

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

**Alan G. Hevesi
COMPTROLLER**



***NEW YORK CITY MAYOR'S OFFICE OF
CONTRACTS***

VENDOR INFORMATION EXCHANGE SYSTEM

2001-N-10

DIVISION OF STATE SERVICES

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Alan G. Hevesi
COMPTROLLER

Report 2001-N-10

Ms. Terri Matthews
Acting Director
New York City Mayor's Office of Contracts
253 Broadway, 9th Floor
New York, NY 10007

Dear Ms. Matthews:

The following is our audit report of the New York City Mayor's Office of Contracts' comprehensive contract information system known as the Vendor Information Exchange System (VENDEX).

This audit was performed pursuant to the State Comptroller's authority as set forth in, Article V, Section 1, of the State Constitution; Article II, Section 8, of the State Finance Law; and Article III of the General Municipal Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

March 3, 2003

EXECUTIVE SUMMARY

NEW YORK CITY MAYOR'S OFFICE OF CONTRACTS VENDOR INFORMATION EXCHANGE SYSTEM

SCOPE OF AUDIT

In 1987, the City Council of the City of New York enacted Local Law 52 to require the Mayor and the Comptroller to jointly establish a computerized database containing information about contracts, franchises and concessions entered into by mayoral agencies. Although non-mayoral agencies are not directly regulated by the City of New York, (City), some of these agencies voluntarily use the computerized database. Local Laws 5 and 13 of 1991 created the complement to this database, which contains information about people and companies with whom the City does business, and required the Mayor and the Comptroller to be jointly responsible for its maintenance. These legislative initiatives were passed because of the City Council's concern that contracts go only to honest and capable vendors and that the City obtain the highest quality and quantity of goods and services.

Established in 1988, the New York City Mayor's Office of Contracts (MOC) oversees the procurement process of mayoral agencies. As an oversight agency, MOC's primary responsibility is to monitor each agency's compliance with procurement laws and rules and to provide public access to information about contracts and contractors. MOC also provides technical assistance and guidance to the agencies, monitors contractor performance evaluations, considers appeals of agency non-responsibility determinations, and automates and streamlines the City's procurement operations. Additionally, MOC maintains a comprehensive contract information system known as the Vendor Information Exchange System, (VENDEX), and operates a Public Access Center that provides on-line access to certain contract and vendor information.

Our audit addressed the following questions about VENDEX for the period July 1, 1999 through June 30, 2001:

- Is the VENDEX data accurate and up-to-date?
- Does the Mayor's Office of Contracts input the data received from the agencies timely?

We did our fieldwork from August 7, 2001 the date of the opening conference to August 21, 2002.

AUDIT OBSERVATIONS AND CONCLUSIONS

Overall, we found that the Mayor's Office of Contract maintains an efficient database system. However, our audit disclosed that three of the 60 contracts we sampled had not been entered into VENDEX. In addition, MOC took an average of 50 days to enter data from questionnaires onto the system. We also noted that ten of 54 contracts did not have performance evaluations on file. The delays in entering the data onto the system or not being able to locate the questionnaires for contractors could result in a contract manager not having complete information to determine whether a vendor is responsible. (See pp. 5-9)

COMMENTS OF MOC OFFICIALS

A draft copy of this report was provided to officials of the Mayor's Office of Contracts for their review and comment. We also discussed these matters at an exit conference on October 7, 2002. Their comments were considered in preparing this final report, and are included as Appendix B.

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INTRODUCTION

Background

In 1987, the City Council of the City of New York enacted Local Law 52 to require the Mayor and the Comptroller to jointly establish a computerized database containing information about contracts, franchises and concessions entered into by mayoral agencies. Although non-mayoral agencies are not directly regulated by the City of New York, (City), some of these agencies voluntarily use the computerized database. Local Laws 5 and 13 of 1991 created the complement to this database, which contains information about people and companies with whom the city does business, and required the Mayor and the Comptroller to be jointly responsible for its maintenance. These legislative initiatives were passed because of the City Council's concern that contracts go only to honest and capable vendors and that the City obtain the highest quality and quantity of goods and services.

Established in 1988, the New York City Mayor's Office of Contracts, (MOC), oversees the procurement process of mayoral agencies. As an oversight agency, its primary responsibilities are to monitor each agency's compliance with procurement laws and rules and to provide public access to information about contracts and contractors. MOC also provides technical assistance and guidance to the agencies, monitors contractor performance evaluations, considers appeals of agency non-responsibility determinations, and automates and streamlines the City's procurement operations. Additionally, MOC maintains a comprehensive contract information system known as the Vendor Information Exchange System, (VENDEX), and operates a Public Access Center that provides on-line access to contract and vendor information.

The City's 2002 annual budget for the procurement of goods, services, construction, and construction-related services exceeds \$7 billion. For contracts valued at \$100,000 or more, the City Charter and Procurement Policy Board (PPB) Rules require vendors to complete and submit a Business Entity VENDEX Questionnaire, and for the vendor's principal, a Principal Questionnaire. In addition, suppliers with contracts

that are sole source valued at \$10,000 or more; those with contracts having an annual aggregate of \$100,000 or more; franchises; and contractors who apply for inclusion on a pre-qualified list, must complete and submit a VENDEX questionnaire. The requirement applies to for-profit and not-for-profit suppliers. All New York City mayoral agencies are subject to VENDEX requirements.

VENDEX was developed to provide the City with a comprehensive contract and contractor management information system. It provides a central repository of information on contractors that do business with the City, including relationships among businesses and their principals, performance history and sanction history such as defaults, findings of non-responsibility and debarments. VENDEX is the primary tool the City uses to determine the “responsibility” of vendors, indicating whether they have the ability, capacity, and business integrity to provide good performance and compliance with the terms and conditions of a contract. Before recommending an award to a particular contractor, City agencies review the data on VENDEX, and other information, to determine whether a contractor is responsible.

MOC developed a systematic process to identify agencies that are not complying with the requirement that all contractors be evaluated. It uses a report VENDEX generates that lists all contracts that have not received the appropriate number of contractor performance evaluations. This report is sent to the agencies and they must respond, indicating the reasons evaluations are not on file – such as cancelled or duplicate contracts – and return it to MOC for review. Upon receipt of the response, MOC will update the contract record in VENDEX with the exclusion reason.

Audit Scope, Objectives and Methodology

We audited MOC’s vendor information exchange system for the period July 1, 1999 to June 30, 2001. The objectives of this performance audit were to determine whether the data on VENDEX is accurate and up-to-date and whether MOC input the data received from the agencies timely. To accomplish our objectives, we reviewed laws, policies, and procedures; interviewed management and staff; reviewed relevant records; observed operations; and tested transactions. Specifically, we obtained contract information from 12 agencies that submitted

questionnaires to the Mayor's Office of Contracts for input onto VENDEX. We also reviewed the data on VENDEX to determine whether evaluations were performed as required by law.

We did our fieldwork from August 7, 2001, the date of the opening conference to August 21, 2002. This time was required because MOC did not provide the contract data requested for several months. In fact, as of March 5, 2002 we did not have some of the information requested during the survey. (MOC replied to the draft report that it was the agencies and not MOC that did not provide the data in a timely manner.

Auditor's Comment: A review of our files indicates that MOC did not provide the information requested in a timely manner. In fact, a letter was sent to MOC on March 5, 2002, to advise them that information about sole source contracts had not been received and could result in a scope limitation if it was not provided. We cite additional items in Appendix C, Note 2.)

As is our practice, we notify 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. In the representation letter, agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further affirm that either 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 Mayor's Office of Contracts informed us that, as a matter of policy, Mayoral agency officials would not provide representation letters in connection with our audits. As a result, we lack assurance from MOC officials that all relevant information was provided to us during our audit. We consider this refusal to provide a representation letter to be a scope limitation on our audit. Therefore, readers of this report should consider the potential effect of this scope limitation on the findings and conclusions presented in this report.

Except as noted in the previous paragraph, we conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations that are included in our audit scope. Further, these standards require that we understand MOC's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, the evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures, as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

Response of MOC Officials to Audit

A draft copy of this report was provided to officials of the Mayor's Office of Contracts for their review and comment. We also discussed these matters at an exit conference on October 7, 2002. Their comments were considered in preparing this final report and are included as Appendix B. To help ensure that our consideration of MOC's comments is clear, we respond to those comments in the State Comptroller's Notes, Appendix C. Where appropriate, we have made changes to the report to recognize factual information conveyed in the response.

Within 90 days after final release of this report, we request that the Director of the Mayor's Office of Contracts report to the State Comptroller advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reason therefor.

ACCURACY AND TIMELINESS

VENDEX supports agencies in reaching responsibility determinations of contractors. A responsible contractor is one who is able to perform the contract requirements and has the business integrity to justify the award of public tax dollars. However, a determination of non-responsibility is not a bar to bidding on future contracts. Rather, it is a determination that a particular contract award would not be in the best interest of the City.

VENDEX stores information from the VENDEX questionnaires, including cautionary information supplied by city agencies and law enforcement agencies. The system also stores contractor's tax filing status, and liens and warrants compiled by the New York City Department of Finance. Contract performance evaluations and information on all City contracts and purchase orders are also on the system.

The VENDEX questionnaires are valid for three years. When responding to any bids, proposals or offers during the three-year period, vendors are required to submit only an Affidavit of No Change or a Questionnaire showing changes.

We randomly selected a sample of 60 contracts valued at \$92 million from the list of 2,879 contracts that we received from the various agencies and were also listed on VENDEX. We determined that all 60 vendors were listed on VENDEX, but the contract information that we received from the agencies concerning three of those contracts that totaled \$1.3 million did not appear on the system. Further, the contract amounts on the agencies' lists did not match the amounts on VENDEX in 25 instances with the differences totaling \$4.1 million.

Additionally, we reviewed the dates that the questionnaires were received by MOC and entered into VENDEX. We found that on average, it took MOC 50 days to enter the data. (In the future, MOC officials hope to have agencies enter their data on-line to alleviate the timeliness issue.) Also, MOC did not have 10 VENDEX questionnaires on file for contracts totaling \$16.1 million. At the closing conference, MOC officials stressed the

fact that VENDEX is a fluid system with changes occurring daily. By the time of this meeting, MOC officials had already entered information for one of the missing contracts onto the system and located five of the missing questionnaires for contracts valued at \$5.3 million.

Clearly, if a contract manager is in the process of determining whether a potential contractor that has not contracted with his agency before is responsible, he/she will not have accurate and timely information and the contract may be awarded to a “non-responsible” vendor. As a result, the City might not receive the quality of goods and services that the public expects and deserves. In fact, in one of the previously cited cases, the contract was awarded before the questionnaire was submitted to MOC. (In response to our draft report, MOC officials asserted that the 50-day time lag will not cause a contract to “be awarded to a ‘non-responsible’ vendor,” because the vendor must submit a questionnaire to the contracting agency. “Thus the agency is in possession of the VENDEX questionnaire during the time that a separate copy is processed at MOC.”

Auditor’s Comment: While the process requires that the contracting agency receive a copy of the questionnaire, there is no assurance this was done. In addition, MOC does not have the information that serves as an additional control towards ensuring that the information on VENDEX is complete and that the questionnaires are provided to MOC, as required. Therefore, MOC should take action to make sure it receives questionnaires in a timely manner from all agencies.)

(MOC also replied that the one contract awarded before the questionnaire was received is a special case and VENDEX requirements do not apply.

Auditor’s Comment: We note that this information was provided almost three months after the closing conference and several months after the preliminary findings were provided to MOC. As a result, we could not verify the accuracy of the information or that the requirements are not applicable under certain circumstances.)

Recommendations

1. Enter all questionnaires on VENDEX in a timely manner.
2. Periodically check the accuracy of the information that is entered into VENDEX.

PERFORMANCE EVALUATIONS

Local Law 94 (Section 6-116.1 of the New York City Administrative Code), and PPB Rules require that annual performance evaluations be completed for contracts for services or goods purchased through competitive sealed proposals or sole source methods. Additionally, contractor performance must be evaluated upon completion of the work or delivery of the goods, with the evaluations entered onto VENDEX. Contract managers at the various city agencies must obtain performance evaluation histories from VENDEX for all potential contractors.

Evaluation reports listing the contractors requiring an evaluation are sent to the agencies every three months as a reminder. These reports are intended to assist agencies in ensuring that all contracts are evaluated timely. In the event that an agency does not send a performance evaluation to MOC when it is due, another evaluation report is sent to that agency listing the contracts that are missing evaluations. These evaluations must be sent to MOC to be entered into VENDEX and be accessible to contract managers at the various city agencies and the public.

Using the same sample of the 60 contracts reviewed for accuracy and timeliness, we determined that performance evaluations were due for 54 of the contracts. Our review indicated that 27 of the contracts did not have performance evaluations listed on VENDEX. Additionally, we requested the evaluation reports that were forwarded to the appropriate agencies for the 27 contracts that were not found on VENDEX. MOC did not have ten of the evaluation reports on file for contracts valued at \$15.6 million. At the closing conference, MOC officials produced two of the missing evaluations for contracts valued at \$2.7 million. Thus, MOC was missing 8 of 54 evaluations (15 percent), for contracts valued at \$12.9 million.

Once again, if a contract manager is in the process of reviewing a potential contractor who has not contracted with his/her agency before and who may or may not have been performing adequately, there is no way the contract manager can tell

whether the contractor may be awarded the contract. As a result, the City may not be receiving the goods and services that the taxpayers expect from this contractor.

Recommendations

3. Remind senior management at agencies that they must forward contract performance evaluations to MOC and upon receipt MOC should provide for the timely input onto VENDEX.
4. Follow up more aggressively with the agencies that are persistently not forwarding the performance evaluations to MOC.

MAJOR CONTRIBUTORS TO THIS REPORT

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JAN 22 2003 13:13

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TERRI MATTHEWS
ACTING DIRECTOR

January 22, 2003

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of Management Audit and State Financial Services
123 William Street, 21st Floor
New York, NY 10038

Re: NYS Comptroller's Draft Audit Report on VENDEX
Report Number 2001-N-10

Dear Ms. Maldonado:

Thank you for the opportunity to respond to the draft audit report ("draft audit") before its public release. The draft audit addresses whether VENDEX data is accurate and entered timely. As discussed below, this office strives to maintain reliable data in its VENDEX system and provide convenient access of this data to agencies and the public. The recommendations included in this draft audit are consistent with the internal goals that the VENDEX Unit has been encouraged to strive for since the inception of the VENDEX system. Accordingly, we agree with the recommendations made in the draft audit. We do, however, question the appropriateness of several of the statements made in the draft audit.

Audit Observations and Conclusions, Page 2

The draft audit states, "In addition, MOC took an average of 50 days to enter data from questionnaires, including cautionary information supplied by city agencies and law enforcement agencies onto the system" (emphasis added). The underlined words are incorrect. The audit staff did not in fact examine such agency-submitted cautionary information. Further, MOC follows a different procedure to enter such cautions into VENDEX, a process whose cycle time averages from one to two weeks.

*
Note
1

Page 3

The audit states that it had an extended duration "because MOC did not provide the contract data requested for several months".

* See State Comptroller's Notes, Appendix C

Appendix B

MOC provided contract data in October of 2001 and various clarifications thereafter. But in fact, the audit (page 5, paragraph 4) states that it is based on contract data received from City agencies, not the MOC-provided information. Further, an April 24, 2002 letter from Jennifer Murrell listing requested information does not mention contract information.

*
Note
2

Accuracy and Timeliness
Page 5

We agree that there are data discrepancies between VENDEX contract information and the City's Financial Management System (FMS) that provides the data. MOC staff have corrected a VENDEX program that was the major cause of divergent dollar amounts. We are working with the Financial Information Services Agency (FISA) to design a correction of the programs that extract FMS contract data, the major source of missing contract information.

We are committed to reducing the 50-day processing time between receipt and entry of VENDEX questionnaires. However, we do not agree with the audit that this lag time creates significant risks to the City of awarding contracts to non-responsible vendors, as asserted by the audit on page 6 (see below). Our longer term goal is to build a web-based system that will let vendors (not agencies, as stated in the audit) enter and submit their questionnaires on-line, thereby eliminating the need for MOC staff to do so.

The audit finds, "MOC did not have 10 VENDEX questionnaires on file." Since entries in the VENDEX system show that the questionnaires in question were received (and entered), MOC is certain that the records were on file at MOC. The fact that MOC was not, however, able to retrieve the 10 questionnaires was a result of MOC's shortage of filing space. Effective January 2002, MOC implemented a new logging system that will prevent the re-occurrence of this inability to retrieve questionnaires received since that date.

Page 6

The audit is incorrect in asserting that the 50-day lag time may cause a contract to "be awarded to a 'non-responsible' vendor," because the proposed vendor must submit its VENDEX questionnaires to the contracting agency. Thus, the agency is in possession of the VENDEX questionnaires during the time that a separate copy is being processed at MOC.

*
Note
3

The audit states, "in one of the previously cited cases [in which MOC could not retrieve a VENDEX questionnaire], the contract was awarded before the questionnaire was submitted to MOC." This is a special case, in which the insurance company undertook completion of the work pursuant to its obligations under the performance bond for the original contractor. There is no requirement in law or written policy to complete VENDEX in such circumstances and VENDEX was not required by the performance bond.

*
Note
4

* See State Comptroller's Notes, Appendix C

Response to NYS Comptroller's Draft Audit Report on VENDEX
Report Number 2001-N-10

Page 3

We agree with both recommendations, "1. Enter all questionnaires on VENDEX in a timely manner," and "2. Periodically check the accuracy of the information that is entered into VENDEX."

Performance Evaluations

Page 7

The City's Mayor's Management Report has shown the submission rate of performance evaluations at between 78 and 80 percent for the last several years. While we are not satisfied with this performance, we believe that the draft audit as written makes its findings look worse than they are. Thus, the audit initially asserts that 27 out of 54 required evaluations were not found on VENDEX, but goes on to acknowledge indirectly that 44, or over 80%, were ultimately submitted. We ask that the audit state this overall result more explicitly. Given that the audit reviewed contracts registered (and starting) between 7/1/99 and 6/30/01, many of the required evaluations first came due during the audit's field work. Thus it should not be a negative audit finding that some of the required evaluations were received at MOC during the audit.

*
Note
5

Page 8

We generally agree with both recommendations, "3. Remind senior management at agencies that they must forward contract performance evaluations to MOC and timely input them onto VENDEX," and "4. Follow up more aggressively with the agencies that are persistently not forwarding the performance evaluations to MOC."

As to recommendation 3, we note that the audit does not elsewhere contain findings on MOC's processing time for data entry of performance evaluations, which in fact has averaged 2 to 4 weeks from receipt, depending on volume.

If you have any questions about this reply, please contact Tom Jelliffe (212-788-0086) of this office.

Sincerely,



Terri Matthews

cc: M. Guccione, T. Jelliffe, S. Singer, H. Friedman, A. Whyte

TOTAL P.04

* See State Comptroller's Notes, Appendix C

State Comptroller's Notes

1. The underlined phrase in the MOC response has been deleted from the Executive Summary.
2. MOC did not provide information in a timely manner. For example, we did not receive five of the 10 questionnaires requested as of April 11, 2002 until October 7, 2002, at the closing conference. In addition, none of the 27 performance evaluations requested on April 24, 2002 were provided as of July 2, 2002.
3. While we understand MOC's position that another copy of the questionnaire is sent to the contracting agency, we do not view it as a substitute for not complying with the requirement that a copy is sent to VENDEX. In addition, by not sending it directly to MOC there is less assurance that the information will be recorded on VENDEX and available for review by others who may need this information.
4. We were not informed of the special case during the audit. This information was provided after issuance of the draft report.
5. It is true that even though some of the evaluations were due during our fieldwork, they still should have been on file. We noted that we did not receive some evaluations that were due in 2000; one was due in 1999.