



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Administration of Non-Competitive and Limited-Competition Contracts

New York City Administration for Children's Services



Report 2013-N-02

June 2015

Executive Summary

Purpose

To determine whether the Administration for Children's Services (ACS) properly awarded, extended, and renewed non-competitive and limited-competition contracts with vendors. We also assessed the adequacy of ACS's monitoring of contractor services. The audit covered the three fiscal years ended June 30, 2013.

Background

The mission of ACS is to protect and promote the safety and well-being of New York City's (City) children, young people, families, and communities. It does so by providing them with 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 required to comply with the provisions of the City's Rules of the Procurement Policy Board (Procurement Rules). During our audit period, ACS had 1,884 active contracts with a value of approximately \$6.5 billion. To perform our audit, we tested a judgmental sample of 40 of ACS's larger non-competitive or limited competition contracts.

Key Findings

- ACS officials did not always comply with the Procurement Rules and document their justification for awarding certain non-competitive and limited-competition contracts. For 13 contracts (totaling about \$20 million), there was inadequate documentation to justify the non-competitive methods used to award the contracts.
- ACS officials did not provide sufficient oversight of contractor performance. Officials renewed or extended contracts with some vendors that had poor performance. In fact, 12 sampled contract vendors received less-than-satisfactory performance ratings. The vendors' contracts totaled \$114.1 million. For 9 of the 12 vendors, children in their care were abused by employees or foster parents. Consequently, in some cases, the health and safety of children were placed at risk.
- ACS officials did not always register contracts in a timely manner. Since the City is not permitted to pay unregistered contractors, a vendor's cash flow and ability to provide needed services may be adversely affected.

Key Recommendations

- Optimize opportunities to solicit competitive bids in awarding ACS contracts to vendors. In particular, ensure that sufficient lead time is made available to obtain services through contracts by the time such services are needed.
- Adequately document the justification for not employing competitive procurement processes to obtain services.
- Monitor all contractors in a timely manner and document the justification for extending or renewing contracts with vendors with a history of poor performance.
- Do not extend or renew existing contracts with vendors until the performance of such contractors has been adequately evaluated.

Other Related Audits/Reports of Interest

[New York City Human Resources Administration: Personal and Miscellaneous Service Contracts \(2010-N-3\)](#)

[New York City Administration for Children's Services: Accounting for and Contracting Children In Foster Care \(2004-N-5\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

June 17, 2015

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

Dear Commissioner Carrión:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government-funded services and 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 Administration for Children's Services entitled *Administration of Non-Competitive and Limited-Competition Contracts*. 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*

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Background

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 (City) 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 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” before awarding an initial contract, and to monitor the performance of vendors awarded contracts prior to extending or renewing existing contracts with those vendors. 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 2012-13 fiscal year, the dollar value of ACS’s procurements exceeded that of any other City agency, mostly due to programs designed to provide early education services to young children. For our three-year audit period, ACS had 1,884 active contracts in place with an approximate value of \$6.5 billion. During the same period, ACS awarded 1,303 contracts (totaling about \$2 billion) through non-competitive processes. These awards can be placed into one of seven contract award categories established by ACS, where a competitive procurement process is not required. A summary of these awards according to category, including the related contract dollar amounts, is included in the Exhibit to this report.

Audit Findings and Recommendations

We found that ACS officials did not always 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 records of poor performance, including findings of child abuse committed against children in their care. In addition, ACS officials often did not register contracts with the City Comptroller within 30 days of the start of the contract period, the period allotted to the New York City Comptroller's Office to either register or object to the contract. Because payments to contractors cannot be made unless contracts are registered, delays in registration could impact the provision of services which are vital ACS programs.

Justification of Procurement Method

As previously noted, a competitive process is preferred when awarding government contracts for goods and services. When City contracts are awarded outside of the competitive process, the Procurement Rules require City agencies to justify their decisions. Such justification should support the need for the particular vendor selected, demonstrate the need for the specific products and /or services procured, and diminish the possibility of favoritism.

To determine whether ACS was justified in awarding certain contracts without using a competitive process, we selected a judgmental sample of 40 contracts from ACS's three largest non-competitive or limited competition contract categories as follows:

Award Category	Sample Size	Sample Amount
Negotiated Acquisition	7	\$35,992,549
Negotiated Acquisition Extension	22	130,716,855
Renewals	11	106,423,305
Totals	40	\$273,132,709

For each of the sampled contracts, we sought documentation that adequately justified why the particular vendor was chosen to perform the contracted work without a competitive process. We found that all 40 contract folders contained a written statement indicating a reason why a competitive contract award method was not used. Reasons for the non-competitive awards included: there was not enough time before contract expiration to go through a competitive process; there is only a limited number of vendors to provide the needed service; and ACS's compelling need to maintain uninterrupted service. Most of the folders also contained narratives that adequately detailed the reasons for the non-competitive awards.

However, for 13 contract folders (eight negotiated acquisition extensions and five contract renewals), there was inadequate documentation to justify the procurements. For example, the contract for one vendor (to provide administrative services to day care providers) was renewed without the benefit of competitive bidding. Although the related contract file included

a restatement of the services to be provided, there was no detailed rationale why vendor competition could not be obtained. Nor were there detailed explanations why sufficient lead time was not available for competitive procurement. The 13 contracts totaled more than \$20 million.

According to ACS officials, the eight contract extensions were interim measures that allowed ACS to continue to provide vital services while it prepared for the process of awarding new contracts. For the five contract renewals, ACS officials explained that renewal options are a standard feature of City contracts and are not prohibited by the Procurement Rules. We acknowledge this. Nevertheless, the fact remains that ACS officials obtained certain services through contract extensions and renewals, without documented justifications for not seeking vendor competition as required by the Procurement Rules. In particular, the contract files did not document that (or why) there was not sufficient time to obtain vendor competition.

ACS should increase its efforts to use competitive bidding when awarding agency contracts and avoid using vendors that may have performed poorly. As detailed subsequently in the report, the performance of several selected vendors was not adequate. Improvements should include providing sufficient lead time (as a contract nears expiration) so that ACS can increase vendor competition and limit the need to use under-performing vendors.

Contractor Performance

Documenting a vendor's performance is critical to helping agencies determine whether a contract with a specific vendor should be renewed, extended, or terminated. The Procurement Rules require that all active contracts be evaluated for performance annually. One evaluation criterion for vendor selection is "overall quality of performance." ACS staff complete vendor evaluations on-line using VENDEX, the City's database of information about current and past vendors. For ACS, such annual evaluations are critical, particularly when vendors provide services to vulnerable children and families.

According to the Procurement Rules, a prospective vendor that has performed unsatisfactorily is presumed to be non-responsible and therefore ineligible for award, unless the agency determines that the circumstances cited were beyond the vendor's control or that the vendor has appropriately corrected the problems. Despite these directives, ACS officials continued using vendors that received poor performance ratings – including some that were found to have abused the children in their care. According to VENDEX, 12 of our 40 sampled contract vendors had less-than-satisfactory performance ratings. The 12 contracts totaled \$114.1 million and included services for congregate care (i.e., independent living, such as a group home) and foster care. For 9 of the 12 vendors, children in their care were abused by either vendor employees or by the children's foster parents.

For example, ACS extended a contract worth \$29.6 million with a vendor for the provision of foster care services. This service provider, however, had 34 cases of substantiated abuse of clients by its employees. Although the vendor purportedly suspended or terminated the problem employees, ACS continued using this provider for foster care services without independently verifying that corrective actions actually took place. In addition, a \$2.8 million contract with a

second foster care provider was extended although ACS officials were aware of 26 substantiated cases of client abuse or neglect by its employees. In addition, this vendor received a D grade in the Safety Practice Area. Both of the aforementioned vendors had active contracts with ACS at the time of our audit fieldwork.

ACS officials stated that these contracts were renewed or extended because there is a limited number of available providers. However, officials did not provide us with a formal analysis to support this determination. Officials also responded that they were aware of the performance issues with these vendors, but were satisfied with the corrective actions the vendors had reportedly taken. Nonetheless, the files we reviewed had no evidence that ACS staff verified the actions purportedly taken by the vendors. Thus, ACS had limited assurance that the reported corrective actions were actually taken. We also noted that ACS's Agency Chief Contracting Officer or a designee was required to sign off on all contracts. However, there was no indication which specific ACS employees performed the contractor evaluations, or that any independent ACS official reviewed the files for accuracy and completeness prior to approval.

The Procurement Rules state that "Performance evaluations shall conform to the requirements of the contract, including, but not limited to, quality and timeliness of performance, and fiscal administration and accountability." They 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." The Procurement Rules require that these evaluations be performed annually, and include unannounced site visits.

We asked for all available documentation of contractor monitoring for 14 of the 40 sampled contracts to determine whether ACS staff were performing the required unannounced site visits. The contracts were primarily with nonprofit organizations providing human services, such as non-secure placement, child care, and foster care. For one of the contracts, all required unannounced site visits were performed. However, files for two of the sampled contracts contained no evidence of annual unannounced visits or other monitoring activities. For seven other contracts, site visits were performed, but they were not unannounced. The visits were scheduled in advance with the contractors. For the four remaining vendors, unannounced visits were performed; however, they were not performed annually.

Unannounced visits give real-time feedback about program operation, including the welfare and safety of the people served by ACS contractors. In the absence of unannounced visits, evaluators may not be able to accurately assess the quality of the services provided and the potential risks that clients may face.

Contract Registration Delays

All City Contracts (new, extensions, and renewals) must be submitted to the City Comptroller for registration pursuant to the New York City Charter (Charter). Pursuant to the Charter's Contract Registration Regulations, the City Comptroller has 30 days to register or reject the contract. The City Comptroller's Office will not make payments on contracts that are not registered. As such,

the Mayor's Office of Contract Services (MOCS) recommends agencies submit their contracts for Registration within 30 days of award. According to MOCS, late submissions of registrations may cause cash-flow and service-continuity problems for vendors because the City cannot pay the vendor prior to registration, even if the vendor has been providing services. Further, vendors may need to raise their prices if they anticipate payment delays, and the City may be required to pay vendors interest on the loans they've taken out to provide operating capital until the City makes payments.

We found that ACS registered 17 of the selected contracts more than 30 days after their respective starting dates. In fact, 16 of them were not registered within 60 days of contract award, and several went unregistered for more than 200 days after the contract period started. The 17 contracts (worth more than \$188 million) provided a variety of critical services to ACS. For example, five contracts provided room and board for youths adjudicated as juvenile delinquents and directed by a City Court for non-secure placement and detention services. Another three provided day care and child care services, and three more were for workers' compensation and health insurance for child care agencies.

ACS officials attributed the registration delays primarily to administrative issues. Nonetheless, the services in question are vital to ACS's programs, and as such, ASC officials should ensure that contracts are registered timely – so that providers can be paid and the risk of service disruption is minimized.

Recommendations

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.
2. Adequately document the justification for not employing competitive procurement processes to obtain services.
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.
4. Do not extend or renew existing contracts with vendors until the performance of such contractors has been adequately evaluated.
5. Develop and implement procedures to ensure that contracts are registered with the City Comptroller by the contracts' effective dates.

Audit Scope and Methodology

We audited ACS to determine whether it properly awarded, extended, and renewed non-competitive and limited-competition contracts with vendors. We also assessed the adequacy of ACS's monitoring of contractor services. The audit covered the three fiscal years ended June 30, 2013.

To accomplish our objectives, we reviewed the City's Procurement Rules and interviewed ACS officials and staff to understand their contract award and monitoring procedures. We judgmentally selected a sample of non-competitive and limited-competition contracts based on factors such as contract amount and diversity of programs. We reviewed available supporting documentation for these contracts to determine whether there was sufficient justification for selecting the sampled vendors without the benefit of a competitive process.

The scope of audit work on internal controls focused on gaining an understanding of the procurement procedures related to awarding non-competitive and limited-competitive contracts for client services. We identified certain control deficiencies that were significant to the audit's objectives. These deficiencies are discussed in the appropriate sections of the report.

We conducted our compliance audit in accordance with generally accepted government auditing standards. These 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.

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 management functions do not affect our ability to conduct independent audits of program performance.

Authority

The 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

We provided a draft copy of this report to ACS officials for their review and formal comment. We considered ACS's comments in preparing this final report and have included them in their entirety at the end of the report. In their response, ACS officials indicated that they had already instituted and followed the policies and procedures we recommended, and they will continue to do so. Our rejoinders to certain ACS comments are included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, we request that the Commissioner of the Administration for Children's Services report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

**Summary of Non-Competitive and Limited-Competition Contracts
Awarded by ACS
During the Period July 1, 2010 to June 30, 2013**

Award Method	Definition	Number of Contracts	Total Contract Dollars
Emergency	Where an unforeseen danger to life, safety, property, or a necessary service creates an immediate and serious need for goods, services, or construction that cannot be met through normal competitive procurement methods.	2	\$726,702
Multiple Awards	A task order against a master agreement where the agency can select from a pool of awarded vendors. The master agreement states how a vendor is chosen from the pool.	57	16,454,662
Negotiated Acquisition	Used in cases of time sensitivity, confidentiality, or where only a few available competitors exist. The agency need not negotiate with each vendor.	24	169,791,844
Negotiated Acquisition Extension	Automatic extension of a contract term for a period not to exceed one year from the date of contract expiration ensuring the continuity of existing services or resumption of the original contracted services once funding is available.	783	1,111,714,144
Renewals	Re-registration of previous contracts with the same vendor, with substantially unchanged terms and conditions, but possibly revised quantities, lists, schedules, or items to be supplied.	169	656,470,416
Small Purchases	Procurements of not more than \$100,000.	267	10,561,227
Sole Source	A contract for goods, services, or construction without competition when an agency determines that there is only one feasible provider.	1	10,849,210
Totals		1,303	\$1,976,568,205

Agency Comments



May 12, 2015

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Dear Mr. Patone:

Thank you for the opportunity to review and comment on the State Comptroller's Draft Report New York City Administration for Children's Services (ACS) Administration of Non-Competitive and Limited- Competition Contracts, Audit Report #2013-N-02 (Draft Report) concerning your review of a judgmental sample of 40 "limited or non-competitive contracts" for the period FY 2011-2013. Our comments are below. It should be noted that ACS comments have been updated in response to the State Comptroller's notification of an error in the draft report.

Overview

ACS, like other New York City (NYC) agencies, delivers critical public services through contracts with selected providers. ACS' services, including foster care, child care, and juvenile justice services, are unique and specialized to protect and ensure the well-being of children and strengthen families. Accordingly, ACS' focus is to ensure excellent and innovative program models which in turn are the basis of ACS' contracts with providers.

As discussed in ACS' comments on the State Comptroller's earlier Preliminary Reports and in informational meetings with the audit staff, the Draft Report is misleading in its categorization and description of contracts as "limited or non-competitive contracts" and misses important points about the purpose of human services delivered by contract and the basis for procurement.

All of the 40 contracts audited originated as competitive solicitations.

Indeed all of ACS' human service contracts—including the categories of Amendment Extensions, Renewals, and Negotiated Acquisition Extensions—originate as competitive solicitations, such as Request for Proposals (RFP) and Negotiated Acquisitions, which are carefully planned and designed to ensure the best services for NYC's children and families. Negotiated acquisitions are original, competitive contract procurements as well.

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Comment

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Comment

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*See State Comptroller's Comments, Page 22.

Amendment extensions, renewals, and negotiated acquisition extensions are, as specified by the Mayor’s Office of Contract Services (MOCS), “...methods used to continue or expand existing contracts for limited periods.”

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Comment
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To conflate and compare procurement actions which serve to extend or expand existing contracts against the original, competitively procured contracts is inaccurate, and may give the impression that the contracts were continued or extended without rigorous review beforehand or in violation of PPB Rules. Both inferences are mistaken.

The Mayor’s Office of Contract Services provides these definitions:

- *“Renewals, used when the initial contract provides specific terms for continuation, typically at the City’s option.*
- *Amendment extensions, allowing the addition of one year to a current contract.*
- *Negotiated acquisition extensions, allowing a negotiated additional term on the same basis as the initial contract.”*

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Comment
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All of the ACS contractors cited in the audit were initially selected through a rigorous, original, underlying competitive solicitation, and it is simply incorrect to imply that these contracts originated as non-competitive contracts. The Renewals method is commonly used by the City to extend contract terms of any industry and §4-04 of the New York City Procurement Policy Board (PPB) Rules fully allows the use of this method. Renewals are a standard feature of NYC human service contracts and are built into the original solicitation, such as an RFP or competitive negotiated acquisition solicitation; the contract document must state the renewal option(s) if any. Similarly, extensions and negotiated acquisition extensions are “short term” methods of continuing essential service provision in anticipation of a competitive solicitation—they are not in lieu of a competitive contract. (See PPB Rules 4-02(b)(1)(iii) and 3-04(b)(2)(iii))

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Comment
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ACS agrees that competitive procurement is a preferred procurement method; however, there are many legitimate reasons that renewals or extensions may be necessary—and are reflective of both prudent operational and administrative decisions, which ensures continuation and stability of critical services. For example, while ACS develops a new model or a new scope of work, an extension is utilized to continue service pending the new procurement process, which includes awarding the new contracts stemming from the RFP. On occasion, a decision pending outside of ACS’ control may impact on future operations or planning, such as programmatic decisions or funding from another governmental entity, and also requires the extension of a current contract until ACS may move forward with a new award. To let the contract simply expire under these circumstances, with the consequent loss of services to needy populations, would be damaging. It is also not required under PPB rules.

Indeed, as discussed in the Mayor’s Office of Contract Services *New York City’s Procurement indicators Fiscal 2014*, “The City must ensure stability and continuity of services to support the health of clients and community providers. The share of procurement methods shifts from year to year as a percentage of open contracts expire and are continued by renewal or extension or by competitive procurement ... In Fiscal 2014, continuations made up two-thirds of human services contracts...”

Providing and exercising renewal options on competitively solicited contracts, in compliance with PPB mandates, also allows ACS to capture other benefits that are highly desirable in the current economic

climate. The benefits of renewal options include reduced costs (startup, ongoing, and closeout costs) and better services through stronger relationships with the provider community. As indicated previously, §4-04 of the PPB Rules allows the use of the renewal method.

Lastly, all of ACS’ negotiated acquisitions and extensions and renewals are subject to Citywide PPB Rules, as well as review by the Mayor’s Office of Contract Services and the City Comptroller.

Justification of Procurement Method

As noted, amendment extensions, negotiated acquisition extensions and renewals are “short term” methods of continuing essential service provision in anticipation of another competitive solicitation—they are based, initially, upon contracts that were competitively bid. They are not in lieu of a competitive solicitation, as the Draft Report seems to suggest.

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Comment
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ACS reiterates that renewal options are a standard feature used by New York City in contracts and the PPB Rules endorses the renewal method. The original contracts reviewed by the auditors included renewal options—and ACS acted properly by ensuring continuity and stability of services through the renewal of these originally competitively-selected contractors. Per City protocol, the renewals were reviewed by Mayor’s Office of Contract Services and the City Comptroller. The renewal actions were appropriate and adhere to the New York City PPB Rules.

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Comment
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The use of amendment extensions and negotiated acquisition extensions was similarly appropriate, ensuring continuity of essential services; allowed by and adhering to the New York City PPB Rules.

With respect to the specific extensions cited by the State Comptroller, ACS reiterates, as discussed previously with the State Comptroller, that this was an interim measure, to allow time to complete the award process of new contracts from new Child Welfare Services RFPs that had been delayed and to plan and sequence the transition of contracts among providers and programs to ensure safety and stability of children and families being served. As discussed with the auditors and described in an ACS press release (September 28, 2010) shared with the State Comptroller, ACS had noted that the RFP scoring tool was inconsistent with the RFP language. ACS remedied this with revision of the tool, in consultation with MOCS, and re-scored the submissions.

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Comment
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Contractor Performance

The Draft Report misunderstands issues relating to ACS’ monitoring of child welfare contracts; the purpose of extension and renewal contracts; the purpose and use of VENDEX; and the purpose and use of Performance Evaluations.

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Comment
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As discussed with and documented for the audit team, ACS has an extensive and robust child welfare program monitoring structure.

ACS monitors and evaluates service providers to ensure the well-being of children and the quality of child welfare services. ACS has a number of different program mechanisms, processes and tools for monitoring and evaluations. ACS’ Scorecard is a comprehensive, annual evaluation—including data and case review—of all foster care contract providers. ACS also monitors foster care contract providers through its Agency Program Assistance unit, assisting contract providers in improving services and

operations, helping contract providers to develop service improvement strategies (for example, training) and monitoring corrective action where needed. In the most serious situations, if contract providers are unable to make necessary improvements, ACS will suspend intake for the contract provider, and possibly terminate the contract.

Monitoring and evaluation information is in turn used to complete City-required VENDEX Performance Evaluations. VENDEX is a database of vendor information compiled by MOCS through vendor-submitted questionnaires and Agency reported performance information. The information in the VENDEX database is provided to City agencies to assist in their Responsibility Determinations in awarding public funding.

If VENDEX indicates vendor performance deficiencies, additional investigation is always required and is routinely conducted. Accordingly, ACS is required to determine whether the deficiencies have been addressed or would pose undue risk to clients or constitute a non-responsible finding prior to receiving public funding. ACS thoroughly investigates all vendors before awarding a contract.

That VENDEX may reflect a "less than satisfactory rating" for a vendor does not prohibit ACS or any other City Agency from reviewing and later contracting with that vendor. ACS, as well as all other City agencies, reviews the reason(s) for the less than satisfactory rating and if determined that the circumstances were beyond the vendor's control or that the vendor has taken appropriate corrective action(s) the vendor can be determined to be responsible to receive an award. Otherwise, the City would be at a loss for vendors, if a VENDEX finding shut a vendor out in perpetuity. The City wants vendors to correct deficiencies and to suggest that a vendor should be barred from contracting for City services because of an earlier VENDEX "less than satisfactory" rating would limit the competitive vendor pool significantly. That is not in any one's interest, and is not a result required under the PPB rules.

Indeed, as discussed in Mayor's Office of Contract Services *New York City's Procurement indicators Fiscal 2014*:

"If a vendor has any cautionary information in its VENDEX database that might raise questions regarding its business integrity, MOCS includes in its VENDEX database any corrective actions that the vendor has taken to rehabilitate itself and address the issues to the satisfaction of the City. This process allows the contracting agency to address responsibility issues, while also retaining the valuable services of particular vendors. Corrective actions can include: retaining an auditor, monitor....oversee its performance, or develop specific remedies....dismissing employees who were the subject matter of the cautionary information in VENDEX; or entering into agreement on a CAP..."

The Draft Report also misstates the contract performance evaluation categorization process and associated elements and documents.

The City requires agencies to perform Responsibility Determinations in advance, when planning any new contracts or for contract change such as a Budget Adjustment. The Responsibility Determination (RD) researches the vendor using a variety of resources including VENDEX, NYC Department of Investigations and performance evaluations for any City contracts. The Responsibility Determination which is conducted in advance of a contract/contractual change to verify the integrity or soundness of the vendor entity is not the same as a Performance Evaluation of a contract which City agencies submit to VENDEX to evaluate specific in-progress contracts – but the audit language conflates the two, joining information from the Responsibility Determinations and information from the Performance Evaluation.

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Comment
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The Draft Report’s assertion, “...ACS officials continued using vendors that received poor performance ratings—including some that were found to have abused the children in their care” is misleading. As previously discussed with audit staff and in comments on Preliminary Reports, ACS is rigorous in its scrutiny of any allegation of abuse or neglect which is reported to the New York State Central Register (SCR).

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Comment
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SCR reports concerning foster parents and foster care provider residential staff receive full child protective services (CPS) investigations as mandated by New York State. The ACS Office of Special Investigation (OSI) investigates SCR reports against foster parents while New York State is responsible for investigating reports against foster care provider residential staff. Also as discussed previously with the audit team, the SCR reports ranged in severity and situation, for example, from allegations of educational neglect or lack of supervision to physical injury or abuse.

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Comment
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In addition, per ACS protocol, at the conclusion of the CPS investigation of an SCR report against a foster parent, ACS may issue recommendations to the foster care provider agency and require a Corrective Action Plan (CAP). ACS enhanced this protocol last year, with issuance of an updated procedure (“Monitoring of Provider Agency Corrective Action Plans 2014/6”) which details the requirements for CAPs, follow-up and monitoring of CAP implementation by foster care provider agencies.

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Comment
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Further, it is an ACS requirement that as part of the Responsibility Determination, providers must disclose any substantiated SCR reports within the most recent 12 months. It is important to remember that this reporting requirement pertains to the totality of the provider organization—any substantiated SCR report related to the provider, including contracts or services provided to other City agencies or other counties. SCR information is not limited to the specific ACS contract or program. In other words, a provider agency which provides multiple services and programs (via contract) to NYC as well as other jurisdictions (for example, other New York State counties) must report to ACS on indicated reports even if the neglect/abuse reports pertain to services for other counties and do not involve NYC children. (Indeed one of the providers is an out-of-state residential school for children with exceptional special needs. The school is used by other jurisdictions and agencies; in addition, the provider organization operates local jurisdiction and day service and educational programs.)

ACS’ Division of Policy Planning and Measurement reviews the SCR disclosure within the Responsibility Determination and reviews whether the provider’s corrective action was appropriate. To suggest that providers cannot take corrective actions regarding indicated SCR reports in their agency might provide a powerful disincentive for agencies to under-report such incidents, which is not sound public policy.

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We would further note that data on indicated reports must be considered in the context of the number of children served. For example, for the two organizations cited in the Draft Report, one provider had had one (1) incident for every 13,780 bed days and the second provider had one (1) incident for every 19,122 bed days in FY 2010.

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Regarding the specific examples cited, the Draft Report states that “ACS extended a contract worth \$29.6 million with a vendor for the provision of foster care services. The service provider, however, had 34 cases of substantiated abuse [sic] of clients by its employees.” As ACS previously discussed in comments to the Preliminary Report, ACS extended contracts pending implementation of the new Child Welfare RFP.

ACS's Office of Special Investigations investigates reports of abuse and neglect involving foster parents (including kinship foster parents) and New York State investigates allegations involving residential staff.

The Responsibility Determination described each of the 34 cases (March 2009-February 2010) which, as discussed above, included the totality for the provider organization (and all of its contracts), not just the specific contract referenced. The Responsibility Determination descriptions include a range of situations, some involving neglectful actions by an adult and others involving more serious concerns such as physical injury or abuse. Examples include a nurse who failed to properly safeguard medication; a foster parent who failed to seek medical treatment timely; a foster parent who did not adequately supervise a birth parent visit; a kinship foster parent who was hospitalized and left foster teen mothers and their children unsupervised; a foster parent who grabbed a child's arm as discipline; a worker who hit a child; and a worker who inappropriately touched students. The Responsibility Determination detailed the actions taken which included—depending upon the circumstances of each case—changes in procedures, retraining, foster home closure and staff termination.

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The Draft Report also states that, "...a \$2.8 million contract with a second foster care provider was extended although ACS officials were aware of 26 substantiated cases of client abuse or neglect by its employees. In addition this vendor received a D grade in the Safety Practice Area." This very broad finding fails to consider all of the reasoning ACS contemplated before extending the contract, which we note immediately below.

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As ACS previously discussed in comments on the Preliminary Report, this extension was a "short-term" or "interim" extension for the period October 1, 2010-June 30, 2011 pending implementation of ACS' then-new Child Welfare RFP. The RFP had been delayed, thus this and other child welfare contracts had been extended. Per procedure, ACS conducted the Responsibility Determination (RD) in August 2010. As is standard, the RD discussed Adverse Information relating to the vendor—for this vendor, the Adverse Information noted a 1) an older poor subcategory rating in a Performance Evaluation that had subsequently been corrected; and 2) the listing of substantiated abuse and neglect reports against foster parents and residential foster care staff over the most recent 12 months. The August 2010 RD detailed that the vendor had a "poor" in an underlying category in 2008 ("safety practice") which was followed by corrective action—and subsequent rating of excellent in 2009.

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The August 2010 RD also included a description of each of the 26 SCR reports and actions taken, covering the period July 2009-June 2010. There were 11 substantiated neglect reports against foster parents, 4 substantiated abuse reports against foster parents, and 11 substantiated neglect reports involving residential foster care staff. There was no "less than satisfactory rating."

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There is also confusion in the reference to reports of neglect and abuse against foster parents or residential foster care staff. "For 9 of the 12 vendors, children in their care were abused by either vendor employees or by the children's foster parents." As discussed, ACS' goal is to ensure the safety and well-being of NYC children, including—through contract providers—seeking the most compassionate and diligent foster parents and staff for children who are in foster care. That said, there are very few foster parents who are not, and are the subject of reports to the SCR. These reports range from issues of neglect—such as educational neglect or lack of supervision—to more serious situations involving abuse, such as excessive corporal punishment etc.

To refer to the totality of SCR reports as abuse is not accurate. Also, as previously discussed, the reporting requirement pertains to the totality of the provider organization—any substantiated SCR

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report related to the provider, including contracts or services provided to other City agencies or other counties. Thus data on SCR reports may (and does) refer to cases involving children from other jurisdictions.

Contract Registration Delays

As discussed, like other City agencies, ACS has experienced registration delays, for a vast variety of reasons. ACS continues to make efforts to improve its performance.

The Mayor's Office of Contract Services tracks registration activity and delays, with special focus on the indicator "long term retroactivity." As discussed in the Mayor's Office of Contract Services *New York City's Procurement indicators Fiscal 2014*, "...long-term retroactivity, defined as delays longer than 30 days, is a more meaningful indicator, since in most cases a delay of less than 30 days does not interrupt payments to the provider." It is further noted in that Report that "ACS ... has kept long-term retroactivity to single digits, with just 2% of Fiscal 2014 contracts registered more than 30 days past the start date..." In fact, ACS' 2014 retroactivity rate of 2% was lower than the overall citywide average.

Recommendations

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.

ACS Response to Recommendation 1: ACS remains cognizant of contract expiration dates, which is tracked by ACS' Office of the Agency Chief Contracting Officer, and the need to maintain services when planning RFPs, and will continue to do so.

Recommendation 2: Adequately document the justification for not employing competitive procurement processes to obtain services.

ACS Response to Recommendation 2: ACS will continue to document the justification, where appropriate, for not employing competitive procurements.

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.

ACS Response to Recommendation 3: ACS fully complies with the PPB rules in this regard, and will continue to do so.

Recommendation 4: Do not extend or renew existing contracts with vendors until the performance of such contractors has been adequately evaluated.

ACS Response to Recommendation 4: ACS rigorously evaluates contractor performance, as stated, and will continue to do so.

Recommendation 5: Develop and implement procedures to ensure that contracts are registered with the City Comptroller by the contracts' effective date.

ACS Response to Recommendation 5: ACS continues to work to improve on our contract registration process, and identify points where the procurement process can begin earlier, to afford appropriate time to bring contracts to registration.

Thank you for the opportunity to comment on the Draft Report.

Sincerely,



Gladys Carrion, Esq.
Commissioner

State Comptroller's Comments

1. The error in question was corrected for this final report.
2. We affirm our categorizations of the contracts in question as either non-competitive or limited competition contracts, as detailed in our report (see Exhibit). Further, the Office of the State Comptroller is fully aware of the significant services provided by ACS, and the auditors considered them as appropriate in the conduct of the audit.
3. Our report does not conflate or compare actions to extend or expand existing contracts against the original contracts. Further, our report does not challenge the reviews performed by ACS staff prior to the award of original contracts. Rather, our report detailed deficiencies in ACS processes used for procurements where there was little or no competition. Some of these procurements included extensions or expansions of existing contracts.
4. In fact, all 40 of the contracts we reviewed were not selected through a rigorous, original, competitive solicitation. Further, we do not assert or otherwise imply that all 40 contracts originated as non-competitive contracts. In fact, we clearly state in the report that some of the contracts were extensions or renewals. We acknowledge that contract extensions or renewals often result from contracts that were competitively procured in the first instance.
5. Our report does not state or imply that extensions were “in lieu” of competitive procurements. Nevertheless, the continuous use of contract extensions and renewals tends to diminish the use of open competitive procurement processes. Further, as detailed in our report, ACS officials obtained services through contract extensions and renewals without documented justifications for not seeking vendor competition, as otherwise required by NYC Procurement Rules.
6. We acknowledge that renewal options are common features in many contracts. However, as detailed in our report, ACS had not conducted performance reviews of certain vendors or followed-up on deficiencies noted in such reviews prior to contract renewals.
7. As noted in our report, responsible ACS officials should have been aware of their contracts' expiration or termination dates, and consequently, officials should have built sufficient lead time into their procurement processes to optimize the opportunity for competitive procurement.
8. As part of their audit procedures, auditors developed detailed understandings of ACS's contract monitoring process, the purposes of contract extensions and renewals, the use of VENDEX, and the purpose and use of vendor Performance Evaluations.
9. We acknowledge that a “less than satisfactory rating” for a vendor does not prohibit ACS from contracting with that vendor. However, as noted in our report, ACS officials did not effectively follow-up with “less than satisfactory” vendors to ensure they had taken adequate steps to address performance deficiencies.
10. Our report does not state, imply, or otherwise suggest the providers cannot take corrective actions in response to State Central Registry (SCR) allegations.
11. We have no basis upon which to question (or affirm) the data referenced by ACS. Nonetheless, as detailed in our report, the two vendors in question were cited for 34 and 26 substantiated cases, respectively, of abuse and/or neglect. Moreover, there was no documented evidence of ACS efforts to verify the corrective actions purportedly taken by

the providers to address these cases.

12. We used the phrase “less than satisfactory” to refer to any rating within a range of ratings that were less than satisfactory.
13. Our report does not refer to the totality of the SCR reports as abuse. As previously noted, our report referenced providers with substantiated cases of abuse and/or neglect.