079A

Date: April 29, 2019

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The objective of this audit was to determine whether the NYC Department of Housing Preservation and Development (HPD) maintains sufficient controls with regard to the prequalification of vendors, and the awarding of Open Market Orders (OMOs), for its Emergency Repair Program (ERP). These processes are governed by the Procurement Policy Board (PPB) Rules and HPD's internal procedures and practices. HPD disagrees with the finding that its controls are inadequate, as described in the Audit Report. HPD has established controls in place to ensure that emergency repairs are made by qualified vendors, that those vendors are afforded a fair opportunity to bid on work orders, and that the costs are not excessive for the emergency repair work necessary to ensure the safety of New York City residents.

HPD's Division of Maintenance (DOM)<sup>1</sup>, which oversees ERP, is charged with evaluating life-threatening and health-threatening conditions in New York City residences if property owners fail to address them in a timely manner; this process includes determining the necessary plans to repair or remediate these conditions, and promptly procuring the services of contractors necessary to resolve these emergency conditions properly. The findings described in this report fail to recognize and appreciate how HPD has balanced the overall volume of contracts, low individual value of each contract, and critical nature of the work performed by ERP with procurement rules and methods established for micro-purchases (which sets ERP's work outside of many of the other requirements in the PPB Rules). Moreover, HPD has carried out the responsibilities of ERP while maintaining a competitive process to secure the best prices for the City, ensuring quality work to address immediately hazardous conditions in the homes of New Yorkers, and encouraging participation by small vendors in City contracting processes. ERP's work complies with PPB Rules, or HPD has requested the necessary waivers or has facilitated PPB Rules changes from the Mayor's Office of Contract Services (MOCS) prior to this Audit Report in order to perform its work more efficiently and more promptly.

HPD also specifically notes the following important qualifications to the Comptroller's report:

- Given the value of the ERP contracts awarded to vendors on the pre-qualified lists (e.g., micro-purchases below \$35,000), the City's PPB Rules allow HPD to award these contracts to single vendors without a competitive bid process; specifically, in the case of ERP contracts, the average OMO award was for \$1,381, which is less than 4% of the micro-purchase amount permitted per PPB Rules. Beyond the required PPB Rules, HPD has safeguards in place, such as a general practice of resoliciting bids for work when HPD determines bid prices to be excessive and a tiered policy for approving bids at escalating price thresholds.

<sup>1</sup> Since the period covered by the audit, DOM has changed its title to the Emergency Operations Division, EOD. For ease, HPD will refer to it as DOM in this audit response.

- HPD values competition, and is concerned with securing fair prices, ensuring quality work, and creating opportunity for small vendors and new vendors (such as Minority and Women-Owned Business Enterprises, M/WBEs) to participate in City procurements. These factors contribute to why HPD has established a Pre-Qualified List (PQL) of vendors for small construction awards, a list that the agency relies on for a significant number of awarded emergency repair jobs.<sup>2</sup> Establishing a PQL allows HPD to ensure, before solicitation and award, that vendors have the required insurance and qualifications. Besides investing in cultivating and maintaining a PQL, HPD has also worked closely with MOCS, prior to this Audit Report, to obtain waivers and exemptions in cases where PPB Rules would deplete the list and/or undermine HPD's ability to maintain broad, qualified, and diverse vendor options.
- DOM staff members that are responsible for approving procurements are themselves qualified construction professionals, trained in both housing maintenance and in City procurement rules, and are capable of making well-informed decisions regarding the cost and scope of required projects. The staff is also committed to ensuring a level playing field for contractors while weighing policies against specific emergency needs at any given point in time.
- This report does not recognize the huge scale, immediacy, and significance of the work done by DOM. ERP responds to hundreds of violations issued for hazardous conditions per day. HPD spends between \$10 and \$13 million per year to address these conditions (approximately 40%-50% through the PQL). Each individual work order may address one or multiple violations issued by the Division of Code Enforcement, including collapsing ceilings, lack of heat or hot water, lead hazards, or broken plumbing; because of the nature of the repairs, which are very specific to the conditions of the building, HPD utilizes its expertise and various contracting methods to ensure that it can respond in the most effective way possible.

HPD does agree with some of technical recommendations made in the Audit Report regarding updating specific forms and written policies to make certain internal practices more clear. The agency has, in fact, already revised or reinforced several procedures mentioned in the Audit Report, some of which were actually made during the audit period itself while others were addressed prior to the issuance of the Audit Report (in certain instances prior to the issuance of the report or before the period of the audit).

#### **Audit Finding Area: Non-Compliance with PPB Rules**

##### Audit Finding: Incorrect Number of Vendors Randomly Selected and Solicited

*Recommendation 1: HPD should develop written policies and procedures to help ensure compliance with the PPB Rules and it should enforce the implementation of those procedures.*

**Agency Response to Recommendation 1:** In response to the specific issue that the Comptroller's Office cited, HPD wants to reiterate that, as of August 16 of 2016, it proactively revised the number of PQL vendors from whom bids were solicited. This change occurred in FY17 during the period covered by the audit (e.g., before the matter was raised by the Comptroller's audit); HPD provided documentation of this change to the Comptroller's audit team, including permission copy of the signed waiver granted by MOCS to implement the new policy before the audit began. HPD's ACCO's Office conducts monthly meetings with all procurement teams within the agency to keep them apprised of changes to PPB Rules

<sup>2</sup> HPD also uses other contracting methods, such as requirements contracts, to address emergency repairs where feasible.

and other procurement rules and processes; the agency will create additional written guidelines and policies and procedures to help further ensure compliance with PPB Rules.

Audit Finding: Non-Responsive Vendors Not Removed from the PQL

*Recommendation 2: HPD should develop reports in HPDInfo to track and monitor vendor responses and ensure management reviews these reports regularly.*

**Agency Response to Recommendation 2:** Until such time as HPD and MOCS can finalize discussions regarding the number of consecutive bids that would justify HPD removing a vendor from the PQL (see Recommendation 3), HPD will not monitor vendor responses for the purpose of removing vendors from the PQL. Once such an understanding is reached and vendors are notified about the applicable rule, HPD will monitor compliance appropriately.

*Recommendation 3: HPD should remove vendors who do not respond to three consecutive bid solicitations from the PQL as required by PPB rules.*

**Agency Response to Recommendation 3:** During the audit period, HPD initiated an average of over 300 bid sequences per day for emergency repair work required to ensure the health and safety of tenants<sup>3</sup>. Given the high number of bids requiring response and the size of the companies which are on the PQL, it is unreasonable to expect a 33% rate for our PQL vendors. (For example, a vendor who is not available to bid on a single given day may be eliminated from the list.) The implementation of this rule as written would significantly reduce the number of vendors available to bid, limiting competition to those companies large enough to maintain staff just for responding to bids, and increasing the risk of HPD having to pay non-competitive prices. Acknowledging this, HPD proactively requested that MOCS grant the agency a policy change in recognition of its unusual volume of procurements and size of individual procurements; the agency took this action before the matter was raised by the Comptroller's audit.

*Recommendation 4: HPD should ensure that the application complete date is clearly documented on the Application Reference form and a decision on prequalification is rendered within 90 days by the ACCO.*

**Agency Response to Recommendation 4:** HPD asserts, and has demonstrated to the audit team, that the practice of documenting the application complete date on the Application Reference form is already in place and that the required documentation is present. The findings may be an issue of timing; as part of the period covered by this audit pre-dates this change, files from the earlier portion of the audit period would not reflect the change. Files from the latter portion of the audit period should reflect the change. HPD has always met the requirement that the ACCO render a decision on prequalification within 90 days of the agency's receipt of a completed application.

**Audit Finding Area: Non-Compliance with Eligibility Procedures for Acceptance to Prequalified Contractor Lists**

Audit Finding: Vendor Files Missing Required Documents for Acceptance to PQL

<sup>3</sup> This number is for all bid sequences processed; not all were bid to the PQL.

*Recommendation 5: HPD should update its PQL Procedures and fact sheet to clearly indicate the required insurance limits and additional insured endorsements for each type of required insurance policy.*

**Agency Response to Recommendation 5:** HPD agrees with this recommendation. The PQL Procedures and fact sheet will be updated to indicate the required insurance limits and additional insured endorsements for each type of required insurance policy.

*Recommendation 6: HPD should consider requesting a waiver from the PPB if a significant number of applicants cannot meet any of the PPB rule criteria for prequalification.*

**Agency Response to Recommendation 6:** HPD does not agree that a significant number of applicants cannot meet any of the PPB Rule criteria. The primary issue raised by the Comptroller's report (in addition to the Recommendation 5, which HPD has already agreed to implement) concerns the EMR requirements. HPD does not agree with the Comptroller's interpretation of those requirements, which would eliminate new companies from being able to participate in the PQL, and which would, in turn, decrease vendor competition and increase the risk that HPD must pay higher prices unnecessarily. However, HPD will seek clarification from MOCS regarding those vendors without enough experience to obtain an EMR.

*Recommendation 7: HPD should ensure that adequate file review is conducted, and such reviews are documented, to ensure that no vendors are added to the PQL that have not met all requirements and that all any waivers are approved.*

**Agency Response to Recommendation 7:** HPD maintains that its files regarding vendor applications are adequate and disagrees with the presentation of certain findings in this report to the contrary. As a specific example, HPD does consider all of the criteria listed in Section 3-10(d) of the PPB Rules, plus additional criteria as required. In all cases, HPD performs due diligence to ensure PQL vendors satisfy the requirements, and in the case of a vendor without an EMR rating (a rating acquired at three years), HPD bases its acceptance of the PQL vendor's qualifications on its in depth review and background investigation of the vendor; this follows both the letter and spirit of the law, and encourages new, well-prepared vendors to enter the market.

*Recommendation 8: HPD should update its Application Reference form to include steps for reviewing insurance submissions.*

**Agency Response to Recommendation 8:** HPD agrees with this recommendation. The Application Reference Form will be updated to list the insurance requirements for PQL inclusion.

*Recommendation 9: HPD should ensure that all applicants who fail the technical interview are rescheduled for another interview and pass the second interview before being added to the PQL in accordance with its policies and procedures.*

**Agency Response to Recommendation 9:** HPD agrees with this recommendation. HPD will ensure that all applicants applying for trades where an interview is a necessary component of the approval process will be required to pass an interview prior to being added to the PQL.

#### **Audit Finding Area: Estimated Cost Threshold Was Not Followed When Awarding OMOs**

*Recommendation 10: HPD should ensure that standard operating procedures are created for the processing and awarding of OMOs, including the necessary steps to take before an OMO can be*

*awarded that is more than 10 percent above the estimated cost, and that staff and management are trained on these procedures.*

**Agency Response to Recommendation 10:** The 10%-above-the-estimated-cost standard, which triggers additional review, is an ERP standard that is under review at the current time. Given the generally low value of the work orders under consideration, 10% may not be the appropriate threshold. When HPD revises this threshold, staff and management will be appropriately advised and trained regarding the appropriate threshold.

*Recommendation 11: HPD should update their Determination of Award form to include the OMO's estimated cost.*

**Agency Response to Recommendation 11:** HPD agrees with this recommendation. HPD will include the OMO estimated cost on the Determination of Award.

*Recommendation 12: HPD should ensure that reports are designed in HPDInfo to track and adequately monitor OMO awards.*

**Agency Response to Recommendation 12:** Supervisors are responsible for adequately monitoring award amounts against estimated costs in real time, and the implementation of Recommendation 11 will assist supervisors with making this determination. HPD already has master reports used for budget purposes which can be utilized for the purpose of periodic reviews of estimated and awarded amounts.

*Recommendation 13: HPD should develop written policies and procedures detailing management's responsibilities and the steps that should be taken to monitor and review report data.*

**Agency Response to Recommendation 13:** HPD will create written guidelines as applicable to help further ensure compliance with PPB rules.

*Recommendation 14: HPD should consider modifying HPDInfo functions to require: (1) additional authorization and justification for approving OMOs greater than 10 percent of the estimated cost; and (2) that an estimated cost amount be entered.*

**Agency Response to Recommendation 14:** As indicated in response to Recommendation 10, HPD is reviewing the cost estimate threshold. Although the number of OMOs processed without estimated costs was extremely low, HPDInfo has been modified to require an estimated cost for OMOs being solicited to the PQL.

## **Audit Finding Area: Non-Compliance with Random Selective Solicitation Procedures**

### Audit Finding: Plumbing OMOs Inappropriately Awarded Using Single Bid

*Recommendation 15: HPD should ensure that standard operating procedures are created detailing bidding guidelines so that eight randomly selected PQL vendors are solicited for plumbing OMOs with an estimated cost over \$2,000.*

**Agency Response to Recommendation 15:** PPB Rules state no competition is required for micro-purchases. On that basis, single bids are allowable in all micro-purchases described in this section of the report. HPD management staff are authorized to use discretion when determining the contracting method to use in these cases.

### Audit Finding: OMOs Inappropriately Awarded to Vendors in Pending Status

*Recommendation 16: HPD should implement process controls in HPDInfo to prevent pending vendors from being solicited for bids and being awarded OMOs. If this cannot be done, HPD should implement some type of compensating control to prevent vendors in pending status from being solicited and awarded OMOs.*

**Agency Response to Recommendation 16:** Although the Comptroller's Office identified only a handful of OMOs bid in error to pending vendors, HPDInfo has been modified to prevent any pending vendors from being solicited.

#### **Audit Finding Area: Inadequate Segregation of Duties Over the Solicitation Process**

*Recommendation 17: HPD should ensure that going forward it complies with its policy for the selective solicitation process to ensure proper segregation of duties and supervision.*

**Agency Response to Recommendation 17:** As explained to the audit team, the operations described in this report were accurate to the period covered by the audit but are no longer the standard operating procedure for this process. Organizational and workflow changes improved the segregation of duties prior to the start of the audit.

#### **Audit Finding Area: Lack of Adequate HPDInfo Systems Documentation**

*Recommendation 18: HPD's MIS should create an HPDInfo user manual and distribute it to all DOM personnel.*

**Agency Response to Recommendation 18:** HPD will assess the costs and benefits of creating this document given competing priorities for technological resources.

*Recommendation 19: HPD should ensure that HPDInfo system documentation, including tables, Business Rules, and user rights and functionality, is properly maintained, accurate and complete.*

**Agency Response to Recommendation 19:** HPD will review the definitions of existing relevant functions to ensure that the key functionalities identified by the audit are associated with the appropriate functions. Doing so will ensure clarity of the definitions of those functions for future audits.

#### **Audit Finding Area: Lack of Written Policies and Procedures**

*Recommendation 20: HPD should ensure that standard operating procedures are created for bid solicitations and the awarding of OMOs.*

**Agency Response to Recommendation 20:** HPD will review the need for procedures for bid solicitations and the awarding of OMOs to complement the PPB rules.

#### **Audit Finding Area: Controls to Ensure that Managers Approve OMOs Require Strengthening**

*Recommendation 21: HPD should ensure that the appropriate access controls are established in HPDInfo including creating and assigning additional profiles based on management's levels and responsibilities.*

**Agency Response to Recommendation 21:** HPD notes that the audit report does not cite any cases in which an award of over \$5,000 was made without supervisory approval. HPD maintains that sufficient



controls are in place. HPD will assess the costs and benefits of creating this functionality in HPDInfo given competing priorities for technological resources.