

AUDIT REPORT

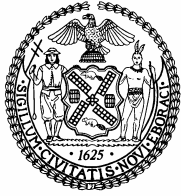


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Other Than Personal Service Expenditures of the New York City Council July 1, 2004–June 30, 2005

FL06-109A

September 21, 2007



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has conducted an audit to determine whether the New York City Council complied with certain purchasing procedures for Other Than Personnel Services expenditures set forth in the New York City Comptroller's Internal Control and Accountability Directives #3, #6, and #24; Procurement Policy Board rules; and the Procurement Rules of the Council.

The New York City Council is the law-making body of the City of New York. It comprises 51 members who are the elected representatives of the 51 Council Districts throughout the City's five boroughs. The Council also monitors the operation and performance of City agencies, makes land-use decisions, and has sole responsibility for approving the City's budget. Audits such as this provide a means of ensuring that City agencies are complying with the City's purchasing procedures.

The results of our audit, which are presented in this report, have been discussed with officials of the New York City Council's Office, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

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

Very truly yours,

William C. Thompson, Jr.
WCT/fh

Report: FL06-109A
Filed: September 21, 2007

Table of Contents

AUDIT REPORT IN BRIEF

Audit Findings and Conclusions	1
Audit Recommendations	2

INTRODUCTION3

Background	3
Objectives.....	3
Scope and Methodology.....	3
Discussion of Audit Results	5

FINDINGS AND RECOMMENDATIONS6

Noncompliance with the City Charter, PPB Rules, and Council Rules	7
Affiliated Companies Bidding Against Each Other	10
Improper Use of Miscellaneous Vouchers	11
Noncompliance with Council Rules	12
Requirement Contracts Not Used	13
Questionable Payments	14
Imprest Fund	15

ADDENDUM

***The City of New York
Office of the Comptroller
Bureau of Financial Audit***

**Audit on the Other Than Personal Service
Expenditures of the New York City Council
July 1, 2004–June 30, 2005**

FL06-109A

AUDIT REPORT IN BRIEF

We performed this audit to determine whether the New York City Council (Council) complied with certain purchasing procedures for Other Than Personnel Services (OTPS) expenditures set forth in the New York City Comptroller's Internal Control and Accountability Directives (Comptroller's Directives) #3, #6, and #24¹; Procurement Policy Board (PPB) rules; and the Procurement Rules of the Council (Council Rules).

The Council is the law-making body of the City of New York. It comprises 51 members who are the elected representatives of the 51 Council Districts throughout the City's five boroughs. The Council also monitors the operation and performance of City agencies, makes land-use decisions, and has sole responsibility for approving the City's budget. As the legislative branch of municipal government, the Council is an equal partner with the Mayor in the governing of New York City. For Fiscal Year 2005, the Council spent more than \$14.3 million in Other Than Personal Service expenditures.

Audit Findings and Conclusions

The Council did not comply with the City Charter, PPB rules, Comptroller's Directives #3, #6 and #24 and its own purchasing procedures when making OTPS purchases. For example, the Council violated City Charter requirements, PPB rules, and Council Rules when purchasing printing services. The Council paid approximately \$1.67 million for printing without entering into formal contracts—\$1.46 million, of which, was paid to five vendors.

In general, the City Charter and the PPB rules require that contracts be awarded through competition. Instead—with the exception of three purchases totaling \$35,470—the Council split printing orders or made several small purchases by individual Council members to prevent the

¹ Comptroller's Directive #3, "Procedures for the Administration of Imprest Funds"; Comptroller's Directive #6, "Travel, Meals, Lodging and Miscellaneous Agency Expenses"; and Comptroller's Directive #24, "Agency Purchasing Procedures and Controls."

total from reaching the \$5,000 threshold for small purchases above which would have required the solicitation of bids from five vendors or a full public procurement. In addition, the Council: permitted affiliated companies to submit competing bids against each other for the same proposal; violated Comptroller's Directive #24 by using miscellaneous vouchers for all Member purchases and "shared" expenditures, totaling \$3.49 million; violated Council and PPB rules when making OTPS expenditures from its Central Office by not obtaining bids on purchases that exceeded \$500 (Council rules) and \$5,000 (PPB rules); did not use requirement contracts in 22 instances when procuring various items totaling \$14,232; made improper and questionable payments, totaling \$54,939; and, made improper and questionable imprest fund payments, totaling \$2,837.

Audit Recommendations

The Council should:

- Immediately discontinue its practice of splitting purchases to circumvent the PPB rules, Council Rules and the competitive bidding process.
- Procure services, especially printing services, in accordance with the provisions of the City Charter, PPB rules, and Council Rules by using the competitive bidding process, by entering into formal contracts with the vendors and by registering the contracts with the Comptroller's Office.
- Determine whether all bidders are independent from each other to ensure that all purchases are made through open competition. In that regard, the Council could review the backgrounds of vendors who routinely do business with the City by reviewing VENDEX and the New York State Department of State Business Entity Database.
- Discontinue its use of miscellaneous vouchers to pay vendors for Member services.
- Enforce its own procurement rules by soliciting bids for purchases exceeding \$500, or review its policies and procedures to determine whether they meet the current needs of the Council.
- Ensure that it complies with PPB rules by soliciting bids for purchases exceeding \$5,000.
- Consider requiring that all purchases of goods and services be purchased from requirements contracts, if available.
- Ensure that all OTPS purchases are made in accordance with Comptroller's Directives and Council Rules, and that they have adequate supporting documentation.
- Ensure that all imprest fund purchases are made in accordance with Comptroller's Directive #3 and have adequate supporting documentation.

INTRODUCTION

Background

The New York City Council is the law-making body of the City of New York. It comprises 51 members who are the elected representatives of the 51 Council Districts throughout the City's five boroughs. The Council also monitors the operation and performance of City agencies, makes land-use decisions, and has sole responsibility for approving the City's budget. As the legislative branch of municipal government, the Council is an equal partner with the Mayor in the governing of New York City. For Fiscal Year 2005, the Council spent more than \$14.3 million in Other Than Personal Service expenditures.

Objectives

The audit's objectives were to determine whether the Council complied with certain purchasing procedures for OTPS expenditures set forth in the New York City Comptroller's *Internal Control and Accountability Directives* #3, #6, and #24; Procurement Policy Board rules; and the Procurement Rules of the Council.

Scope and Methodology

The audit scope covered the period July 1, 2004, through June 30, 2005 (Fiscal Year 2005). To obtain an understanding of procedures and regulations with which the Council is required to comply, we reviewed PPB rules; Comptroller's Directives #3, #6, and #24; and the Council Rules. It should be noted that officials from the Council informed us that they do not follow PPB rules. Instead, the Council elected to issue and follow its own procurement rules. The Council rules were issued in 1991—with a subsequent update to sections on Member Purchases—and “mirror” PPB rules.

To obtain a better understanding of the Council's operations, we conducted walkthroughs of the purchasing processes for three separate areas: Central Office purchases; Member purchases, and Member printing services. We interviewed appropriate Council personnel and documented our understanding of these processes through flowcharts and memoranda indicating process procedures and the internal controls in place at that time.

To determine the total dollar amount that the Council spent on OTPS expenditures, we reviewed the City's Financial Management System (FMS) and retrieved a list of all vouchers associated with Council OTPS expenditures.

All OTPS expenditures were separated into three areas: Central Office purchases; Member purchases, and Member printing services.²

² Member printing service expenditures included printing, “stuffing” envelopes, preparing mailing lists, translating, and postage.

For Central Office OTPS expenditures, we randomly selected 50 vouchers for purchases of between \$1,000 and \$150,000, totaling \$192,906. In addition, we reviewed all 16 vouchers for purchases exceeding \$150,000, totaling \$5.45 million. Overall, we reviewed \$5.64 million, which represents 64 percent of the total Central Office OTPS expenditures. For Member expenditures, we randomly selected 50 vouchers of more than \$100 (totaling \$32,107, one percent of the total Member OTPS expenditures) and an additional 8 vouchers for Member “shared” expenses (totaling \$52,924, 14 percent of the total Member “shared” expenditures).³ For shared expenses, we randomly chose one voucher from each category: postage, cable, telephone, beeper service, Council folders, imprest fund, Metro Cards and *Green Books* (City directories) from the City Store. For printing service expenditures, we randomly selected 50 vouchers for purchases of between \$200 and \$5,000, and all 4 vouchers equal to or greater than \$5,000 (totaling \$167,707, eight percent of total Member printing expenditures).

For all 178 vouchers, we determined whether these purchases were in compliance with PPB rules; Comptroller’s Directives #3, #6, and #24, and Council Rules, if applicable. Specifically, we determined whether:

- each sampled payment voucher, invoice, and corresponding documentation had the required authorizations, approvals, and signatures;
- transactions were for proper business purposes and were supported by adequate documentation;
- bids were solicited for purchases exceeding \$500, in accordance with Council Rules; and procedures, and for purchases exceeding \$5,000, in accordance with PPB rules;
- vouchers related to travel expenses were preapproved, and itineraries were included as supporting documentation for payment;
- there was any evidence of split purchasing to avoid monetary purchase thresholds that would require the solicitation of bids;
- there were any duplicate payments; and
- purchases could have been made through available City requirement contracts.

During our review of the 178 vouchers, we found evidence of split purchasing. Consequently, we reviewed the list of all Council OTPS expenditures made in Fiscal Year 2005 to determine whether the Council was making multiple payments to the same vendors on the same days.

For Central Office expenditures, we identified 19 purchases, in which the Council processed multiple payments to the same vendors on the same days. Specifically, the Council processed 71 vouchers, totaling \$159,540, to eight vendors that appeared to be split purchases. For Member printing expenditures, there were 64 purchases that appeared to be split, totaling \$1.5 million, for which the Council processed multiple payments to the same vendors on the same days. We judgmentally chose six apparently split purchases that included 304 vouchers, totaling \$676,528, 33 percent of all printing expenditures.

³ Member “shared” expenditures are payments made on one voucher for several Members.

We reviewed all 375 vouchers and their supporting documentation to determine whether the Council intentionally split purchases to prevent the total from reaching the \$5,000 threshold that would have required the solicitation of bids from five vendors or the requirement to award a contract for purchases over \$10,000, as per Council Rules, or \$100,000, as per PPB rules.

The results of the above tests, which covered sampled items totaling \$6.7 million (about 47 percent of reported OTPS expenditures for Fiscal Year 2005), while not projectable to all OTPS expenditures for the audit period, provided a reasonable basis to assess the Council's compliance with certain purchasing procedures for OTPS expenditures set forth in Comptroller's #3, #6, and #24; PPB rules; and Council Rules.

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

Discussion of Audit Results

The matters covered in this report were discussed with Council officials during and at the conclusion of this audit. A preliminary draft report was sent to Council officials and was discussed at an exit conference. We submitted a draft report to the officials with a request for comments. We received a written response from Council officials on August 21, 2007. In their response, Council officials described the actions they have taken to address the report's recommendations.

The full text of the Council response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The Council did not comply with the City Charter, PPB rules, Comptroller's Directives #3, #6 and #24 and its own purchasing procedures when making OTPS purchases. Specifically the Council:

- *Violated City Charter requirements and PPB rules when purchasing printing services.* The Council paid approximately \$1.67 million for printing without entering into formal contracts—\$1.46 million was paid to five vendors. In general, the City Charter and the PPB rules require that contracts be awarded through competition. Instead—with the exception of three purchases totaling \$35,470—the Council split printing orders or made several small purchases by individual Council members to prevent the total from reaching the \$5,000 threshold for small purchases that would have required the solicitation of bids from five vendors.
- *Permitted affiliated companies to submit competing bids against each other for the same proposal.* PPB rules are in effect to ensure that purchases are made through an open competition of independent bids. Clearly, affiliated companies submitting bids against each other for the same proposal could result in collusion and price fixing.
- *Violated Comptroller's Directive #24 by using miscellaneous vouchers for all Member purchases and "shared" expenditures, totaling \$3.49 million.* Purchases included those for rent and postal and phone service, which are specifically identified in Comptroller's Directive #24 as inappropriate uses of miscellaneous vouchers.
- *Violated Council and PPB rules when making OTPS expenditures from its Central Office.* Of the 50 sampled OTPS expenditures from the Central Office, totaling \$192,906, 34 expenditures, totaling \$125,057, required the Council to obtain bids because these purchases exceeded \$500. However, we found no evidence that any bids were obtained; a violation of Council Rules. Moreover, five of these expenditures, totaling, \$62,837, were in violation of PPB rules because the purchases exceeded the \$5,000 threshold for solicitation of bids.
- *Did not use requirement contracts in 22 instances when procuring various items totaling \$14,232.* Specifically, of the 50 sampled OTPS expenditures between \$1,000 and \$150,000 from the Central Office, totaling \$192,906, six purchases totaling \$9,567 could have been made from existing requirements contracts. Furthermore, of the 50 sampled Member OTPS expenditures for more than \$100, totaling \$32,107, 16 purchases totaling \$4,665 could have been made from existing requirements contracts. It should be noted that the Council did not use existing requirements contracts to purchase the \$1.67 million in printing services.
- *Made improper and questionable payments, totaling \$54,939.* Of the 50 sampled OTPS expenditures between \$1,000 and \$150,000 from the Central Office, totaling \$192,906, \$42,045 was not paid in accordance with Comptroller's Directives or

Council Rules, or was paid without adequate supporting documentation. In addition, of the 50 sampled Member OTPS expenditures for more than \$100, totaling \$32,107, \$12,894 was not paid in accordance with Comptroller's Directives or Council Rules, or was paid without adequate supporting documentation.

- *Made improper and questionable imprest fund payments, totaling \$2,837.* Of the \$8,588 in imprest fund payments reviewed, payments of \$2,837 either were not made in accordance with Comptroller's Directive #3, or were made without adequate supporting documentation.

These issues are discussed in further detail in the following sections of this report.

Noncompliance with the City Charter, PPB Rules, and Council Rules

The Council violated City Charter requirements, PPB rules, and Council Rules when purchasing Member printing services. Of the \$2.02 million spent on Member printing services, \$1.67 million was used for printing. The remaining \$349,480 was spent on “stuffing” envelopes, preparing mailing lists, translating, and postage. Of the \$1.67 million, \$1.46 million was paid to just five vendors.⁴ In general, the City Charter, PPB rules, and Council Rules require that contracts be awarded through competition. Specifically, PPB rules and Council Rules state that contracts should be awarded by competitive sealed bidding when the procurement of goods and services exceed the small purchase limit— \$100,000 for PPB rules and \$10,000 for Council Rules.

Instead of awarding a printing contract through competition, the Council intentionally split printing orders or made several small purchases for individual Members—with the exception of three purchases totaling \$35,470—to prevent the total from reaching the \$5,000 threshold for small purchases that would have required the solicitation of bids from five vendors.

For example, on June 20, 2005, Council personnel approved 46 purchase orders, totaling \$203,550, to Jon-Da Printing Company for printing a mailer entitled “17 Seats”—a Council initiative that would dedicate the revenue from a continued personal income tax surcharge on New Yorkers making \$500,000 or more to the lowering of class size in the public schools. Jon-Da generated 46 invoices, dated June 14, 2005, or June 15, 2005, and submitted them for payment. Council personnel then submitted for payment purchase orders for each invoice that did not exceed the \$5,000 threshold. This practice appears to be intentional.

⁴ It should be noted that of the five vendors, two vendors are affiliated with two other vendors. Consequently, 87 percent of total printing expenditures was paid to three unaffiliated vendors. Specifically, according to the New York City Vendor Information Exchange System (VENDEX), Jon-Da Printing is the parent company of JM Envelope. In addition, according to the New York State Department of State Business Entity Database, the President of Copy Photo Print is also the contact person for Metro Graphics N.Y. Further, Metro Graphics N.Y. and Copy Photo Print operate out of the same offices at 200 Hudson Street, Suite #304, and at 481 Washington Street, 6th floor.

In another example, on June 15, 2005, June 16 2005, and June 21, 2005, the Council approved 26 purchase orders totaling \$101,076 to Metro Graphics N.Y., Inc., Copy Photo Print Co.—companies that operate from the same offices—and Jon-Da Printing for printing another mailer concerning Member action to stop the Mayor’s proposed elimination of the Weekend Meals program for seniors. Metro Graphics N.Y., Copy Photo Print, and Jon-Da Printing generated 48 invoices, all dated June 9, 2005, and submitted them for payment. Council personnel then intentionally grouped invoices on purchase orders so as not to exceed the \$5,000 threshold and processed for payment.

The Council is circumventing the competitive bidding process by not awarding contracts thereby precluding the Council from receiving the best possible purchase prices. Printing vendors are manipulating the unit price per copy, to achieve the same payment amount per invoice, regardless of the quantity printed. In addition, vendors are increasing the unit price by using affiliated companies that billed the Council two to three cents more per unit for the same job. In the second example of the 48 invoices cited above, Metro Graphics N.Y. submitted 39 invoices (\$2,025 each) totaling \$78,975. However, the quantity of mailers printed ranged from 12,000 to 28,000 copies. By manipulating the unit price, Metro Graphics N.Y. received the same payment per invoice (per Member), regardless of the quantity printed. An affiliated company, Copy Photo Print, submitted seven invoices (\$2,385 each) totaling \$16,695, and one invoice that was labeled a “rush” and totaled \$2,960. For the seven invoices, the quantity of mailers printed ranged from 11,000 to 20,000 copies. Again, by manipulating the unit price, Copy Photo Print arrived at the same payment amount per invoice (per Member), regardless of the quantity printed. More significantly, Copy Photo Print charged two to three cents more per unit than Metro Graphics N.Y. For example, for 12,000 units, Metro Graphics N.Y. charged 17 cents per unit, while Copy Photo charged 20 cents per unit. The remaining invoice, totaling \$2,446, was submitted by Jon-Da Printing.

If the Council had awarded one contract rather than intentionally splitting this purchase into 26 purchase orders, the Council could have saved at least 42 percent in printing costs for this mailer. The Council paid \$101,076 to print the mailer at unit prices ranging from seven cents (for 28,000 units) to 22 cents (11,000 units). Had the Council awarded a contract for all 846,000 units at seven cents a unit, it would have paid only \$59,220.

Moreover, New York City has requirement contracts for printing services. If the Council purchased printing services through these requirement contracts, as is required for City agencies, the Council would help ensure that the City is getting the best possible price, which is in the best interest of the City.

The City Charter requires that all contracts and agreements be registered with the Comptroller’s Office, since the Comptroller is responsible for tracking City expenditures and maintaining a registry of City contracts. By not awarding contracts appropriately, the Council was circumventing important internal controls that allow the Comptroller to ensure that all expenditures are properly recorded on the City’s books and records.

Finally, the PPB and Council rules are designed, in part, to: increase public confidence in City procurement procedures; enhance efficiency, economy, and flexibility in procurement; maximize the City's purchasing power; foster competition from all segments of the vendor community; safeguard the integrity of the procurement system and protect it from corruption, waste, fraud, and abuse; and ensure appropriate public access to contracting information. By not following PPB and Council rules and intentionally splitting these printing purchases, the Council was disregarding its responsibilities and neglecting its obligations to the City of New York.

Recommendation

The Council should:

1. Immediately discontinue its practice of splitting purchases to circumvent the PPB rules, Council Rules and the competitive bidding process.

Council Response: "The time period covered by this audit was during the prior Council Speaker's administration.

"This section of the audit focused on the area of printing services mainly covering newsletters. In Spring 2006, under the direction of the current Speaker, the Council restructured the process for procuring goods and services, including newsletter printing services. The Council now bids out Member newsletters regardless of the dollar amount. Member newsletters vary and are not standardized in size, color, subject matter or general appearance, and therefore the Council separately bids out these newsletters. The Council also has expanded the number of vendors it solicits on such bids promoting competition among a wider selection of vendors. This includes soliciting vendors from the City's bidders list in order to expand the solicited vendor pool.

"Furthermore, the Council will continue to work to ensure that it solicits bids for purchases exceeding \$5,000 when required."

2. Procure services, especially printing services in accordance with the provisions of the City Charter, PPB rules, and Council Rules by using the competitive bidding process, by entering into formal contracts with the vendors and by registering the contracts with the Comptroller's Office.

Council Response: "The time period covered under the audit was during the prior Council Speaker's administration.

"In the Spring of 2006, under the direction of the current Speaker, the Council restructured the process for purchasing goods and services, including printing services. The Council will continue to make efforts to anticipate future needs based on prior experience and will, where feasible, enter into formal contracts with vendors and, when required, register such contracts with the Comptroller's Office.

“The Council currently, and for over a year, has bid out Member newsletters regardless of the dollar amount. The Council has expanded the number of vendors it solicits on such bids promoting competition among vendors. The Council has solicited newsletter bids from the vendor that is on the City requirements contract for printing services. However, this vendor was not the low bidder on those specific bids in which they were solicited. The lowest bidder was selected to perform the requested printing services at a cost savings to the City. For Central Office, the Council uses requirements contracts for items that are readily standardized (such as letterhead and envelopes used by Central Office).”

Affiliated Companies Bidding Against Each Other

As stated in the previous section of this report, the Council made three purchases for printing services in which the Council solicited bids from vendors. However, one of the solicitations resulted in affiliated companies submitting bids against each other for the proposal. The Council’s Member Services Division requested bids for printing a newsletter for a Member. The Council received six bids, as shown in Table I, below.

Table I
List of Vendors Who Submitted Bids

COMPANY	BID QUOTE
Metro Graphics N.Y., Inc.	\$9,600
Jon-Da Printing Company, Inc.	9,795
Color Graphics & Communications Inc.	9,900
JM Envelope Co.	9,945
Copy Photo Print Co., Inc.	10,075
Cambridge Graphic Arts, Inc.	11,205

However, two companies that bid are affiliated with two other bidding companies. Specifically, according to the New York City Vendor Information Exchange System (VENDEX), Jon-Da Printing is the parent company of JM Envelope. In addition, according to the New York State Department of State Business Entity Database, the President of Copy Photo Print is also the contact person for Metro Graphics N.Y. Further, Metro Graphics N.Y. and Copy Photo Print operate out of the same offices at 200 Hudson Street, Suite #304, and at 481 Washington Street, 6th floor. Metro Graphics N.Y. was awarded this printing job.

PPB and Council Rules are in effect to ensure that purchases are made through an open competition of independent bids. Clearly, affiliated companies submitting bids against each other for the same proposal could result in collusion and price fixing.

Recommendation

3. The Council should determine whether all bidders are independent from each other to ensure that all purchases are made through open competition. In that regard, the Council could review the backgrounds of vendors who routinely do business with the City by reviewing VENDEX and the New York State Department of State Business Entity Database.

Council Response: “The Council restructured its process for procuring printing services by increasing the number of vendors solicited for each bid. The Council solicits printing vendors who have responded to prior solicitations, as well as vendors randomly chosen from the City’s bidders list. The Council believes this restructured process has significantly increased competition while at the same time minimizing the likelihood that bidders are affiliated, and meeting the recommendations contained within this audit.

“Also, to ensure that bidders are independent of each other, the Council intends to conduct a review every six months of vendors it solicits.”

Improper Use of Miscellaneous Vouchers

The Council inappropriately used miscellaneous vouchers to pay for Member purchases. This systematic use of miscellaneous vouchers for all its Member purchases, totaling \$3.2 million, and “shared” expenses, totaling \$284,078, violated Comptroller’s Directive #24, which states:⁵

“Miscellaneous Vouchers were created explicitly for vouchering payments in situations when agencies cannot predetermine the amount which will be spent for certain payments, and when Advices of Award or Purchase Orders are not required or applicable. The inappropriate use of Miscellaneous Vouchers contributes to the distortion of the City’s books of account by understating the City’s outstanding obligations.”

It should be noted that, \$1.75 million (50 percent) of the \$3.49 million in miscellaneous vouchers was for rent and postal and phone service, expenditures that are specifically identified in Comptroller’s Directive #24 as inappropriate uses of miscellaneous vouchers, and another \$111,716 was for utilities.

In addition, our review of 50 vouchers for Member purchases, totaling \$32,107, revealed that Members paid \$11,357 for cellular phones, office cleaning, copier rental, rent, utilities, and office supplies; and for personal services, including general secretarial and administrative responsibilities—filing, answering phones, word processing—in violation of Comptroller’s Directive #24.

⁵ “Shared” expenses did not include \$81,124 in reimbursements to the imprest fund. These payments were properly processed through Replenishment Vouchers (PVRs) as required by Comptroller’s Directive #3.

Recommendation

4. The Council should discontinue its use of miscellaneous vouchers to pay vendors for Member services.

Council Response: “Historically, the Council has used miscellaneous payment vouchers to process payment for vendors who provided goods and services to Members who independently purchase for their offices, which was a well know practice. The Council is amenable to encumbering recurring expenses to ensure compliance with Comptroller Directive #24. However, it should be noted that the Council treats each Member office as an independent purchasing entity. The Council has already begun the process of encumbering funds for recurring expenses when appropriate, which will lead to making payments using methods other than by miscellaneous payment vouchers. The Council will continue discussions with the Comptroller’s office on how to best implement this recommendation.

“In January 2007, the Council began using requirement contracts for certain Member purchases, such as copier machines. The Council will continue to expand its use of requirements contracts when purchasing goods and services for Members.”

Noncompliance with Council Rules

The Council violated its own Council Rules when making OTPS expenditures from its Central Office. In fact, the Council ignored its own procurement rules completely. Of the 50 sampled OTPS expenditures between \$1,000 and \$150,000 from the Central Office, totaling \$192,906, 34 expenditures, totaling \$125,057, required the Council to obtain bids because these purchases exceeded \$500.⁶ However, we found no evidence that any bids were obtained. It should be noted that five of these expenditures, totaling \$62,837, were in violation of PPB rules because the purchases exceeded the \$5,000 threshold that requires the solicitation of bids.

Recommendation

The Council should:

5. Enforce its own procurement rules by soliciting bids for purchases exceeding \$500, or review its policies and procedures to determine whether they meet the current needs of the Council.

Council Response: “The Council has always used the threshold levels established in the PPB Rules. The Council is in the process of revising its own Rules to better meet current needs. These revised rules will mirror current PPB rules and continue to use PPB

⁶ It should be noted that the remaining 16 vouchers did not require the Council to obtain bids because these purchases were made through negotiated acquisitions, requirement contracts, or were for routine expenditures, such as rent and utilities.

threshold levels for purchases. It is expected that the Council Rules should be completed by the end of the calendar year.”

6. Ensure that it complies with PPB rules by soliciting bids for purchases exceeding \$5,000.

Council Response: “The Council will continue to ensure that it solicits bids for purchases exceeding \$5,000. In furtherance of that goal, the Council is undertaking additional training for staff involved in purchasing. In many cases, including newsletters and other printing services, the Council currently solicits bids for purchases under \$5,000.”

Requirement Contracts Not Used

As mentioned in a previous section, the Council did not use existing requirement contracts to purchase \$1.67 million in printing services. In addition, the Council did not use requirement contracts in another 22 instances when procuring various items totaling \$14,232. Specifically, of the 50 sampled OTPS expenditures between \$1,000 and \$150,000 from the Central Office, totaling \$192,906, six purchases totaling \$9,567 could have been made from existing requirements contracts. Furthermore, of the 50 sampled Member OTPS expenditures for more than \$100, totaling \$32,107, 16 purchases totaling \$4,665 could have been made from existing requirements contracts.

In general, City agencies are required to purchase goods and services through requirements contracts when they are available. Specifically, a March 2005 memorandum from the Commissioner of the Department of Citywide Administrative Services (DCAS) to Agency Heads stated that “agencies are also reminded that commodities available under requirement contracts must be purchased through such contracts. Additionally, items available from DMSS [Department of Municipal Supply Services] Storehouse must be obtained from that facility.”

The Council should purchase goods and services through requirements contracts, when available, as is required for City agencies. This would ensure that the City is getting the best possible price, which is in the best interest of the City.

Recommendation

7. The Council should consider requiring that all purchases of goods and services be purchased from requirements contracts, if available.

Council Response: “The Council has expanded the use of requirements contracts for purchases made by Central Office. In Fiscal Year 2006, the Council made 17 purchases via city requirements contracts while in Fiscal Year 2007 the number increased to 37. It should be noted that the Council has found some instances where prices were more competitive from vendors other than those on requirements contract (i.e. some newsletter

bids were awarded to other vendors because the vendor on City requirements contract did not submit the lowest bid), which resulted in saving City funds.

“The Council will continue to work toward expanding the use of requirement contracts for Member purchases as well.”

Questionable Payments

The Council made improper and questionable payments, totaling \$54,939. Of the 50 sampled OTPS expenditures between \$1,000 and \$150,000 from the Central Office, totaling \$192,906, \$42,045 was not paid in accordance with Comptroller’s Directives or Council Rules, or was paid without adequate supporting documentation. In addition, of the 50 sampled Member OTPS expenditures for more than \$100, totaling \$32,107, \$12,894 was not paid in accordance with Comptroller’s Directives or Council Rules, or was paid without adequate supporting documentation. Specifically, for Central Office expenditures, the Council made the following questionable payments:

- \$6,580 on three invoices without product descriptions.
- \$3,647 on two vouchers that should have been charged to Member rather than Central Office purchases.
- \$3,250 on one voucher (dated July 2004) issued as purchase order rather than charged to its contract “because present contract is out of money but does not expire until 10/05.”
- \$24,995 on one voucher without proper receiving certification.
- \$1,235 for credit card expenses, including \$555 paid without an invoice for a California-area cellular phone; and \$660 (including sales tax) paid without an itinerary or prior approval for a trip to Washington D.C.
- \$1,191 in employee reimbursements: for travel paid without itineraries or prior approval; without receipts or supporting documentation; and for a parking ticket.
- \$1,147 for three trips to Albany without itineraries or prior approvals. This total included the purchase of a VCR/DVD player.

For Member purchases, the Council made questionable payments that included:

- \$2,700 in consulting and monthly service fees (January 2005 through June 2005) for database-access maintenance and updating of the password protection system to a consulting firm, the principle of which was the treasurer of the Member’s campaign. The consulting firm’s invoices did not identify a specific database and there was no written contract that incorporated a clear statement of services that the vendor was

required to provide. In addition, there was no evidence that the services were competitively let. Information subsequently provided to us indicated that the consulting firm was retained by both the Member's government office and his election committee to provide consulting services that involved two separate databases.

- \$8,100 in rent without evidence of a lease.
- \$1,496 on a voucher that had no Member certification stamp or signature.

Recommendation

8. The Council should ensure that all OTPS purchases are made in accordance with Comptroller's Directives and Council Rules, and that they have adequate supporting documentation.

Council Response: "The Council will review and strengthen its internal controls and processes to better maintain the fiscal integrity of the office.

"The Council will review procedures and ensure compliance with all rules. In furtherance of that goal, the Council is undertaking additional training for staff involved in purchasing and processing payments."

Imprest Fund

The Council made improper and questionable imprest fund payments totaling \$2,837. Of the \$8,588 in imprest fund payments reviewed, payments of \$2,837 either were not made in accordance with Comptroller's Directive #3 or were made without adequate supporting documentation. For example, the Council paid \$2,521 (including \$96 in late fees) in 53 checks for recurring expenses, such as drinking water and utilities, improper payments according to Comptroller's Directive #3.

Recommendation

9. The Council should ensure that all imprest fund purchases are made in accordance with Comptroller's Directive #3 and have adequate supporting documentation.

Council Response: "The Council will review and strengthen its internal controls to ensure compliance with Comptroller Directive #3. As stated above, the Council will expand the usage of requirements contracts for Member purchases. In furtherance of that goal, the Council is undertaking additional training for staff involved in processing payments."



THE COUNCIL
THE CITY OF NEW YORK
ADMINISTRATIVE SERVICES DIVISION
250 BROADWAY
NEW YORK, N.Y. 10007-2594

EDWARD F. O'MALLEY
DIRECTOR

TEL: (212) 788-6925
EDWARD.OMALLEY@COUNCIL.NYC.NY.US

August 21, 2007

John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
NYC Office of the Comptroller
1 Centre Street
New York, NY 10007

Dear Mr. Graham:

The Council appreciates the opportunity to review and respond to the findings and recommendations of your "Audit Report on the Other Than Personal Service Expenditures of the New York City Council July 1, 2004 – June 30, 2005" (FL06-109A). This audit, which focused on a time period during the former Council Speaker's Administration, commenced in February 2006 and ended with the issuance of this report. During this time, the Council provided an extensive number of documents to the Comptroller's Office allowing for this review.

The time period of this audit, July 1, 2004 and June 30, 2005, covered part of the second term of office for the former City Council Speaker. The current City Council Speaker's term of office began on January 4, 2006. The transition of the Council to a new Speaker included significant changes in senior staff, including those responsible for the review and processing of Other Than Personal Service Expenditures. This transition resulted in an extensive review and modification of the Council's purchasing practices and procedures, which occurred during the early stages of the audit. Those modifications, combined with the recommendations of the audit itself, have enabled the Council to continue to strengthen its internal management processes with regard to purchasing. This effort is on-going.

Attached please find our response to the audit report's recommendations.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ed F. O'Malley".

Edward O'Malley
Director of Administrative Services

Recommendation #1 Response:

The time period covered by this audit was during the prior Council Speaker's administration.

This section of the audit focused on the area of printing services mainly covering newsletters. In Spring 2006, under the direction of the current Speaker, the Council restructured the process for procuring goods and services, including newsletter printing services. The Council now bids out Member newsletters regardless of the dollar amount. Member newsletters vary and are not standardized in size, color, subject matter or general appearance, and therefore the Council separately bids out these newsletters. The Council also has expanded the number of vendors it solicits on such bids promoting competition among a wider selection of vendors. This includes soliciting vendors from the City's bidders list in order to expand the solicited vendor pool.

Furthermore, the Council will continue to work to ensure that it solicits bids for purchases exceeding \$5,000 when required.

Recommendation #2 Response:

The time period covered under the audit was during the prior Council Speaker's administration.

In the Spring of 2006, under the direction of the current Speaker, the Council restructured the process for purchasing goods and services, including printing services. The Council will continue to make efforts to anticipate future needs based on prior experience and will, where feasible, enter into formal contracts with vendors and, when required, register such contracts with the Comptroller's Office.

The Council currently, and for over a year, has bid out Member newsletters regardless of the dollar amount. The Council has expanded the number of vendors it solicits on such bids promoting competition among vendors. The Council has solicited newsletter bids from the vendor that is on the City requirements contract for printing services. However, this vendor was not the low bidder on those specific bids in which they were solicited. The lowest bidder was selected to perform the requested printing services at a cost savings to the City. For Central Office, the Council uses requirements contracts for items that are readily standardized (such as letterhead and envelopes used by Central Office).

Recommendation #3 Response:

The Council restructured its process for procuring printing services by increasing the number of vendors solicited for each bid. The Council solicits printing vendors who have responded to prior solicitations, as well as vendors randomly chosen from the City's bidders list. The Council believes this restructured process has significantly increased competition while at the same time minimizing the likelihood that bidders are affiliated, and meeting the recommendations contained within this audit.

Also, to ensure that bidders are independent of each other, the Council intends to conduct a review every six months of vendors it solicits.

Recommendation #4 Response:

Historically, the Council has used miscellaneous payment vouchers to process payment for vendors who provided goods and services to Members who independently purchase for their offices, which was a well known practice. The Council is amenable to encumbering recurring expenses to ensure compliance with Comptroller Directive #24. However, it should be noted that the Council treats each Member office as an independent purchasing entity. The Council has already begun the process of encumbering funds for recurring expenses when appropriate, which will lead to making payments using methods other than by miscellaneous payment vouchers. The Council will continue discussions with the Comptroller's office on how to best implement this recommendation.

In January 2007, the Council began using requirement contracts for certain Member purchases, such as copier machines. The Council will continue to expand its use of requirements contracts when purchasing goods and services for Members.

Recommendation #5 Response:

The Council has always used the threshold levels established in the PPB Rules. The Council is in the process of revising its own Rules to better meet current needs. These revised rules will mirror current PPB rules and continue to use PPB threshold levels for purchases. It is expected that the Council Rules should be completed by the end of the calendar year.

Recommendation #6 Response:

The Council will continue to ensure that it solicits bids for purchases exceeding \$5,000. In furtherance of that goal, the Council is undertaking additional training for staff involved in purchasing. In many cases, including newsletters and other printing services, the Council currently solicits bids for purchases under \$5,000.

Recommendation #7 Response:

The Council has expanded the use of requirements contracts for purchases made by Central Office. In Fiscal Year 2006, the Council made 17 purchases via city requirements contracts, while in Fiscal Year 2007 the number increased to 37. It should be noted that the Council has found some instances where prices were more competitive from vendors other than those on requirements contract (i.e. some newsletter bids were awarded to other vendors because the vendor on City requirements contract did not submit the lowest bid), which resulted in saving City funds.

The Council will continue to work toward expanding the use of requirement contracts for Member purchases as well.

Recommendation #8 Response:

The Council will review and strengthen its internal controls and processes to better maintain the fiscal integrity of the office.

The Council will review procedures and ensure compliance with all rules. In furtherance of that goal, the Council is undertaking additional training for staff involved in purchasing and processing payments.

Recommendation #9 Response:

The Council will review and strengthen its internal controls to ensure compliance with Comptroller Directive #3. As stated above, the Council will expand the usage of requirements contracts for Member purchases. In furtherance of that goal, the Council is undertaking additional training for staff involved in processing payments.