



# New York City Department of Parks and Recreation

## Contracts for Personal and Miscellaneous Services

Report 2009-N-13



Thomas P. DiNapoli



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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

July 29, 2010

Adrian Benepe  
Commissioner  
New York City Department of Parks and Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, NY 10021

Dear Mr. Benepe:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively, and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York City Department of Parks and Recreation's Contracts for Personal and Miscellaneous Services. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*





## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### Audit Objectives

One objective of our audit was to determine whether the New York City Department of Parks and Recreation (Department) justified the need to contract for personal and miscellaneous services. Another objective was to determine whether the Department periodically reassessed personal and miscellaneous services contracts to identify what work could be deferred, eliminated, or reduced in an effort to deal with the current fiscal crisis.

#### Audit Results - Summary

The City Charter, Procurement Policy Board Rules, and City Comptroller Directives establish certain expectations for City agencies regarding decisions to contract out for personal and miscellaneous service contracts (Service Contracts). These guidelines have added significance given the City's increasing fiscal difficulties. In his January 2009 State of the City Address, the Mayor outlined the need to find new efficiencies throughout City government while protecting core City services. For the period July 1, 2008 through November 30, 2009, the Department had 471 open Service Contracts with award values totaling \$235.7 million; 128 (about 25 percent) of these contracts were awarded for more than \$100,000. Many were multi-year contracts - some providing services over several years both before and after our audit scope period.

We examined ten of these Service Contracts valued at \$10.1 million and reviewed related documents to determine whether the decision to contract for services was in writing and whether there was documentation supporting that decision. We found that all ten contract files contained a standardized form, prepared by a Department contracting officer, that identified the reason for contracting out the service. The reason most often cited was that contracting out for the service was cost-effective. However, Department officials could not provide any written analyses or other relevant documentation used to support their decisions.

Department officials told us they believe the standardized form sufficiently documents the need to procure a service and that the decisions are made by officials who are most familiar with the skills and resources available to complete projects and assignments, as well as the workload of their staff, and that they generally do not maintain additional documentation. They add that the City Charter expectations are not applicable, since they only apply when an employee is displaced - and none were; and that Procurement Policy Board Rules are not applicable for most of the contracts in our sample for various reasons.

The absence of documentation showing that alternatives were considered, cost benefits were analyzed, and informed decisions were made leaves the taxpayers without adequate assurance that all relevant factors were considered in making the decision to contract out work.

In light of the current fiscal crisis, Department officials need to ensure that expenditures are necessary and cost-effective. To achieve this goal, we believe the Department should perform a comprehensive review of each Service Contract to determine what can be delayed, suspended, postponed or performed in-house. While we found that the officials have not performed this type of comprehensive review, they explained that they do actively review, prioritize and make adjustments to contracts depending on budget constraints as well as service needs. The Department may be missing opportunities to further reduce costs and save funds. We note that if the Department achieved an 8-percent savings on the unspent amounts remaining on these existing Service Contracts, it could realize \$4.5 million in cost savings.

Our report contains two recommendations for improving Department efforts to attain savings through justification and reassessment of Service Contracts. Department officials disagree with the need for our recommendations. They indicated that their contract justification process complies with the City's Procurement Policy Board Rules and they regularly conduct reviews of Service Contracts.

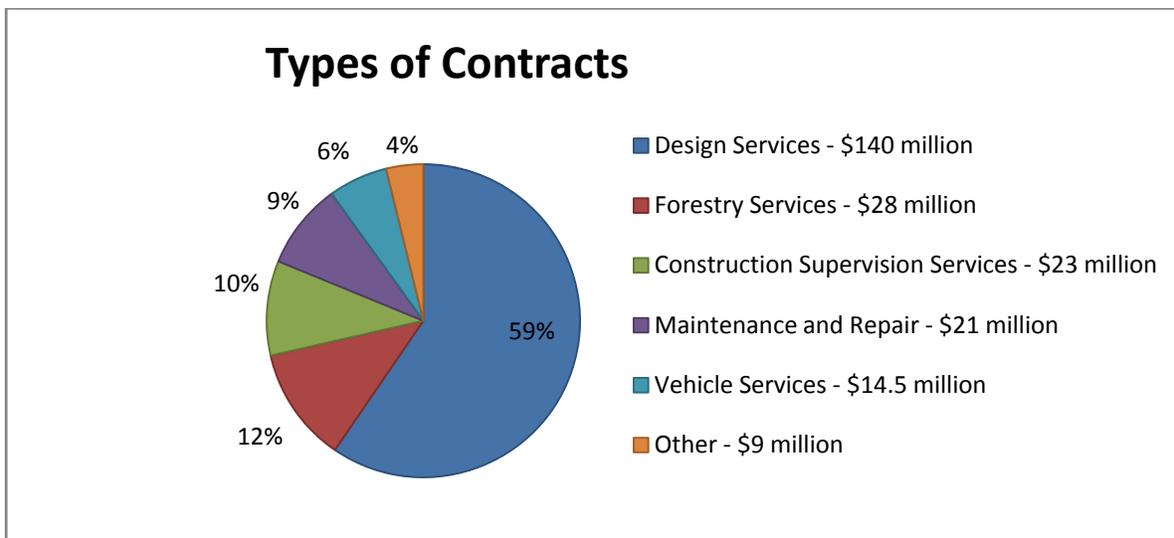
This report, dated July 29, 2010, is available on our website at <http://www.osc.state.ny.us>.  
Add or update your mailing list address by contacting us at: (518) 474-3271 or  
Office of the State Comptroller  
Division of State Government Accountability  
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Albany, NY 12236

# Introduction

## Background

The New York City Department of Parks and Recreation (Department) operates one of the largest municipal park systems in the country. Its principal mission is to ensure that the approximately 29,000 acres of parks, beaches, playgrounds, and recreational facilities in New York City (City) are clean, safe, accessible, and attractive for the health and enjoyment of the people and that they provide a wide variety of recreational opportunities. For the fiscal year ended June 30, 2009, the Department had 7,395 full-time equivalent employees and total expenditures of \$853.5 million, including \$643 million for goods and services.

To help achieve its mission, the Department often enters into personal and miscellaneous service contracts (Service Contracts) to provide services for park design, construction supervision, forestry (such as tree pruning), maintenance, and recreation activates. According to Department records, it had 471 open Service Contracts during the period July 1, 2008 through November 30, 2009. The total award value of these contracts was \$235.7 million. (This amount is the full, awarded amount and includes contracts of widely varying term lengths and at many different stages of implementation). More than 25 percent (128) of these contracts were awarded for more than \$100,000, and many were multi-year contracts - some providing services over several years. The 471 contracts are categorized in the following chart:



The following guidelines set forth expectations for City contracts:

- Section 312 of the City Charter requires that a cost-benefit analysis be prepared before a City agency enters into any contracts for technical, consultant or personal services valued at more than \$100,000 when such contract would result in the displacement of a City employee.
- Section 2-01 of the Procurement Policy Board Rules (PPB Rules) requires that the decision to procure technical, consultant and personal services that cost more than \$100,000 be in writing. PPB Rules further require agencies to consider several factors in making that decision, such as cost-effectiveness, special expertise and the duration of the needed service.
- New York City Comptroller Directive 24 states that agencies should retain documentation used for purchasing decisions, such as material from vendor presentations, agency discussions and memoranda, and any other paper and/or electronic records supporting the purchase decision.

These guidelines have added significance given the City's increasing fiscal difficulties. In the Mayor's January 2009 State of the City Address, the Mayor outlined the need to find new efficiencies throughout City government while protecting core City services. Further, in November 2009, the City's Office of Management and Budget (OMB) issued a memo to all agency heads calling for targeted savings of 8 percent of expenditures for most agencies.

### **Audit Scope and Methodology**

One objective of our audit was to determine whether the Department justified the need to contract for personal and miscellaneous services (Service Contracts). Another objective was to determine whether the Department periodically reassessed Service Contracts to identify what work could be deferred, eliminated, or reduced in an effort to deal with the City's fiscal difficulties. For the purposes of our audit, Service Contracts are those in which the majority of costs associated with the contracts are for services and labor. We did not include contracts for commodities or capital construction. Our audit period was July 1, 2008 through November 30, 2009.

To accomplish our audit objectives, we reviewed relevant City guidelines, interviewed Department and City personnel, and reviewed contracts and other supporting documentation provided by the Department. We tested the completeness of the Department-provided contract list by comparing it with contracts registered with the New York City Comptroller. We selected a judgmental sample of 10 Service Contracts totaling \$10.1

million, each awarded for more than \$100,000, from the 471 contracts open during our audit period.

We conducted our 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 objectives.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They further affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from Department officials that all relevant information was provided to us during the audit.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Authority**

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

**Reporting Requirements**

A draft copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this report, and are included at the end of the report as Agency Comments. Our rejoinders to the Department's comments are presented thereafter as State Comptroller's Comments.

Within 90 days of the final release of this report, we request that the Commissioner of the New York City Department of Parks and Recreation report to the State Comptroller advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

**Contributors to the Report**

Major contributors to this report included Frank Houston, Cindi Frieder, Gene Brenenson, Ryan Wendolowski, Farhan Ahmad and Elizabeth Norniella.

## Audit Findings and Recommendations

### **Justification of Service Contracts**

We selected a sample of ten Service Contracts and reviewed available documentation to determine whether the decision to contract for services was in writing and whether there was documentation supporting that decision. We found that all ten contract files contained a standardized form, prepared by a Department contracting officer, which identified the reason for contracting out the service - using a check-off box to select among various options, such as cost-effectiveness, special expertise, or lack of personnel. The reason most often selected was cost-effectiveness. However, Department officials could not provide any written analyses or other written documentation that would support their determinations. For example, one contract included in our sample was a two-year \$3.7 million contract for tree stump removals. According to the standardized contract form, the contract was awarded because it was cost-effective; however, Department officials could not provide details or calculations indicating how this determination was made. A second contract in our sample was awarded for \$186,000 for janitorial services. Similarly, Department officials provided no written calculation substantiating that it was cost-effective to contract out these services, as stated on its standardized form.

Department officials told us that completing the checked-off box on the standardized form is sufficient support. They contended that the decision to contract out services is determined by officials who are most familiar with the skills and resources available to complete projects and assignments, as well as the workload of their staff, and thus a formal documented analysis is not necessary. They add that such documentation may have existed at the time the decision was being made, but it is no longer available. They further added that using contractor employees to perform certain services is cost-effective, as it gives the Department the flexibility to use them only when needed. Furthermore, Department officials point out that Section 312 of the City Charter requires a written analysis only when an employee is displaced. As the Department never displaces any employee, a written cost analysis is not required.

Department officials further indicated that many of the contracts reviewed are not subject to Section 2-01 of the PPB Rules. Therefore, written documentation does not have to be maintained to support their decisions to contract out these services. They added that Section 2-01 applies only to contracts where a vendor is selected based upon the expertise or skill of particular contractor employees and only one of the ten contracts fit this criteria. Department officials indicated that they do

not have any supplementary internal policies or procedures; they adhere to the PPB Rules.

We acknowledge that there are times when outside service contracts should be used. However, given the substantial amounts of money involved, it is good business practice that officials involved in these decisions obtain and review documentation supporting the rationale for contracting out services. The absence of documentation showing that alternatives were considered and cost benefits were analyzed leaves taxpayers without adequate assurance that all relevant factors were considered in making the decision to contract out work - and that an economical and effective choice was selected. Furthermore, maintaining written support for these decisions will improve the Department's transparency.

**Reassessment of Service Contracts**

In light of the current fiscal crisis, Department officials need to ensure that expenditures are necessary and cost-effective. To achieve that goal, we believe the Department should perform a comprehensive review of each Service Contract to determine what can be delayed, suspended, postponed or performed in-house.

While we found that the Department has not performed this type of comprehensive review, Department officials explain that they do actively review, prioritize and make adjustments to contracts depending on budget constraints as well as service needs. They explain that they are given an already-downsized budget, which they work within to prioritize projects and procure necessary services to accomplish their projects. They cite, for example, their recent achievements in reducing vehicle purchase costs by \$1 million and tree pruning contract expenses by \$2.5 million. They also explain that the full contract award value for all contracts may not be used, as some contracts are used "as needed" or for "emergency service" and their use is therefore subject to constant review and assessment.

We believe a more comprehensive review of each Service Contract may reveal additional opportunities for savings, especially in light of OMB's call to reduce expenditures by 8 percent. As of November 30, 2009, \$57.2 million remained on the Service Contracts open during our scope period. If the Department could achieve an 8-percent reduction on the remaining balances of these contracts, approximately \$4.5 million in cost savings could be achieved.

- Recommendations**
1. Communicate to appropriate staff the need to develop and retain written analyses to justify the need for contracted services.
  2. Instruct managers to reassess all Service Contracts periodically, identifying opportunities to delay, suspend, postpone or bring them in-house, and to document these determinations.



## Agency Comments



City of New York  
Parks & Recreation

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Robert L. Garafola  
Deputy Commissioner  
Management and Budget

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June 28, 2010

Mr. Frank J. Houston  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
123 William Street-21<sup>st</sup> Floor  
New York, NY 10038

Dear Mr. Houston,

We appreciate the opportunity to comment on the State Comptroller's draft report (2009-N-13) regarding the New York City Department of Parks & Recreation's ("Parks" or "Agency") Contracts for Personal and Miscellaneous Services.

The Draft Audit Report (Report), as well as the recommendations, focuses on the development of additional written documentation covering decisions to enter into contracts for services, as well as reassessing the Agency's needs in an effort to generate possible savings. As emphasized previously, Parks reiterates that it follows the New York City Procurement Policy Board rules and regulations, as clearly acknowledged in this Report. Furthermore, Parks constantly reviews and evaluates its contracts to determine spending patterns, and reassess service needs and priorities, as discussed in the attached response.

Sincerely,

Robert L. Garafola

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[www.nyc.gov/parks](http://www.nyc.gov/parks)

**NYC Department of Parks and Recreation**  
Response to Draft Report on Personal and Miscellaneous Services

Parks regularly contracts out services to meet its core function. These personal and miscellaneous service contracts do not displace City employees, but rather are supplemental to our work force. At times these services are needed because Parks lacks the requisite level of expertise, does not have personnel in relevant titles or lacks the necessary equipment to handle a given project. In cases where it is not appropriate for Parks to acquire such expertise, titles or equipment, we follow all of the City's procurement rules as promulgated by the Procurement Policy Board (PPB).

The State Comptroller's Report focuses on the *"lack of detailed cost analysis"* and, in particular, on the absence of documentation in the contract files. Yet, the Report states, *"We found that all ten contract files contained a standardized form, prepared by a Department contracting officer, which identifies the reason for contracting out the service"*. This statement further certifies that Parks does indeed follow the PPB rules. However, the Report erroneously cites a PPB Rule, 2-01 (*"Decision to Procure Technical, Consultant or Personal Services"*), which has no applicability to most of the contracts reviewed.

\*  
**Comment**  
**1**

PPB Rule 2-01 does *not* apply to the procurement of miscellaneous services of all types. Rule 2-01 applies *only* to the procurement of *"technical, consultant and personal services."* Other types of contracts are not governed by Rule 2-01 in any respect. Thus, for example, of the 10 contracts selected for review by the review team, only the Toshiko Mori Architect contract falls within the purview of Rule 2-01. As detailed in the attached letter that the City Chief Procurement Officer submitted in connection with a similar Report of the Department of Youth and Community Development (DYCD), by personal services, Rule 2-01 refers to contracts for which the City selects the vendor based upon an evaluation of the specific employees who will render the services and in some sense contracts for the expertise or skilled judgment of those employees. Within the group of contracts that you examined, the contracts for such services as fencing, cleaning, telecommunications repair, surface repairs, vehicle maintenance, stump removal, debris removal and/or flagpole installation, simply do not trigger any analysis pursuant to Rule 2-01. These are mostly what the City treats as *"standardized services"* contracts, for which no part of the basis of award relates in any way to the personal provision of services by specific vendor employees.

\*  
**Comment**  
**2**

Thus, the specific cost effectiveness analysis that the Report is apparently seeking is not required to be performed. Likewise, a side-by-side comparison or analysis of the costs of a given procurement against the cost of using City workers is not required unless City employees are displaced, as stated in Section 312 of the City Charter.

\*  
**Comment**  
**1**

Leaving aside the citation of inapplicable rules provisions, the Report goes on to state that *"The absence of documentation showing that alternatives were considered leaves taxpayers without adequate assurance that all relevant factors were considered in making the decision to contract out work-and that an economical and effective choice was selected"*. This is not true. Parks **does** consider many key factors in its decision making process. These factors include but are not limited to:

\*  
**Comment**  
**3**

2

\* See State Comptroller's Comments, page 25.

- 1) What is the need?
- 2) Does Parks have in-house staff available to provide this service?
- 3) What is the in-house workload?
- 4) Does Parks have the technical expertise to provide this service?
- 5) Is the need for the services temporary, i.e., limited in time, such that it would be impractical to hire individuals?
- 6) Is the need for the services immediate or time sensitive, such that it would not be possible to hire individuals?
- 7) Are special permits or licenses required?
- 8) Overall budget and planning?

Operational needs are usually determined at the Borough/Bureau level and include input from Directors and Managers for Expense. Borough Team Leaders, Chiefs of Construction and Directors of Architecture for Capital may be involved. This staff is most familiar with both the skills and resources required to complete projects and assignments, as well as the workload of their staff.

Once this knowledge is communicated to the Agency Chief Contracting Officers (ACCOs), they prepare the Pre Solicitation Review (PSR) documents accordingly, as required by the PPB rules and as overseen by the Mayor’s Office of Contract Services (MOCS).

The Report’s finding that written documentation is required in order to ensure that alternatives have been considered and cost implications appropriately weighed, runs counter to the facts here. For the Report to imply that more communication of written analyses is needed because taxpayers are left without adequate assurance that all relevant factors were considered is unfounded. In fact, the Report did not result in any findings regarding any significant concerns as to any of the contracts that were reviewed. Indeed, in the meetings with “project managers” knowledgeable about the selected contracts, at no time were any of the contracts or the decisions leading to contracting out even challenged.

**RECOMMENDATION:** Communicate to appropriate staff the need to develop and retain analysis to justify the need for contracted services.

**PARKS’ RESPONSE:** Parks disagrees with the need for further action. The current justification process is conducted in accordance with the PPB rules and the PSR serves as the written record of the rationale and justification. All concerned, as mentioned above, are aware of the decisions that have been made, and are fully accountable for those decisions.

\*  
**Comment**  
1

The report further comments that *“The Department should perform a comprehensive review of each Service Contract to determine what can be delayed, suspended, or postponed”*. Parks constantly reviews and makes assessments as to the required service and prioritizes needs relating to its core mission. Especially in times of tight fiscal constraints, Parks reviews, prioritizes and makes adjustments to contracts, as well as other areas of functionality. Additionally, many of the contracts for both Capital and Expense are “as needed” or “emergency service” contracts which are subject to constant review and assessment of need.

3

\* See State Comptroller’s Comments, page 25.

Additionally, the Report mistakenly claims that “...the Department has not performed this type of comprehensive review...” This is not true. In the past fiscal year Parks has faced a reduction of \$40 million and an additional contingency savings of \$24 million. This in itself demonstrates that Parks has, in fact, reassessed its purchases, contracts and programs, and will continue to do so. By way of example, Parks has eliminated \$1 million in vehicle purchases and reduced Forestry contracts by \$7.3 million, and reduced administrative Other Than Personal Service (OTPS) by \$1 million. Parks continues to look at other contracts, as well as operations agency-wide. The report suggests that “If the Department could achieve an 8-percent reduction on the remaining balances of these contracts, approximately \$4.5 million in cost savings could be achieved.” The aforementioned reductions took place prior to this report and exceed the suggested cost savings.

\*  
Comment  
4

**RECOMMENDATION:** Instruct managers to reassess all Service Contracts periodically, identifying opportunities to delay, suspend, postpone or bring them in house, and to document these determinations.

**PARKS’S RESPONSE:** Parks disagrees with the need for further action as it already follows this practice—well in advance of the recommendation – and will continue to conduct such reviews as appropriate. It is good business practice to constantly evaluate spending patterns, needs and priorities. Parks will continue to assess its condition regularly.

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Comment  
4

Lastly, on the first page of the report, included in the Background section, the breakdown of Parks’ contractual funding is misleading. The Report states that “From July 1 2008 through November 30, 2009, the Department had...service contracts valued at \$235.7 million for services expected through December 2012”. This is misleading, in that the dollar totals include the full contract value of many construction-related contracts that are open for multi-year periods, some of which may be as much as 10 years old, and may only be “open” on the City’s books for purposes of final review and payment on completed projects. The Report should note that the amount listed is the full, awarded amount and includes contracts of widely varying term lengths and at many different stages of construction or implementation. This is particularly true with respect to the pie chart category for design services on page 9.

\*  
Comment  
5

In closing, Parks respectfully requests that the final report more accurately depict the requirements of the City’s PPB rules, and thus, of Parks’ compliance with such rules, as well as the savings that Parks has achieved.

\* See State Comptroller’s Comments, page 25.



OFFICE OF THE MAYOR  
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New York, New York 10007  
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MARLA G. SIMPSON  
*Director*

\*  
Comment  
2

March 31, 2010

Joan Williams  
Examiner-in-Charge  
Office of the State Comptroller  
Division of State Government Accountability  
123 William Street  
New York, NY 10038-3804

Re: Report Number 2009-N-12

Dear Ms. Williams:

As the City's procurement oversight agency, the Mayor's Office of Contract Services (MOCS) hereby submits this letter for your consideration. As per your invitation last week to the Department of Youth and Community Development (DYCD) to submit any relevant "additional information or documentation," we believe that it is important to correct certain misinterpretations as to the applicability of specific Procurement Policy Board (PPB) rules that are described in your preliminary draft report.

Pursuant to Executive Order 121 (copy attached), MOCS exercises the Mayoral approval powers set forth in the City Charter, local law and PPB rules, and also provides staffing and administrative coordination to the PPB.

With respect to your review of DYCD, you obtained documentation concerning 23 procurement actions through which DYCD obtained services valued at more than \$11.4 million, all of which were in effect during at least part of the period July 1, 2008 through November 30, 2009. Your preliminary draft report correctly describes those actions as "generally for technical assistance, accounting, and cleaning services." However, not all of the 23 procurement actions were actually subject to the classifications set forth in the referenced rules and regulations. Rather, some of the actions were simply task orders under contracts procured by other agencies, and some are services contracts that do not contemplate personal service and are not covered by rules or procedures pertaining to consultant services. As described below, these distinctions have a material consequence on the applicability of some of the PPB rules that your preliminary draft report goes on to reference.

Your preliminary draft report cites Section 2-01 of the PPB rules. By its terms, Rule 2-01 applies only to the procurement of "technical, consultant and personal services." This phrase is a term of art in City procurement practice, and refers to contracts for which the City selects the vendor based upon an evaluation of the specific employees who will render the services and in some sense contracts



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\* See State Comptroller's Comments, page 25.

for the expertise or skilled judgment of those employees. Contracts that are not of this type are not governed by Rule 2-01 in any respect. Within the group of contracts that you examined (see table appended to this letter), nos. 1, 21, 22 and 23 fall outside (entirely) the purview of Rule 2-01. No. 21 is for the purchase of use of a proprietary records system owned by that non-profit vendor; as per the sole source documentation provided with that contract, DYCD had no other means for obtaining this software. Such purchases do not trigger any analysis pursuant to Rule 2-01. No. 1 on the spreadsheet is what the City terms as a "standardized services" contract; it is for payroll processing services, and does not contemplate personal services. Likewise, nos. 22 and 23 are standardized services contracts for janitorial/cleaning services. Again, in no sense are these treated as personal services. Thus, in none of these cases would City rules or procedures have required an analysis pursuant to Rule 2-01.

Your preliminary draft report correctly recognizes that agencies such as DYCD are required to submit Pre-solicitation Review Reports and/or Recommendations for Renewal to MOCS for approval. Indeed, it is the responsibility of my office to prescribe the specific pre-solicitation forms and procedures to be used by DYCD and all Mayoral agencies; a copy of the applicable form is attached hereto. This form is a mandatory part of all contract registration packages for new services contracts, and at no time has my office ever required the Rule 2-01 compliance section to be completed for the types of contracts referenced above – nor has any such interpretation been made by the Office of the City Comptroller, at any time since this rule took effect.

The preliminary draft report cites Rule 2-01 as the basis for the Pre-solicitation Review Report requirement. However, that requirement is not in Rule 2-01. It is in fact set forth in Rule 2-02. As shown in the text of Rule 2-02, except in limited (specified) circumstances, the Pre-solicitation Review Report does *not* require the inclusion of any cost benefit analysis or justification for agency decisions to continue outsourcing particular services. As noted above, when Rule 2-01 applies, there is a cost effectiveness determination for technical, consultant or personal services, but this does not apply with respect to other types of services. This is also consistent with City Charter Section 312, which requires a cost benefit analysis whenever City employees are to be *directly* displaced as a result of a proposed procurement of technical, consultant, or personal services. But this analysis is not required when there are no City employees currently performing the same (exact) services as are proposed to be included in the contract, nor when the services are of a different nature (not personal services). And it is certainly not required when agencies decide to continue to outsource services that may once have been performed by City employees, but are no longer so performed at the time of the contract action in question. The requirement in Rule 2-02(d)(4) for a statement "of the basis for the decision to contract out for services (if applicable)" thus refers to the very limited circumstances when these other provisions are triggered. Such a statement would not be applicable where the services had been previously outsourced, which is the case, for example, with the auditing services reviewed here.

The preliminary draft report refers to DYCD's representations concerning seven (7) of the procurement actions as being "piggy-back" actions, and states that PPB Rules nonetheless require that a Pre-solicitation Review Report or Recommendation for Renewal Report be completed for each Service Contract, including these seven actions. That is not correct. I have confirmed that Nos. 4 and 5 on the table are intergovernmental procurements, wherein DYCD purchased services off contracts that DYCD does not itself hold, i.e., contracts procured by the New York State Office of General Services (OGS), and that Nos. 16 through 20 are merely task orders that DYCD processed, under City contracts that are held *not* by DYCD, but rather by the Department of Information Technology and Telecommunications (DoITT).



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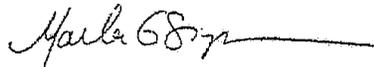
With respect to intergovernmental (OGS) procurements, Section 316 of the Charter provides that the procurement provisions of the City Charter (i.e., Chapter 13), including the PPB rules, which are authorized by Charter Section 311, do not apply. PPB Rule 3-09 sets forth very limited submission requirements for intergovernmental procurements, and those do not include the submission of either a Pre-solicitation Review Report or Recommendation for Renewal within the meaning of Rules 2-02 or 4-04. Copies of the relevant submission forms, fully setting forth all of the legal requisites for agencies' decisions to use OGS contracts, are attached hereto.

Similarly, for Nos. 16 through 20, an agency's use of a task order, which is a document that allows it to draw down services on a citywide procurement contract held by DoITT, does not trigger any submissions under Rule 2-02 or 4-04. Such procurement actions by the user agencies, such as DYCD here, are governed instead by Rule 3-14 and, if applicable Rule 3-03(j). These actions (task order submissions) have never been treated as requiring the types of analyses referenced in your preliminary draft report, either by MOCS or by the City Comptroller.

The remaining eleven procurement actions listed in the table (Nos. 2, 3 and 6 through 15), are governed by Rule 2-01, as your preliminary draft report indicates. However, it is incorrect to treat them as governed by Rule 2-04. That rule applies, by its terms, only to contracts for "client services." Under this definition, for example, DYCD's contracts with non-profit entities for the direct provision of after-school programming to New York City children are covered by Rule 2-04. But DYCD's contracts for the evaluation of those programs (nos. 2 and 3) or for technical assistance to non-profit providers (nos. 16 through 20) are *not* client services contracts, and as such, are not governed by Rule 2-04; thus there is no specific legal requirement for an annual or pre-renewal evaluation of those contracts under that rule. The only applicable evaluation provision for such contracts is set forth in Rule 4-01.

I appreciate the opportunity to present this information to your office, in order to clarify the procedural requisites applicable to the DYCD contracts that your office is reviewing. MOCS has certified the compliance with those procedural requisites pursuant to City Charter Section 327(a) and Executive Order 102. My staff and I stand ready to assist you in any manner you may wish as you complete your review of the DYCD contracts, as well as the similar reviews now underway with respect to other City agencies.

Very truly yours,



Marla G. Simpson

Cc: William M. Kamen, DYCD  
Russell Ann Nobles, DYCD  
George Davis, III, Mayor's Office of Operations  
Howard Friedman, NYC Law Department



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Count	Vendor Name	Contract #	Amount	Purpose
1	Corporate Staff Services, Inc	20070029487	\$2,234,000	Payroll processing services
2	Policy Studies Associate	20090027076	\$1,497,000	OST evaluation services
3	Policy Studies Associate	20060008383	\$1,496,770	OST evaluation services
4	Information Builders, Inc	20080003708	\$872,448	Technology services
5	Information Builders, Inc	20060023244	\$315,364	Technology services
6	TATC Consulting Inc	20080017392	\$645,475	OST technical assistance
7	Dadia Valles Vendiola, LLP	20090019065	\$585,192	Audit services
8	Wei Wei & CO., LLP	20090009381	\$503,907	Audit services
9	Partnership for After School Education	20100017757	\$400,000	OST technical assistance services - training for front-line staff
10	Partnership for After School Education	20090005944	\$330,047	OST technical assistance services for elementary school providers
11	Partnership for After School Education	20090006048	\$168,732	OST technical assistance services for middle/high school providers
12	Partnership for After School Education	20080011045	\$100,000	Technical assistance for service learning providers
13	The After School Corporation	20080011124	\$300,000	Technical assistance for service learning providers
14	The After School Corporation	20090029777	\$285,000	Technical assistance for service learning providers
15	The After School Corporation	20100017797	\$270,000	Technical assistance for service learning providers
16	Spherion Atlantic Enterprises	20080024129	\$249,308	Technology services
17	Spherion Atlantic Enterprises	20080024098	\$199,620	Technology services
18	Spherion Atlantic Enterprises	20080012154	\$198,368	Technology services
19	Modis, Inc	20080024153	\$181,504	Technology services
20	Modis, Inc	20080024147	\$172,650	Technology services
21	Literacy Assistant Ctr	20090035998	\$135,000	Web-based adult student record system
22	Maiday - Maiday Cleaning Svcs	20080041562	\$121,487	Cleaning services
23	Maiday - Maiday Cleaning Svcs	20090034200	\$121,486	Cleaning services

## State Comptroller's Comments

1. The report cites a number of guidelines that set forth expectations for City contracts. The report clearly states the Department's position that not all contracts are subject to Section 2-01 of the PPB Rules. The report also cites the New York City Comptroller Directive 24, which requires that documentation used for purchasing decisions be retained. Moreover, it is good business practice to retain documentation to support the rationale for contracting out services of this magnitude.
2. The points made by the Mayor's Office of Contract Services in a March 31, 2010 letter in response to the preliminary audit findings for our audit of the New York City Department of Youth and Community Development: Contracts for Personal and Miscellaneous Services (Report 2009-N-12) was taken into consideration in preparing this report.
3. The citation from our report is incomplete; it deletes the bracketed words: "The absence of documentation showing that alternatives were considered [and cost benefits were analyzed] leaves taxpayers without adequate assurance that all relevant factors were considered in making the decision to contract out work - and that an economical and effective choice was selected." As stated in the report, Department officials could not provide any written analyses or other written documentation that it was cost-effective to contract out for these services. We stand by our recommendation that the Department develop and retain such documentation.
4. The report acknowledges Department action to review, prioritize and make adjustments to contracts, depending on budget constraints and service needs. However, Department officials did not provide documentation supporting that a comprehensive assessment of Service Contracts was performed.
5. We modified the report to reflect that the \$235.7 million is the full-awarded amount and includes contracts of widely varying term lengths and at many different stages of implementation.