

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 9, 2017

Ms. Gladys Carrión, Esq.
Commissioner
New York City Administration for Children's Services
150 William Street
New York, NY 10038

Re: Administration of Non-Competitive and
Limited-Competition Contracts
Report 2016-F-10

Dear Commissioner Carrión:

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, we have followed up on the actions taken by officials of the New York City Administration for Children's Services to implement the recommendations contained in our prior audit report, *Administration of Non-Competitive and Limited-Competition Contracts* (2013-N-02).

Background, Scope, and Objective

The mission of the Administration for Children's Services (ACS) is to protect and promote the safety and well-being of New York City's children, young people, families, and communities. It does so by providing its constituents with various programs such as child welfare, juvenile justice, early childhood care, and education services. As part of this effort, ACS contracts with various community-based organizations to operate many of its programs. ACS is responsible for monitoring these entities to ensure that they provide quality services for the agreed-upon cost.

Procurements made by City agencies are governed by the "Rules of the Procurement Policy Board" (Procurement Rules). The Procurement Rules prefer agencies to use a competitive procurement process, allowing agencies to benefit from vendors that possess a variety of skills and expertise and to procure goods and services at the lowest cost. However, because a competitive process is not always feasible (e.g., when a sole source vendor is needed), the Procurement Rules allow for non-competitive and limited-competition contracts in specific circumstances. The Procurement Rules require an agency's Chief Contracting Officer (ACCO) to complete a "Recommendation for Award" documenting the justification for vendor selection when non-competitive and limited-competition contracts are awarded.

The Procurement Rules also require City agencies to evaluate whether a contractor is “responsible” in both financial and non-financial matters (such as a foster care provider’s efforts to minimize the occurrence of abuse or neglect) before awarding an initial contract, and to monitor the performance of vendors awarded contracts prior to extending or renewing existing contracts with those vendors.

The Procurement Rules also state that “Performance evaluations shall include periodic unannounced site visits and interviews with clients and staff. The results of the unannounced site visits shall be summarized and made part of the evaluation report.” They require that these evaluations be performed annually. In addition, all contracts must be registered with the New York City Comptroller’s Office before the City will authorize payments to contracted vendors.

During the 2015-16 fiscal year, ACS awarded 170 contracts (totaling about \$2.2 billion) through non-competitive and limited-competitive processes. These awards comprise 12 categories established by ACS, where ACS officials determined that a competitive procurement process is not required. A total of 99 of these contracts fell into the following three categories: renewal of contract (93), negotiated acquisition (2), and negotiated acquisition extension (4). These 99 contracts totaled \$729,530,303.

Our prior audit concluded that ACS officials did not always properly justify their selection of vendors that were awarded contracts without the benefit of competitive procurement processes. Further, ACS officials did not sufficiently monitor contractor performance, and they renewed and extended contracts with vendors that had substantiated findings of child abuse or neglect committed against children in their care. This is consistent with recent news reports and investigations performed by the NYS Office of Children and Family Services (OCFS) and ACS, which concluded that ACS did not: conduct thorough investigations into the circumstances surrounding these occurrences; and strictly follow regulatory standards when performing their investigations. Further, the investigations concluded that timely and appropriate intervention could have assisted families at specific points in time.

In addition, ACS officials often did not register contracts with the New York City Comptroller within 30 days of the start of the contract period – the period provided to the City Comptroller’s Office to either register or object to the contract. The City cannot make payments to contractors unless the contracts are registered. Therefore, delays in registration could cause contractors to delay services to vital ACS programs.

Subsequent to the completion of our follow-up review’s fieldwork, the ACS Commissioner (at the time of our original audit and follow-up review) announced her retirement. In addition, OCFS directed ACS to hire an external, OCFS-approved monitor to conduct a comprehensive evaluation of ACS’s Child Protective and Prevention Services programs.

We issued our initial audit report on June 17, 2015. The objective of our follow-up review was to assess the extent of implementation, as of November 2, 2016, of the five recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that ACS officials made virtually no progress in addressing the issues identified in our initial report. Of the report's five recommendations, none were substantively implemented. According to ACS officials, they believe that all of their procurements and contracts follow the procurement rules, and that extensions and renewals are allowable methods to maintain continuity of critical services. ACS officials further asserted that ACS is rigorous in its scrutiny of any allegations of abuse or neglect, and that reports concerning foster parents and staff of foster care providers receive full child protection investigations.

Follow-Up Observations

Recommendation 1

Optimize opportunities to solicit competitive bids in awarding ACS contracts to vendors. In particular, ensure that sufficient lead time is available to obtain services through contracts by the time such services are needed.

Status – Not Implemented

Agency Action – During the 2015-16 fiscal year, ACS awarded 170 contracts (totaling about \$2.2 billion) through non-competitive and limited-competitive processes, including 93 renewals (or 55 percent of the 170 awards) totaling \$719.9 million. ACS officials reiterated their original position, stating that contract renewal options are an acceptable procurement method and a standard feature of City contracts and are not prohibited by the Procurement Rules.

ACS's ACCO also stated that each Deputy ACCO is aware of the expiration dates of the contracts contained within their respective portfolios. However, ACS had not developed and implemented a structured process to provide ample advance notice of contracts' expiration dates, so that sufficient lead time is provided for competitive contract procurements.

Recommendation 2

Adequately document the justification for not employing competitive procurement processes to obtain services.

Status – Not Implemented

Agency Action – We reviewed the procurement binders for a random sample of 10 contracts awarded during the fiscal year ended June 30, 2016. These 10 contracts were comprised of 8 renewals of contract (renewals), 1 negotiated acquisition, and 1 negotiated acquisition extension.

The procurement binders for seven of the renewals indicated that these contracts were renewed or extended in order to maintain continuity of the services provided. An eighth renewal, for non-secure placement services for youth, stated that the renewal would protect individuals and the community and foster positive growth for the youth.

The two negotiated acquisition and negotiated acquisition extension contract binders both indicated that there is a limited number of available providers. The justification for the negotiated acquisition contract also stated that it was time sensitive. The justification for the negotiated acquisition extension added that the vendor had special expertise in providing the contracted services.

However, officials did not provide us with a formal analysis to support the justification for any of these determinations, along with the reason(s) why no other vendors were suitable.

Recommendation 3

Monitor all contractors in a timely manner and document the justification for extending or renewing contracts with vendors with a history of poor performance.

Status – Not Implemented

Agency Action – The contract procurement files we reviewed for 8 of the 10 sample contracts (6 renewals and 2 negotiated acquisitions) contained reports of 59 substantiated cases of abuse or neglect. The nature of most of the substantiated cases involved inadequate guardianship, neglect, and/or abuse. The highest number of substantiated cases was 16 (for a contract renewal), which involved inadequate guardianship and staff neglect. For another renewal, we noted two substantiated cases: one involving the sexual abuse of one child, and the other the death of another child.

In each case, the ACCO was satisfied with the corrective actions the vendors had purportedly taken. However, as we found in our initial report, the files contained no evidence that ACS staff actually verified the corrective actions cited by the vendors before either renewing or awarding contracts. Furthermore, ACS officials did not provide any supporting documentation for extending or renewing the contracts in response to our requests.

Recommendation 4

Do not extend or renew existing contracts with vendors until the performance of such contractors has been adequately evaluated.

Status – Not Implemented

Agency Action – To determine whether ACS staff adequately evaluate existing contract performance

before extending or renewing a contract, we requested the performance evaluations pertaining to 8 sampled contracts with substantiated cases of abuse or neglect where ACS monitoring was appropriate. However, ACS officials did not provide any documentation to demonstrate that they made the required periodic unannounced site visits. ACS officials need to determine that vendors have fulfilled their contractual obligations in a satisfactory fashion before renewing or extending a contract.

Recommendation 5

Develop and implement procedures to ensure that contracts are registered with the City Comptroller by the contracts' effective dates.

Status – Not Implemented

Agency Action - During fiscal year 2016, ACS officials did not register all contracts with the City Comptroller within 30 days of the start of the contract period. Furthermore, ACS has not developed and implemented procedures to ensure that contracts are registered with the New York City Comptroller by the contracts' effective dates. Of the 10 sampled contracts we reviewed, 4 were registered after their effective award date, ranging from 20 days to more than 6 months late.

Although ACS officials told us that they continue to improve their contract registration process, they did not provide us with any documentation of specific improvements and what they achieved. Officials attributed some late contract registrations to factors outside of their control. For example, questions from the City Comptroller's Office resulted in the return of a contract to ACS for follow-up and resubmission. However, ACS did not have a formal analysis of how often and the extent to which this occurred.

Major contributors to this report were Keith Dickter, Jeremy Mack, Sophia Lin, and Daphnée Sanon.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of New York City Administration for Children's Services for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Michael Solomon, CPA
Audit Manager

cc: J. Fiellman, ACS
G. Davis, Mayor's Office