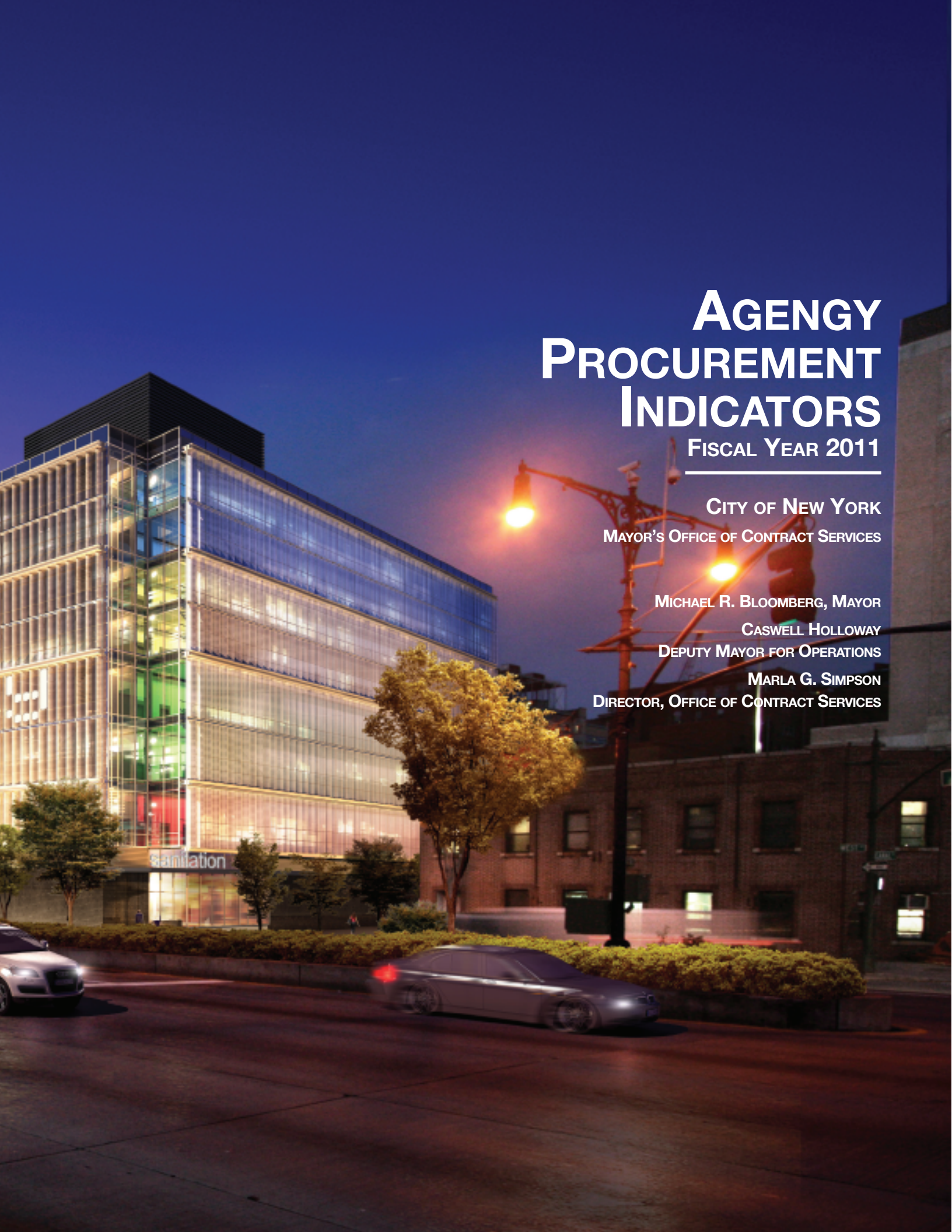

Agency Procurement Indicators

Fiscal Year 2011

City of New York

Mayor's Office of Contract Services

Michael R. Bloomberg, Mayor

Caswell Holloway
Deputy Mayor for Operations

Marla G. Simpson
Director, Office of Contract Services

CELEBRATING OUR CITY

COVER IMAGE: Rendering of Plans for the Spring Street Garage, Manhattan

Serving Manhattan Community Districts 1, 2 and 5, the Spring Street Garage will house and service the collection and snow clearing vehicles for the Department of Sanitation (DSNY), and will provide space for salt storage, as well as administrative and personnel operations. The newly-relocated garage will make room for DSNY's existing location to be developed as part of Hudson River Park. This image was rendered by Dattner Architects/WXY Architecture, showing an evening view of the garage looking north from Hudson River Park.

DSNY continues to be the world's largest refuse and waste management provider. In addition to removing and processing over 12,000 tons of materials every day, DSNY is implementing green initiatives to make their facilities more environmentally-friendly, including a 62,500-square-foot green roof. The garage is currently on track to receive a LEED Gold designation from the US Green Building Council.

Through a public competitive sealed bid process, DSNY awarded a $194 million contract to Dematteis/Darcon, Joint Venture for construction of the garage. DSNY also awarded a $13 million contract for project, solicited by a public request for proposals, to Turner Construction Company. For more information, call 311 or visit nyc.gov.

♻ Printed on paper containing 30% post-consumer material.

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EXECUTIVE SUMMARY

In Fiscal 2011, New York City procured almost $15 billion worth of supplies, services and construction, through more than 55,000 transactions. New York City employs procurement as one of its essential tools to serve the public and accomplish critical governmental functions. Agencies procure the goods and services they need to fulfill their missions, from trucks to sweep the streets, to architectural designs for new firehouses, from biodiesel fuel for City vehicles, to nonprofit service providers working in communities throughout the City. The breadth and variety of City contracts reflect the breadth and variety of City services themselves.

With significant restructurings of major client services programs, as well as new investments in core services, infrastructure, waste management and economic development, New York City remains one of the largest contracting jurisdictions in the nation. And under the leadership of Mayor Michael R. Bloomberg, the City has continued to pursue initiatives to improve the procurement process.

This report tells the story of what New York City agencies bought during Fiscal 2011 and how those purchases were made.[1] Indeed, how we buy is just as important as what we buy. The procurement system is designed to achieve three main goals:

- Provide necessary goods and services on time and at the best value for the taxpayer.
- Operate fairly and transparently.
- Ensure the responsibility of our vendors, including their business integrity.

To measure our success achieving these goals, the Mayor's Office of Contract Services (MOCS) tracks key indicators of the performance of the City's procurement system.

I. TAKING INVENTORY

Overall, procurements declined in Fiscal 2011 by about 12%, as agencies awarded somewhat less large-scale construction work than they had during Fiscal 2010. Highlights from the Fiscal 2011 procurement inventory include:

- Ten City agencies account for 87% of the City's procurement, and the largest 25 contracts of the year account for 29% of the total dollars awarded. The Administration for Children's Services (ACS) tops the list of awarding agencies, owing to its restructuring of the City's child welfare system, which resulted in 139 request for proposal awards, six of which are among the Top 25.
- Human services – i.e., contracts that agencies enter into with vendors (typically nonprofits) to provide services directly to clients and communities throughout the City – amounted to 48% of the awards in Fiscal 2011. Agencies hold new competitions for these client services contracts in cycles that generally run from three to six years. Because several large programs – including child

[1] Fiscal 2011 runs from July 1, 2010 through June 30, 2011. Except where specifically noted, this report presents information on procurements by only the Mayoral operating agencies that are governed by Chapter 13 of the New York City Charter and the rules and regulations of the Procurement Policy Board (PPB). Agencies covered by this report are listed following the Glossary.

welfare, HIV-related health services and indigent criminal defense services – were awarded in Fiscal 2011, the human services category yielded more than seven billion dollars in awards.

- City agencies processed approximately $11.4 billion in payments on their procurement contracts during Fiscal 2011 – including those initially registered this year and those registered in prior years and still active this year. While registered award values include multi-year (projected) spending, payments reflect actual spending during the fiscal year. By this measure, human services procurements amounted to 26% of the value of Fiscal 2011 contract spending.
- The City's procurement volume also included goods and commodities (10% of registered awards, 3% of payments), construction (13% of awards, 16% of payments), architecture and engineering services (3% of awards, 21% of payments), other professional services (14% of awards, 5% of payments) and standardized services (12% of awards, 25% of payments).
- The size of City contracts was comparable to prior years. About 81% of all purchasing dollars flowed in contracts that exceeded $3 million, with only 2% in contracts of $100,000 or less.

II. PLANNING THE PROCUREMENT

- Over half of City purchasing resulted from competitive procurements, while 6% used selection methods controlled by governmental agencies, 12% relied upon methods with limited competition and 31% reflected renewals and continuations of contracts from prior years.
- Competitiveness remained strong, with 88% of contracts showing high levels of competition (three or more competitors), comparable to last year. Highly competitive procurements dropped to the 82% and 87% level, for human services and goods, respectively, as a result of a handful of large, highly specialized procurements. Competition for small purchases remained strong, with 85% of the transactions reflecting ten or more competitors.
- Three of the City's human services agencies – ACS and the Departments of Homeless Services (DHS) and Health and Mental Hygiene (DOHMH) – used requests for proposal (RFP) processes to implement over $5.5 billion in major programmatic contracts to serve New Yorkers in need.
- Construction agencies used tools such as the Construction Pipeline to encourage strong vendor interest in City public works projects, and "Early Project Scoping" contracts to ensure more reliable project scopes of work and more accurate cost estimates.
- The Department of Design and Construction (DDC) awarded over $100 million of innovative "joint bidding" contracts to expedite Lower Manhattan rebuilding efforts.
- The City purchased nearly $17 million worth of goods covered by environmentally-preferable purchasing (EPP) standards. Over $250 million worth of the City's construction work included EPP products, and over one billion dollars worth supported "Green Buildings" projects.
- The Economic Development Corporation (EDC), processed new awards and contract amendments totaling nearly $460 million, primarily for construction and development projects.
- The City awarded 129 new concessions and collected nearly $47 million from 600 operating concessions. The Department of Parks and Recreation (DPR) led in amount raised, with food operations and golf courses as its top revenue-producing uses. The City collected $197 million from 72 franchises, primarily from the franchises held by the Department of Information Technology and Telecommunications (DoITT) for cable television and by the Department of

Transportation (DOT) for street furniture. DOT and the Department of Consumer Affairs (DCA) registered agreements valued at $15 million for sidewalk cafés and similar uses.

- Agencies also made over $153 million in grant awards, primarily to cultural and economic development organizations.

III. FINDING QUALIFIED AND RESPONSIBLE BUSINESS PARTNERS

- Over 63,000 vendors have enrolled on the City's bidders lists.

M/WBE Contracting and Subcontracting:

- During the four-year history of the City's Minority- and Women-Owned Business Enterprise (M/WBE) goals program, agencies have awarded nearly two and a half billion dollars worth of work to certified M/WBE firms.
- In Fiscal 2011, more than $1.2 billion dollars worth of the City's prime contracts were covered by M/WBE participation goals, including more than $346 million covered by prime contract goals and over $870 million covered by subcontracting goals.
- M/WBEs obtained over $561 million worth of City procurements (prime contracts and subcontracts) during Fiscal 2011. M/WBEs won nearly 25% of the City's small purchases, up from 19% in Fiscal 2010.
- M/WBE certifications rose by 16%, to more than 3,200 certified firms at the end of Fiscal 2011.
- Agencies awarded 218 Fiscal 2011 prime contracts that are subject to M/WBE subcontracting goals. Over the life of the contracts, $137 million in construction and professional services subcontracts will be generated, with about $54 million slated for M/WBEs, i.e., about 40%.
- State and federal goals programs that apply to about $547 million worth of Fiscal 2011 contracts will also yield $89 million worth of subcontracts for M/WBEs and disadvantaged businesses. EDC's subcontractor goals will yield nearly $10 million in similar awards.
- All told, counting all subcontracts on all prime contracts, including those not covered by any goals program, M/WBEs won over $186 million of subcontract work during Fiscal 2011, which amounts to 18% of the City's total subcontract dollars, including 39% of the value of subcontracts below one million dollars.

Labor Agreements and Worker Opportunities:

- The City awarded over 905 contracts, worth $2.2 billion, subject to New York State's prevailing wage laws and 437 contracts, worth $533 million, subject to the City's Living Wage Law. EDC also processed 36 contract actions, valued at $467 million, for work subject to prevailing wage requirements. MOCS conducted 34 detailed reviews of proposed contracts for which prevailing wage compliance questions were raised, ultimately approving 31 awards, and disallowing three.
- During Fiscal 2011, agencies awarded 60 contracts, valued at $445 million, under Project Labor Agreements (PLAs).
- During Fiscal 2011, utilizing the ground-breaking "bring along" provisions of the PLAs, M/WBEs had won 13 prime contracts valued at $79 million, and 71 subcontracts valued at nearly $52 million, under those PLAs.

- For 76 contracts, worth nearly $765 million, agencies mandated participation in apprenticeship programs to afford opportunities for New Yorkers to obtain well-paying construction jobs. All PLA contracts also provide for apprenticeship opportunities. In total, about 90% of the City's newly-awarded construction procurements provide for apprenticeships.

Protections Against Pay-to-Play Influence:

- Through the unique Doing Business Database created to enforce the City's "Pay-to-Play" statute, MOCS made available to the public data from City agencies, city-affiliated public authorities and similar entities, concerning over 6,000 businesses and nonprofits that were awarded (or sought) business with the City, as well as over 22,000 key individuals at these entities, and their lobbyists.
- In the most recent election cycle (2009) campaign contributions from individuals doing business with the City were estimated at only 4% of the total funds raised, down from 22% in 2005.

Vendor Responsibility:

- Agencies issued 18 non-responsibility determinations on vendors, primarily on product quality, legal non-compliance and business integrity grounds.
- MOCS processed over 31,000 vendor filings for the City's comprehensive vendor responsibility database, VENDEX.
- At the request of the City Council, MOCS researched and cleared nearly $125 million in discretionary awards, i.e., "line items," after determining that the selected vendors were qualified to provide services to their communities. As part of that clearance process, MOCS provided detailed training to 545 nonprofit leaders from the funded groups. During Fiscal 2011, agencies processed nearly $169 million worth of such awards, some of which had been cleared by MOCS in prior years. These awards accounted for 1% of the City's total Fiscal 2011 purchasing dollars.

IV. PROCUREMENT TIMELINESS

- The time between advertisement and contract registration for competitive bids increased to 165 days, up considerably from 137 days in Fiscal 2010. Shorter bid cycle time remains a goal.
- Processing times for human services program contracts also remain unduly long. The major human services agencies averaged 41 days late in registering these contracts, with 11% delayed more than 30 days. Several agencies declined in performance on this indicator, although ACS, with the highest volume of procurements to complete, substantially improved its performance and lowered its long-term lateness level to 8% (from 17% in Fiscal 2010).
- MOCS and the City's human services agencies stepped up efforts to ameliorate cash flow problems caused by late contracting and similar challenges. Through the City's cash flow loan program – administered by the Fund for the City of New York – MOCS issued 204 loans, valued at nearly $43 million, to a total of 132 vendors. Loan volume increased by 45% over last year.

V. CONTRACT MANAGEMENT

- Agencies completed detailed performance evaluations for over 88% of their contracts, rating 97% of their vendors as satisfactory ("fair") or better.
- Through voluntary cost containment negotiations with 89 of the City's largest vendors, City agencies negotiated contract modifications projected to achieve $13 million in savings.

- Agency efficiency improved for design change order processing, with the cost of such change orders averaging 9% of the original contract value, down from 20% in Fiscal 2010, while the average processing time also declined from 156 days last year to 109 days in Fiscal 2011.
- For construction change orders, cost relative to the original contract remained steady at 3%. Processing time declined to 125 days, down from 150 days in Fiscal 2011, although some progress is attributable to improved tracking of smaller change orders, which pose less risk to vendors' ability to move forward with major projects. Because of the impact of change order delays on project costs, shortening these time frames remains a high priority.
- Agencies awarded nearly $500 million in construction work as part of the "damages for delay" pilot program, under which vendors can be compensated for project delays caused by the City.
- The MOCS Capacity Building and Oversight (CBO) unit initiated comprehensive evaluations of the fiscal management and corporate governance practices of 91 of the City's nonprofit vendors.
- Through its Central Insurance Program (CIP), the City provided general liability, workers' compensation, disability and property insurance to over 800 nonprofits that operate day care, Head Start, senior services, home health care, after-school and other programs out of more than 1,000 sites, at a Fiscal 2011 cost of $150 million. CIP also provided health insurance coverage to day care, Head Start and senior services providers, at a cost of $123 million.
- Based on surveys conducted under Executive Order 72, 87% of the City's vendors provide or offer health insurance coverage to their full-time employees, and of those, 48% offer such coverage equally to spouses and domestic partners.

VI. MEETING ONGOING NEEDS

- Using more than 1,000 requirement contracts, offered mainly by the Department of Citywide Administrative Services (DCAS), agencies placed $959 million worth of orders for supplies and services. At the top of the list for total dollars were requirement contracts for security guard services, Sanitation trucks and fuel and road salt/de-icing products. The most frequently-used requirement contract was for copy machines.
- Agencies processed task orders worth $967 million under master agreements, primarily the technology services contracts held by DoITT and the design services contracts held by DDC.
- Small purchases ($100,000 or less) totaled more than $112 million, with the Police Department (NYPD) leading in this category. Micropurchases ($5,000 or less) accounted for $56 million, with the Department of Housing Preservation and Development (HPD) leading City agencies in such awards. For micropurchases, 20% of City spending was accomplished through the use of innovative "procurement card" technology, up from 17% in Fiscal 2010.

In the pages that follow, and in the appendices at the back of the report, we expand on each of the topics outlined above. Additional information is available by calling 3-1-1, or at the following web sites:

- For more information on MOCS and the topics covered in this report, nyc.gov/mocs
- For a copy of the City's PPB Rules, nyc.gov/ppb
- For information for vendors and potential vendors, nyc.gov/selltonyc
- For information on assistance available to nonprofits, nyc.gov/nonprofits

I. Taking Inventory: Citywide Procurement at a Glance

New York City procures more goods and services than any other municipality in the country, and is one of the largest procurement jurisdictions at any level of government. That said, the City's total procurement volume by value decreased in Fiscal 2011 by almost 12% relative to Fiscal 2010. This decrease reflects the cyclical nature of multi-year procurements, as well as planned reductions in City spending.

Ten agencies account for 87% of the City's total procurement dollar value and 30% of the total number of contract actions in Fiscal 2011. The Administration for Children's Services (ACS) had the highest overall procurement value, due primarily to a system-wide procurement for multiple-year child welfare service programs; six of the resulting contracts for family foster care are included in the year's Top 25 Contracts. The Department of Citywide Administrative Services (DCAS), the City's chief commodities purchaser, had the second-highest procurement value, as a result of large purchases in the energy sector, and the Department of Health and Mental Hygiene (DOHMH) posted the third-highest procurement value, led by two large contracts, one to support services to HIV-infected individuals and persons at risk of contracting HIV and one to provide health care for the City's detainees and prisoners.

A. The 25 Largest City Contracts

Many of the City's contracts support major initiatives that affect the lives of millions of New Yorkers. The City regularly enters into individual contracts that are valued in the hundreds of millions of dollars, occasionally even billions. The table below shows the 25 largest contracts ranked by dollar value. Together, these contracts equal nearly 29% of the overall citywide procurement dollar volume during Fiscal 2011.

Human service investments continue to be a major focus of City procurement. Because Fiscal 2011 fell at the "new competition" point in the procurement cycle for several of the City's major service programs, human service procurements increased during Fiscal 2011. Indeed, ten of the Top 25 Fiscal 2011 contracts support major multi-year social service programs, including ACS foster care programs, a Department of Homeless Services (DHS) family shelter, DOHMH services for AIDS health and prison health, and indigent criminal defense services (procured by the Office of the Criminal Justice Coordinator/CJC).

Seven of the Top 25 contracts were awarded by DCAS, the City's chief purchaser of ***goods and standardized services***. Five contracts, for a combined $611 million, were for fuel, heating oil and natural gas, providing heat for City buildings and keeping the City's fleet running. A $100 million DCAS contract for security guard services will serve the needs of multiple agencies, and DCAS also let an $89 million contract for the purchase of street sweepers for use by the Department of Sanitation (DSNY). DSNY also registered a contract for processing electronic waste, part of the implementation of the City's sustainability plan, PlaNYC (see page 14).

To foster ***economic growth and development,*** the Administration continues to strengthen the City's economic infrastructure throughout the five boroughs. The Department of Small Business Services (SBS) awarded two of the largest 25 contracts, for a total of $998 million, to the Economic Development Corporation (EDC) to support citywide economic development projects. For more information on procurement activity by EDC see page 15.

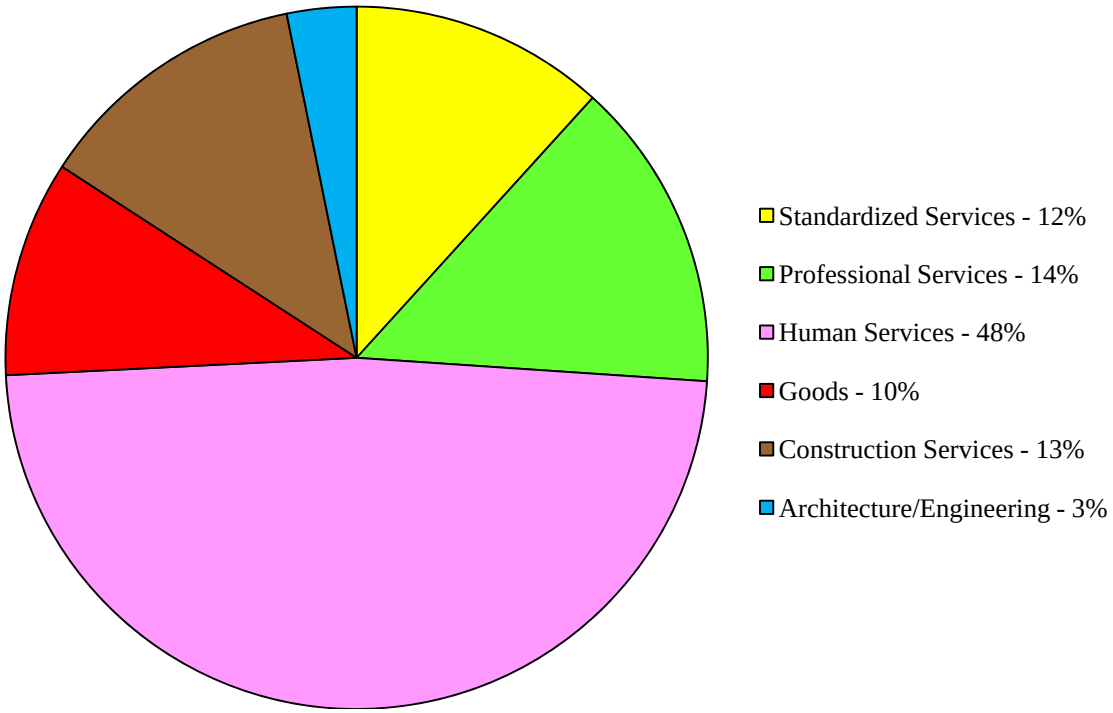
Table I-1: Top 25 Contracts of Fiscal 2011				
#	**Agency**	**Vendor**	**Purpose**	**Value**
1	SBS	NYC Economic Development Corp.	Master contract: citywide economic development	$818,026,000
2	DOHMH	Public Health Solutions	Master contract: HIV/AIDS Services	$471,000,000
3	DSNY	Veolia Environmental Solutions	Remove, handle and process electronic waste	$268,204,000
4	DoITT	Northrop Grumman Systems Corp.	Citywide mobile wireless network	$207,388,000
5	DSNY	DeMatteis/Darcon, Joint Venture	Construction of lower Manhattan garage	$194,844,500
6	DCAS	Castle Oil Corporation	Diesel and biodiesel fuel	$192,435,645
7	DOHMH	PHS Medical Services	Medical/mental health services to inmates in custody	$183,647,147
8	SBS	NYC Economic Development Corp.	Master contract: maritime economic development	$180,000,000
9	DoITT	Telesector Resources Group Inc.	Voice and data services	$175,000,000
10	DCAS	Sprague Energy Corporation	Reformulated gasoline blendstock and ethanol blends	$164,727,958
11	ACS	SCO Family of Services	Family foster care program	$145,833,024
12	DEP	Barnard - DA Collins JV	Gilboa Dam reconstruction	$121,485,500
13	ACS	Catholic Guardian Soc. & Home Bur.	Family foster care program	$113,120,889
14	CJC	The Legal Aid Society	Indigent legal defense services	$105,874,999
15	ACS	New York Foundling Hospital	Family foster care program	$102,571,421
16	ACS	Edwin Gould Serv. for Children & Fam.	Family foster care program	$101,200,567
17	DCAS	Allied Barton Security Services	Unarmed security guard services	$100,000,233
18	ACS	Graham-Windham, Inc.	Family foster care program	$98,971,277
19	DHS	Housing Partners of New York Inc.	Provide shelter service for homeless families	$95,403,541
20	DoITT	Northrop Grumman Systems Corp.	Emerg. Communications Transformation Program	$95,000,000
21	DCAS	Castle Oil Corporation	Fuel, heating, and bioheating oil	$90,439,400
22	DCAS	Allianz Sweeper Co./Johnston Sweeper	Street sweeper vehicles	$88,725,910
23	ACS	Little Flower Children's & Fam. Serv.	Family foster care program	$88,302,176
24	DCAS	The Brooklyn Union Gas Company	Natural gas	$82,324,980
25	DCAS	Con Ed of New York, Inc.	Natural gas	$80,902,849
Total Value				**$4,365,430,016**

The City also made major ***infrastructure*** investments, as reflected in the Top 25 contracts. DSNY registered a contract for construction of the Spring Street Garage, serving Manhattan Community Districts 1, 2 and 5. This contract is one of the largest contracts to date covered by the City's cost-saving Project Labor Agreements (PLA). For a detailed discussion, see page 33. The Department of Environmental Protection (DEP) invested in the City's water supply with a contract to reconstruct the Gilboa Dam. And the Department of Information Technology and Telecommunications (DoITT) registered two contracts to upgrade and support the City's technological infrastructure – one for voice and data services at the Public Safety and Communication Center and one for maintenance of the Citywide Mobile Wireless Network.

B. Procurements by Industry Category

The Mayor's Office of Contract Services (MOCS), tracks procurements according to six major industry categories: architecture/engineering, goods, construction services, human services, professional services and standardized services (definitions are included in the Glossary). The chart below reflects Fiscal 2011 procurement volume by industry category. See Appendix A.

Chart I-1: Dollar Value of Citywide Procurements by Industry
Total Dollar Value = $15.0 Billion



As this chart illustrates, contracts for human services comprised nearly half of all Fiscal 2011 procurement, totaling $7.1 billion, as compared with $3.7 billion registered in Fiscal 2010. Competitions for human services program awards typically recur in three- to six-year cycles, as services are continuously needed, though the locations and communities to be served evolve over time. Therefore year-to-year registration values for these programs can vary widely. Three agencies accounted for nearly all of the Fiscal 2011 increase: ACS, DHS and DOHMH; each of those agencies re-procured major service programs. For a detailed discussion, see "The Human Services Contracting Cycle" on page 9.

C. Size of Contracts

The table below presents overall procurement volume at various dollar values. See Appendix B for year-to-year totals for individual agencies. In Fiscal 2011, contracts for $3 million or more totaled 81% of the overall dollar volume of citywide procurements. These larger contracts represented just over 1% of the

total number of procurements made. By contrast, purchases for $100,000 or less accounted for only 2% of the total dollar value purchased, but 87% of the number of procurements processed.

Table I-2: Dollar Value of Contracts by Contract Size								
Group	Fiscal 2011		Fiscal 2010		Fiscal 2009		Fiscal 2008	
	Value	%	Value	%	Value	%	Value	%
<$0	($494,618,396)	-3%	($356,175,022)	-2%	($87,152,896)	-1%	N/A	N/A
$1-$100K	$369,473,060	2%	$366,369,083	2%	$395,136,349	3%	$319,110,623	2%
$100K-$1M	$1,150,658,936	8%	$1,264,255,921	7%	$1,172,540,171	9%	$822,050,462	5%
$1M-3M	$1,768,765,335	12%	$1,537,879,250	9%	$1,367,579,730	10%	$1,281,546,336	8%
$3M-25M	$5,368,642,883	36%	$4,749,256,580	28%	$3,904,333,698	29%	$3,453,083,063	21%
>$25M	$6,803,756,808	45%	$9,420,432,514	55%	$6,666,004,423	50%	$10,592,236,784	64%
Total	**$14,966,678,624**	**100%**	**$16,982,018,326**	**100%**	**$13,418,441,475**	**100%**	**$16,468,027,268**	**100%**

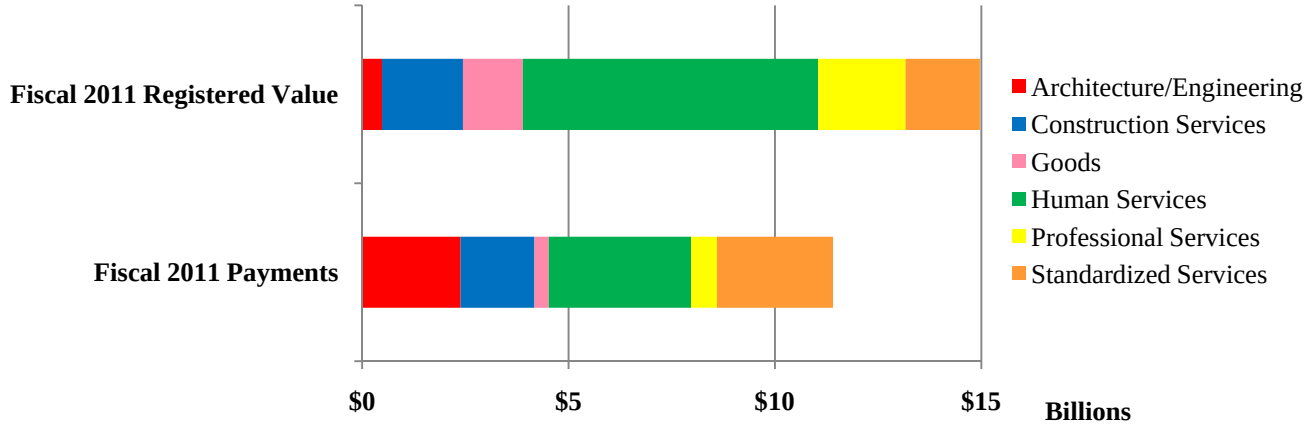
By far the most frequently used procurement method is micropurchase. But because this method reflects only purchases of $5,000 or less, micropurchases thus account for a very small share of overall contract value (0.4%). Although they account for a far smaller number of procurements, Competitive Sealed Proposals (or "RFPs") and Competitive Sealed Bids accounted for most of the Fiscal 2011 procurements by value. For a detailed discussion of procurement methods, see "Selecting a Procurement Method" on page 5.

D. Agency Payments on Contracts

This report tracks procurements by their value at registration, counting multi-year contracts entirely in the year of their initial registration. Because the proportion of multi-year awards remains relatively constant from year-to-year, this measure of contract value provides useful tracking information on procurement. This year, in addition, we provide comparable information on the total payments made by City agencies during Fiscal 2011 on their procurement contracts – both those initially registered in this year and those registered in prior years but still active in Fiscal 2011.

As shown below, the value of agencies' contract payments in Fiscal 2011 is slightly smaller (24% less) than the value of registered contracts. But the cyclical nature of the contract process is evident from the wide differences in the relative sizes of the "slices" for each industry. Human services, for example, amounted to 48% of the value of Fiscal 2011 contract registrations, but only 26% of contract payments – owing to the large number of multi-year procurements registered in Fiscal 2011.

Chart I-2: Fiscal 2011 Contract Registrations and Payments



II. Planning the Procurement

A. Introduction

City agencies provide crucial public works and essential programs to New Yorkers, but require a broad array of goods and services to do so. By helping to provide those goods and services, vendors become essential partners in the City's efforts – and the resulting dollars that flow through the procurement process contribute to the local economy and provide jobs for the thousands of New Yorkers employed by those vendors. This chapter describes agencies' procurement planning process, including the criteria for selecting the most appropriate procurement method.

The first step in procurement planning is to ensure that agencies have a well-trained staff. MOCS continues to offer a full curriculum on best practices and compliance with City procurement rules through the Procurement Training Institute. During Fiscal 2011, 744 individuals attended one or more of the 21 different courses offered. Classes covered topics such as determining vendor responsibility, ensuring vendor compliance with prevailing and living wage mandates, and procurement ethics. As of the conclusion of Fiscal 2011, a total of 103 Agency Chief Contracting Officers (ACCOs) and other high-level procurement staff had attained full certification under the City's professional development program.

B. Selecting a Procurement Method

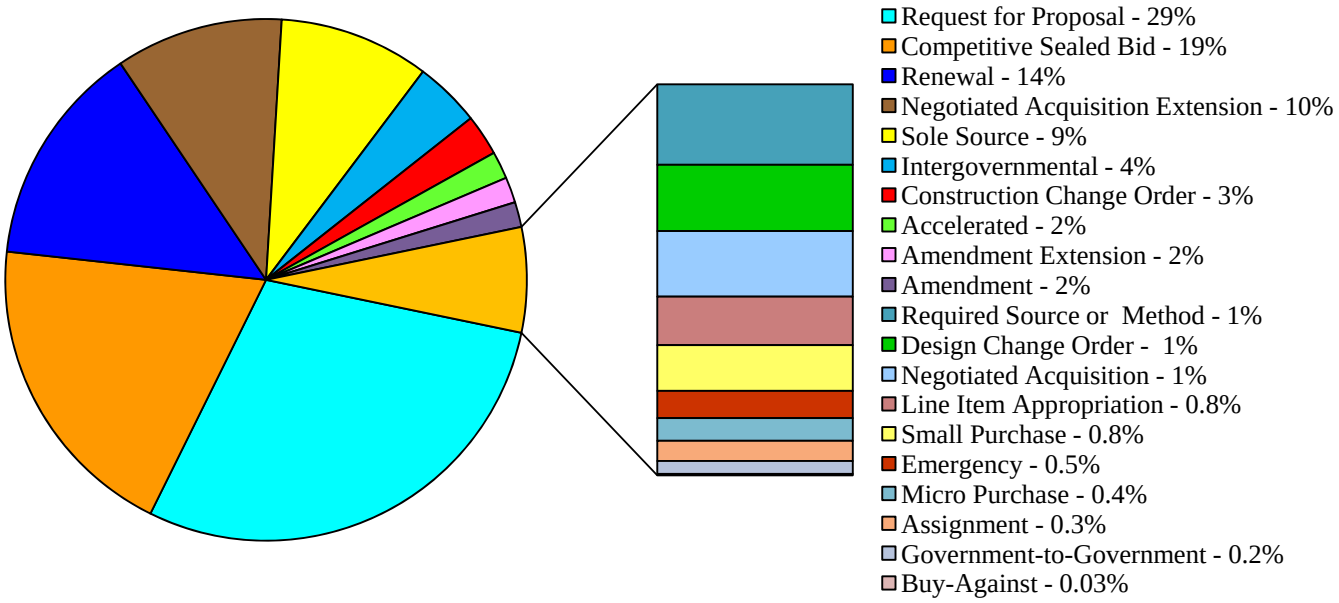
City agencies use different methods to select vendors; methods vary according to such factors as competitiveness, speed of the procurement process and length of the resulting contracts that can be awarded. This section outlines these methods and the circumstances in which agencies employ them.

1. Methods of Procurement

The chart on the following page reflects the total Fiscal 2011 procurement volume by dollar value for each of the procurement method categories tracked in this report. Agencies choose among the various methods based on their business needs and the City's procurement rules.

More than half of all City procurements result from four competitive methods: ***competitive sealed bids,*** with vendors selected on a low-bid basis; ***accelerated procurements,*** a fast-track bid process for commodity purchases such as fuel that must be obtained quickly due to shortages or rapid price fluctuations; ***competitive sealed proposals*** *(also called* ***requests for proposals*** *or* ***RFPs),*** with vendors chosen based on price and quality-based factors; and ***small purchases,*** a less formal competitive process for purchases valued between $5,000 and $100,000. Year-to-year comparisons of procurement volumes by various methods of procurement are shown in Appendix C.

Chart II-1: Dollar Value of Contracts Citywide by Method of Procurement
Total Dollar Value = $15.0 Billion



The next largest group of procurements, accounting for 31% of Fiscal 2011 procurement value, consists of six methods used to continue or expand existing contracts. These include ***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 any current contract; ***negotiated acquisition extensions,*** allowing a negotiated additional term on the same basis as the initial contract; ***amendments***, which allow the addition or subtraction of funds to a current contract to reflect programmatic needs; and change orders, which we classify as either ***construction change orders*** and ***design change orders,*** amending the contracts that support capital construction projects so that ongoing work can be completed.

Agencies also procure goods and services via selection processes based on determinations by other governmental agencies. These include: ***intergovernmental procurements***, where the City "piggy-backs" contracts held by other government agencies, typically state or federal entities; ***required method*** and ***required/authorized source awards***, where an outside entity (also typically a state or federal agency) determines either how the City must solicit a contract or its actual choice of vendor; and ***discretionary awards*** (also called ***line item awards***), where elected officials are authorized to designate the vendors to be used (see Vetting Contracts Designated by Elected Officials, page 40). Combined, these procurements amount to 6% of the Fiscal 2011 procurement volume.

Lastly, 12% of Fiscal 2011 procurements rely on a variety of methods subject to more limited competition. These methods include: ***sole source awards,*** where only one vendor is available for the needed goods or services; ***emergency contracts,*** where public health or safety considerations dictate rapid

response; ***negotiated acquisitions,*** where agencies may limit competition based on such considerations as time-sensitivity, confidentiality or the existence of very few competitors in the market; ***micropurchases,*** for purchases valued at no more than $5,000; ***government-to-government*** contracts, where the City's vendor is itself a government entity; and ***buy-against procurements*** and ***assignments***, which are used when a vendor defaults, fails to fulfill its responsibilities or becomes unable to continue providing services or supplying goods. Detailed definitions of all these methods are included in the Glossary to this report.

Emergency Procurements – Responding to the Snowstorm

The snowstorm that started December 26, 2010, which began the second snowiest winter in the City's weather history, presented huge procurement challenges and has prompted significant improvements in the City's preparedness plans for the future. From a procurement standpoint, the first major challenge was to acquire enough additional assistance from vendors, to supplement DSNY's capacity to clear massive amounts of snow on the ground. DSNY initially struggled to recruit contractors over the holiday weekend, when many had already been contracted for private work. Meanwhile, DSNY's own salt reserves were severely depleted. Handling such a storm of obstacles required cooperative efforts by DSNY, the Law Department, the Comptroller's Office, MOCS and DCAS. In the immediate aftermath of the storm, these agencies processed nearly $18 million worth of emergency contracts, including over $11.5 million in plowing services and over $6 million worth of additional road salt and de-icing compounds.

In the aftermath of this storm, the City also developed a 15-point action plan for future winter storms. This plan outlines a streamlined process to declare emergencies, an improved accountability tool to monitor snow clearing, processes to ensure rapid deployment of City resources, better pre-positioning of private contractors and more efficient communication between all parties involved. DSNY will secure and expeditiously deploy private contractors in advance, to facilitate their assistance as needed. Procurements are underway for requirement contractors (see page 56) to provide snow plowing services for defined tertiary streets in designated districts, and to provide hired equipment and operators to perform supplemental snow plowing and hauling, and/or incidental towing services, in various zones throughout the City.

C. Competitive Procurements: Success in Attracting Bidders and Proposers

Competition is a primary indicator of the City's ability to obtain fair prices and high quality for its goods and services. We review competitiveness in competitive sealed bids and RFPs, as these are open to all qualified vendors. We define a "highly competitive" procurement as one with at least three responses. In Fiscal 2011, the level of such procurements remained high at 88%, similar to Fiscal 2010. Agency totals and comparative year-to-year data are presented in Appendix D.

Table II-1: Citywide Competition Level by Industry (Dollar Value)

Industry Sector	% of Highly Competitive Procurements			
	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008
Architecture/Engineering	99%	91%	87%	87%
Construction Services	98%	88%	62%	27%
Goods	87%	98%	95%	89%
Human Services	82%	95%	69%	93%
Professional Services	99%	69%	74%	99%
Standardized Services	91%	89%	97%	93%
Total	**88%**	**89%**	**80%**	**64%**

The decline in human services competitiveness to 82% in Fiscal 2011 resulted from a single $471 million DOHMH contract awarded to Public Health Solutions to coordinate delivery of HIV-related services. At that scale, few competitors were available. Competitiveness in human services would otherwise total 95%. Similarly for goods, competitiveness declined as a result of several large purchases by DCAS of specialized vehicles for use by DSNY and the Fire Department (FDNY), for which only a few competitors are able to supply the City's needs.

For small purchases, agencies use an informal competitive process, drawing a random sample of at least five bidders from the citywide bidders lists for the type of goods or services needed. The bidders list system automatically includes an equal number of certified M/WBEs, resulting in the solicitation of at least ten firms. This process of creating a solicitation list – called "5+5" – creates enhanced opportunities for M/WBEs to compete for the City's small purchases. While small and micropurchases continue to account for a small dollar volume of agency procurement dollars, the large number of available procurements presents excellent opportunities for certified M/WBEs to begin successful business relationships with the City.

Robust competition is critical to ensuring that small purchases remain a wide open door for M/WBEs and other new entrants seeking to become business partners with the City. As the table below shows, competition levels remained strong in Fiscal 2011.

Table II-2: Level of Competition in Small Purchases

Number of Solicitations	Fiscal 2011		Fiscal 2010		Fiscal 2009		Fiscal 2008	
	Value	% of Total	Value	% of Total	Value	% of Total	Value	% of Total
1 to 4	$4,848,298	4.6%	$1,423,668	1.4%	$3,676,379	3.3%	$2,103,651	1.8%
5 to 9	$10,764,071	10.3%	$12,466,516	12.5%	$8,525,909	7.9%	$11,396,286	9.5%
10 or More	$89,338,994	85.1%	$86,160,484	86.1%	$95,836,632	88.8%	$106,339,798	88.7%
Total	**$104,951,363**	**100%**	**$100,050,668**	**100%**	**$108,038,920**	**100%**	**$119,839,734**	**100%**

D. Planning Human Services Procurements

1. Human Services Contracting Cycle

Most human service contracts address ongoing programmatic needs, and in many cases – such as child welfare or mental hygiene – provide crucial help to some of the City's most vulnerable residents. An agency's portfolio of contracts for each of its programs typically consists of many multi-year contracts that originally resulted from a single RFP and thus expire at the same time. Some have single-year or multi-year renewal terms, and most are extended by at least one or two years at the end of the original contract cycle. Because human service procurements occur in these large groupings, the total value of human service contracts registered in a fiscal year can vary widely.

As noted on page 3, Fiscal 2011 human service procurement volume underwent a significant increase over the comparable Fiscal 2010 volume. This increase stems from the re-procurement of a small number of programs that serve a large number of clients.

- ACS registered human service contracts valued at more than $3.7 billion, up from $1.6 billion in Fiscal 2010. One major program, Child Welfare, accounts for most of this increase. For a detailed description of ACS' overhaul of this program, see "ACS' Child Welfare Program Restructuring" on page 11.

- DHS registered $988.9 million in human services contracts, which was also up substantially from its Fiscal 2010 total of $478.7 million. Contracts from an "open-ended" RFP, aimed at increasing system-wide shelter capacity, accounted for nearly all of the increase. Under the open-ended RFP, which has been available to potential shelter providers since 2000, proposals come in from providers for different types of shelter facilities, at various times. DHS evaluates them on an ongoing basis as they are received. In Fiscal 2011 DHS registered eight new contracts under this RFP, cumulatively valued at $417 million.

- DOHMH registered $924.1 million in human services contracts, up from $345.8 million in Fiscal 2010. Two contracts accounted for most of this increase. Under a "master contract" valued at $471 million, Public Health Solutions will coordinate service delivery by health care providers and community-based organizations providing services to HIV-infected individuals and persons at risk of contracting HIV. Similarly, under its $184 million contract, Prison Health Services will provide medical and mental hygiene services to the City's detainees and prison inmates.

2. Annual Human Services Plans

As required by Procurement Policy Board (PPB) Rule 2-04, human services agencies publish annual plans to inform City vendors and the general public of new and expiring contracts. The plans provide transparency about upcoming City procurement actions and also serve as a planning tool for both agencies and their nonprofit partners. City agencies and MOCS work together to make sure that where continuity of services is required, a new contract or contract continuation is executed prior to the expiration of an existing contract. The plans are available at www.nyc.gov/MOCS. A snapshot from a posted plan is shown below.

DYCD FY'12 HUMAN SERVICES ANNUAL PLAN 6.30.2011					
Vendor Info					
Name	Program Name or Description	Existing (E) or New (N) program	Continuation plan -- RFP award (RFP) or renewal (REN) or neg. acq. ext (NAE) or amend. ext. (EXT) or State-Mandated (SM) or Sole Source (SS) or none (NO)	End date for expiring contract	Start date for new contract
Italian American Civil Rights League	Summer Youth Employment	E	REN	3/31/2012	4/1/2012
Jacob A. Riis Neighborhood Settlement, Inc.	Summer Youth Employment	E	REN	3/31/2012	4/1/2012
Kips Bay Boys & Girls Club	Summer Youth Employment	E	REN	3/31/2012	4/1/2012

3. Concept Reports

When an agency decides to initiate or substantially alter a human services program, it issues a "concept report" to solicit feedback from stakeholders and other members of the public. Within the concept report, the agency must include the purpose of the RFP, the planned method for evaluating proposals, the estimated term of the contracts, total funding available, the anticipated number of awards and a procurement timeline. This report must be issued publicly at least 45 days prior to the release of an RFP, providing the agency with comments and concerns to consider when drafting the RFP.

MOCS approved nine concept reports during Fiscal 2011, which by the end of the fiscal year had resulted in the release of three RFPs. Agencies registered 148 contracts, valued at $544.9 million, which resulted from concept reports approved in prior years.

ACS' Child Welfare Program Restructuring

New York City's child welfare system has undergone enormous change over the past eight years. ACS is the largest city-administered child welfare system in the nation, and has had to adapt programs in response to major shifts in caseloads and client populations. In partnership with its nonprofit providers, ACS has enhanced the quality of services to children and families and improved training and oversight of direct staff and contracted service providers. ACS' procurement in Fiscal 2011 reflected its ongoing commitment to strengthen the core child welfare programs that protect New York City children.

In February 2008, ACS released a concept report announcing its plan to restructure preventive services, residential care, family foster care and community partnerships under a single Child Welfare umbrella. Through a new RFP, ACS sought to protect children and strengthen families through three basic principles: 1) a safe, stable, and nurturing family throughout a child's placement in foster care; 2) safe, stable, early reunification with family; 3) a permanent family through adoption or other legally permanent means, as soon as it becomes clear that reunification is not the best goal for a child. The Child Welfare RFP added new programmatic dimensions, including specialized programs for children with developmental disabilities, those who have been sexually exploited or those who exhibit sexually abusive behavior, as well as mobile crisis response teams to provide families in crisis with in-home clinical and social work support.

The RFP also included a new initiative, the Community Partnership Program, to increase the engagement for communities and their stakeholders to support and inform a strong child welfare system, creating an integrated, coordinated local community and citywide system of comprehensive services.

ACS received a total of 315 proposals in response to this solicitation, and as a result of the RFP the agency made 186 new awards totaling $2.6 billion. Of these, 139 contracts were registered in Fiscal 2011, totaling $2.4 billion (55 contracts with family foster care providers, 44 contracts with preventive care providers, and 29 contracts with residential care providers and 11 contracts with CPI providers).

By restructuring these programs and combining funding sources and administration, ACS used its procurement process to ensure that NYC's children and families would receive the services they need, through providers based in their communities, while also ensuring that scarce resources will be put to work efficiently and effectively.

E. Planning Construction Procurements

1. Construction Project Pipeline

The Construction Project Pipeline is one of the many tools used by City agencies to communicate upcoming work opportunities to vendors. It provides a list of projects that the City anticipates bidding out in the near future, allowing the construction contracting community to plan for and make business decisions about upcoming bids. The pipeline provides useful information such as project location, if a project is subject to Minority- and Women-Owned Business Enterprise (M/WBE) subcontracting requirements, if a PLA applies and which projects are to be included in the City's Damages for Delay pilot program. The Pipeline can be found at www.nyc.gov/MOCS.

2. Early Project Scoping

Completing construction projects on schedule and on budget requires careful planning, particularly at the outset when the initial project scope is determined. As part of Mayor Bloomberg's ongoing construction reform and cost control initiatives, City agencies are receiving funds to conduct architectural and engineering studies aimed at obtaining more accurate cost estimates. The goal of this Early Project

Scoping initiative is to identify potential challenges up front, so that City agencies can adjust designs to avoid unnecessary change orders later and can more accurately predict which projects they can afford.

For example, in Fiscal 2011, the Department of Transportation (DOT) elected to use Early Project Scoping funds to award a $3.7 million contract to AECOM USA Inc. for design and engineering of fender systems for the Staten Island Ferry, a highly technical and complex project. AECOM will focus on many factors including environmental constraints and potential permitting problems, safety and operational considerations, soil and foundation considerations, and construction cost factors. Once completed, AECOM's scope report will help DOT decide whether to continue with the project. As part of its ongoing procurement streamlining efforts, DOT also established pre-solicitation kick-off meetings, with the goal of optimizing contract specifications prior to issuance, and is also relying on value engineering contracts on an as-needed basis.

3. Joint Bidding

It's often just as crowded underneath a City street as it is above ground.

City-owned infrastructure, such as water mains or sewers, operates in close proximity to infrastructure owned by private utilities, such as electrical lines owned by Con Ed, making it a physical impossibility to do the City's work without moving or protecting the utility infrastructure. As a result, City contractors must negotiate arrangements with each utility as work progresses, in many cases putting the City's work on hold until the utility issue can be resolved. The length and cost of the construction project dramatically increases when these utility issues are encountered and disputes arise while the City's work progresses – or does not progress.

To address this issue, the concept of "joint bidding" was first developed in the late 1980s. In a joint bid, the City and affected utilities cooperatively solicit bids and select a single vendor so that pricing and other arrangements are worked out before work commences. Litigation halted the use of joint bidding in 1998. Without joint bidding, street construction projects take as much as 60% longer to complete, increasing the City's cost for construction supervision and overhead, as well as greatly inconveniencing the residents and businesses that must endure the disruption to their local streets. However, to expedite projects associated with critical City infrastructure work, the State Legislature authorized the City's Department of Design and Construction (DDC) to use joint bidding in rebuilding Lower Manhattan after

the September 11th attacks. During Fiscal 2011, DDC registered over $104 million worth of joint-bid contracts for Lower Manhattan infrastructure work.

Separate state legislation also allowed joint bidding for work to connect the newly-built Third Water Tunnel to the existing distribution grid. Unfortunately, due to litigation by a few contractors and the General Contractors Association (GCA), DDC has not yet been able to pursue joint bidding as a common-sense way to expedite this critical work, so DDC and DEP are moving forward with projects to protect the supply of water to New York City using the conventional, but more delay-prone, bidding process.

F. Planning for a Sustainable City

Procurement supports the Administration's efforts to promote a sustainable New York City in multiple ways. Not only do specific procurements advance the goals of the City's innovative PlaNYC, but various local laws ensure that sustainability is considered for all relevant procurements.

1. Environmentally-Preferable Purchasing & Green Buildings

Pursuant to Local Law 118 of 2005 (LL 118), this section includes data reflecting City compliance with environmentally-preferable purchasing (EPP) standards,[2] which require agencies to procure environmentally friendly alternatives for goods that use energy or water, contain potentially hazardous substances or can be made from recycled or recovered materials.

Goods Purchases

All goods covered by the EPP standards fall within the purview of DCAS, because DCAS is the City's major purchaser of commodities. Goods covered by the EPP standards can be obtained by City agencies through Citywide requirement contracts awarded by DCAS. A detailed listing of goods contracts covered by the EPP standards is included in Appendix E.

Table II-3: Fiscal 2011 EPP Goods

Products	Value
Miscellaneous Products – Non-Construction	$8,467,387
Electronics	$4,908,126
Paper products	$3,009,213
Architectural Coatings	$124,044
Plumbing	$362,945
Total	**$16,871,715**

Construction Projects

In addition to goods that agencies purchase directly, many products used in construction are also covered by EPP standards. For instance, agencies must limit the hazardous content of carpets (and related products such as carpet cushions or adhesives), paints and other architectural coatings. During Fiscal 2011, City agencies awarded construction contracts valued at more than $357 million that included at least one of 14 EPP specifications. This total includes more than $106 million in contracts with specifications for Energy Star products,[3] nearly $91 million in contracts with specifications for EPP lighting and more than $75 million with specifications limiting the hazardous content of architectural coatings.

[2] LL 118 requires compliance reporting with respect to energy- and water-using products, products with hazardous content and products made from recycled/recovered materials. LL 118 provides for specific exemptions and waivers, but these provisions were not exercised in Fiscal 2011. Small purchases and micropurchases are also exempt from the EPP standards.

[3] Some contracts use specifications for more than one category; thus, individual product totals cannot be cumulated.

The table below provides year-to-year data on the amount of contract dollars covered by the EPP standards since the implementation of these laws in Fiscal 2007. Fluctuations in volumes reflect such factors as variation in the amount of large-scale construction projects (typically covered by some or all of the standards), and large DCAS purchases, e.g., for photocopiers.

Table II-4: EPP Procurement Totals Fiscal 2007 through Fiscal 2011			
Goods		**Construction**	
Fiscal Year	**Dollar Value**	**Fiscal Year**	**Dollar Value**
2007	$17,601,616	2007	$241,537,004
2008	$5,752,250	2008	$2,514,826,140
2009	$65,561,345	2009	$966,470,638
2010	$144,266,132	2010	$453,698,142
2011	$16,871,715	2011	$357,363,514
Goods Total	**$250,053,058**	**Construction Total**	**$4,533,895,438**

Most of the City's largest capital projects are covered by the more comprehensive Green Buildings Law, Local Law 86 of 2005 (LL 86). Where Local Law 86 applies to a City capital project, the specific requirements for green construction, energy cost reduction and water conservation are determined by the project type, occupancy group and overall construction costs. While projects subject to the Leadership in Energy and Environmental Design (LEED®) provisions of Local Law 86 are exempt from EPP reporting requirements, these large projects do, in fact, use substantial quantities of EPP products. In Fiscal 2011, over $1 billion worth of contracts were registered for LL 86 projects.[4]

2. Progress Implementing PlaNYC

On Earth Day 2007, Mayor Bloomberg announced PlaNYC, a broad initiative to enhance New York City's livability and sustainability through 2030 and beyond. PlaNYC established ambitious goals in the areas of land, water, transportation, energy, air and climate change, outlining 127 individual initiatives. On Earth Day 2011, the updated PlaNYC outlined program accomplishments and new initiatives. Highlighted below are two Fiscal 2011 DPR contracts that contribute to the PlaNYC effort:

Greenstreets

The Greenstreets initiative is one of the most extensive urban beautification initiatives in New York City since the start of citywide neighborhood street tree planting in the early twentieth century. Since its launch in 1996, DPR has converted thousands of paved street parcels – islands formed by the City's intersecting streets – into leafy, "pint-sized" parks. These triangles and medians beautify the urban landscape, calm busy traffic, increase pedestrian safety and capture stormwater. Through the PlaNYC initiative, the Greenstreets program received its first-ever dedicated funding of $8.5 million which provides for the creation of 480 new sites by 2017 and establishes a source of funding for site

[4] Projects that cost $2 million or more and entail new buildings, additions to existing buildings and/or substantial reconstruction, must achieve LEED® Silver certification from the United States Green Building Council (USGBC). Projects costing $12 million or more must also meet energy cost reduction targets. Projects to install or replace boilers and HVAC comfort controls costing $2 million or more, and projects to install or replace lighting systems costing $1 million or more, must meet energy cost reduction targets. Plumbing system projects costing $500,000 or more must meet water use reduction targets.

maintenance. Since the launch of PlaNYC in 2007, 257 new sites throughout the five boroughs have been completed, utilizing best practices in sustainable design. In Fiscal 2011, DPR awarded Capri Landscaping Inc. a competitive sealed bid contract for $713,000 for Greenstreets construction work.

Dyker Beach Park Lighting

Only a fraction of the City's 800-plus athletic fields are usable after dark. Placing lights around our athletic fields allows people to play longer into the evening at a fraction of what a new field would cost. The lights can provide an additional two hours of use during the summer and an additional four hours during the spring and fall. Through PlaNYC, nineteen fields, located in twelve parks throughout the five boroughs, have been slated to have lights installed. To date, eleven of the nineteen fields have been completed, while the remaining eight are currently under construction and will be opened for use in Spring 2012. For instance, in Fiscal 2011 DPR awarded Peter J. Catanzaro Inc. a contract for $784,826 for the construction of recreational lighting at Dyker Beach Parks, and in August 2011, a celebratory ribbon-cutting event was held to honor the addition of the new lights to Dyker Beach baseball fields.

To learn more about these and many other PlaNYC efforts, log on to nyc.gov/PlaNYC.

G. Economic Development Corporation (EDC)

EDC, a nonprofit corporation operating under contract with the City, is the primary vehicle through which economic development services are provided by the City.[5] In Fiscal 2011, EDC's procurements totaled nearly $460 million. EDC's procurement methods are similar to those of City agencies. These methods include public bidding (63%), RFP awards (28%), and other methods such as intergovernmental procurements, sole sources, small purchases and micropurchases (collectively 1%). EDC's other procurements (8%) were done by means of "funding agreements" and interagency agreements, transactions similar to negotiated acquisitions or required source procurements. EDC's selection of the business partner for the agreement is generally dictated by the commitments the City has made to support particular economic initiatives, specific institutions or redevelopment projects.

Most of EDC's Fiscal 2011 procurements went to support construction and development projects (76%).[6] Another 23% supported professional services, including planning and economic studies and economic development-related services, as well as architecture and engineering. Finally, about 1% of EDC's procurements entailed the purchase of goods or standardized services such as printing and mailing.

Examples of EDC's Fiscal 2011 procurements include:

- **Hunter's Point South:** In late 2006, Mayor Bloomberg announced the City's intention to acquire the Hunter's Point South site in Long Island City, to create a vibrant, sustainable, mixed-use and mixed-income neighborhood and waterfront park, including up to 5,000 residential units, 60 percent of which will be affordable to middle-income households. In Fiscal 2011, EDC awarded a $15.9 million construction contract for this project to Galvin Bros Inc/Madhue Contracting Inc JV.

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[5] EDC supports these efforts by conducting planning and feasibility studies, performing financial analyses, guiding projects through necessary public approvals and packaging various City programs and financing incentives. In Fiscal 2011, SBS registered 2 contracts with EDC: a master contract for $818 million and a maritime master contract for $180 million.

[6] This figure includes direct construction work, construction management services, and EDC's real estate development and property acquisition initiatives.

- **Water Siphon Replacement:** The Anchorage Channel is an integral part of the City's water transportation infrastructure, providing the international shipping trade access to the harbor and the Port of New York and New Jersey (the "Port"), one of the most heavily-used water transportation arteries in the world. The Port handles nearly 40% of the North Atlantic shipping trade and provides more than 229,000 jobs to the local economy. In order to deepen Anchorage Channel to accommodate the new generation of cargo mega-ships, two water siphons providing tap water to Staten Island must be replaced by a deeper siphon. As part of this project, during Fiscal 2011 EDC procured contracts for construction, resident engineering and construction management.

H. Generating Revenue – Franchises, Concessions and Revocable Consents

City agencies also provide services and amenities through awards that allow private entities the right to use City-owned property in exchange for payment, provision of a public service, or both. These transactions are classified as franchises, concessions or revocable consents. The City awards franchises and concessions in a manner similar to the procurement process, mainly using RFPs or competitive sealed bids. Many require public hearings; others require approval by the Franchise and Concession Review Committee (FCRC). Revocable consents follow a permitting process; the sponsoring agency conducts public hearings. MOCS oversees compliance with applicable laws and regulations. In Fiscal 2011, seven agencies awarded 129 new concession awards, for which revenue projections were estimated at nearly $79 million, over the course of multi-year terms. DPR made 80% of the awards, representing 94% of the value, for uses including restaurants and mobile food units; merchandise and marketing operations such as Christmas tree and souvenirs; sports and recreation facilities, marinas and amusement parks; and occupancy permits, parking lots and other types of concessions.[7] Agencies awarded over 89% of these concessions through competitive sealed bids or RFPs, and the rest by sole source or other methods.

During Fiscal 2011, the City collected nearly $47 million from nearly 600 operating concessions. DPR took in almost $41 million, with 18% of that revenue coming from golf courses, 21% from restaurants and 9% from pushcarts. DCAS collected over $2 million from occupancy permits. EDC collected nearly $2.5 million from occupancy permits and the City's downtown Manhattan heliport. NYC & Company collected over $1 million in fees for merchandise bearing City-owned trademarks and logos.

The FCRC approved seven franchise transactions in Fiscal 2011, including two new DOT bus franchises and five changes of control of DoITT franchises. The City's 72 existing franchises yielded $197.4 million in revenue, including $126.7 million from cable television and $39.6 million from street furniture.[8] DOT also registered 60 revocable consents, with a total projected value of nearly $5 million, for bridges, conduits and other street and sidewalk obstructions. The Department of Consumer Affairs (DCA) registered 780 revocable consents for sidewalk cafés, with a total projected value of $9.6 million.

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[7] In addition to DPR, six other agencies awarded concessions during Fiscal 2011: DCAS; DOHMH; DOT; the Department of Housing Preservation and Development (HPD); NYC & Company; and the Police Department (NYPD). In addition to the 129 concession awards noted above, DPR also issued 273 short-term (less than 30 days) permits, requiring neither approval nor hearings, yielding $569,172 in revenue, while EDC issued 11 such short-term permits, yielding $46,084 in revenue. In addition, the FCRC approved 21 other requests to negotiate sole source concessions, six by DPR and 15 by DOT, that had not reached the award stage as of the end of Fiscal 2011.

[8] A comparison to prior fiscal years is shown in Appendix F.

NYC Prescription Benefit Concession

DOHMH awarded a concession to HealthTran, LLC for the right to use City-owned intellectual property, such as the City Seal, to market a new drug discount card program. BigAppleRx, the City's official prescription discount card, helps consumers save on medications. Savings average 15% for brand name medications and 53% for generics. The City receives no monetary compensation, but HealthTran covers program costs, including advertising and publicity. By visiting www.BigAppleRx.com, consumers may download the card, access educational information on prescriptions, compare prices and locate nearby participating pharmacies. The BigAppleRx Card is available in more than 750 locations throughout the City including DOHMH, City Council offices, neighborhood businesses and community organizations.

Airport Bus Franchise

During Fiscal 2011, DOT awarded a franchise to Veolia Transportation Services, Inc. (VTSI), operating as the NYC Airporter, for bus service between Midtown Manhattan, JFK International Airport and LaGuardia Airport. The NYC Airporter's core fleet will include 29 newly built diesel-electric hybrid buses, each with free Wi-Fi and a capacity for 31 passengers plus baggage, fully accessible to people with disabilities. VTSI operates through its subsidiary Golden Touch Transportation of New York, Inc., based in Astoria, Queens. VTSI projects that potential revenue to the City over the 25-year franchise term will reach $27.5 million.

Photo courtesy of: VTSI

I. Grants

Grants are cash transfers to private entities to support activities that have a public purpose but which are largely directed by the recipient, as distinguished from contracts which pay a vendor for specific goods or services as directed by the City. City agencies processed over 1,000 grants in Fiscal 2011, valued at $153.3 million. Over 90% (964) went to cultural organizations, with funding from the Department of Cultural Affairs (DCLA) in support of cultural programming. These grants were either administered by DCLA or by DDC for capital improvements. Capital funding to cultural organizations comprised 78% of the Fiscal 2011 grants total. SBS also processed 90 grants funded by the federal Department of Housing and Urban Development. Most flowed through the Avenue NYC program, with 49 grants totaling $2.1 million to support nonprofits' community revitalization efforts in low and moderate income communities. Another 41 grants totaling $768,080, went to small businesses via the Small Firm Assistance Program (SFAP), administered by SBS, EDC and the Lower Manhattan Development Corp. SFAP provides working capital to small firms in Lower Manhattan that have suffered disruption as a result of public construction projects.

Table II-5: Fiscal 2011 Grants

Agency	Value	#
DCLA	$31,376,285	946
DDC	$119,025,154	18
SBS	$2,913,805	90
Total	**$153,315,244**	**1054**

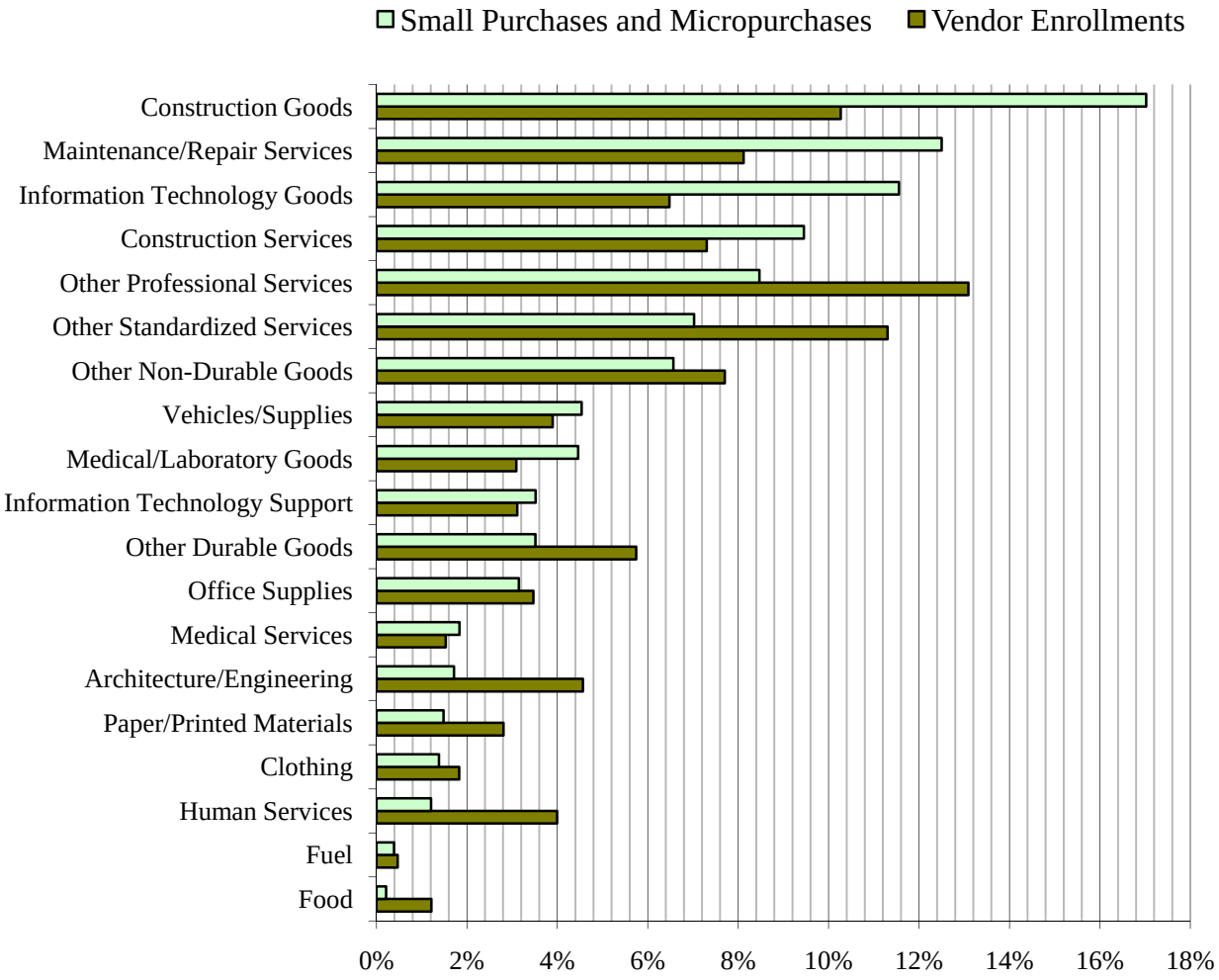
III. Finding Qualified and Responsible Business Partners

A. Notifying Potential Vendors

1. Vendor Enrollment Center

Attracting vendors for City work ensures the City receives the best quality and the lowest prices from the widest possible range of businesses. The City publicly advertises many procurements and also maintains bidders lists which agencies use to directly notify potential vendors of upcoming opportunities. The Vendor Enrollment Center (VEC) enrolls businesses wishing to sell goods or services to the City onto these lists. At the end of Fiscal 2011, 63,669 individual vendors were enrolled to do business with the City, up from 56,745 enrolled in Fiscal 2010. Vendors sign up for lists that correspond to their respective areas of business. Many vendors offer goods or services in more than one category. Viewed from this perspective, the City has more than 134,721 unique vendor and business category combinations to choose from to meet its needs, providing the basis for robust competition.

Chart III-1: Vendor Enrollment by Industry Detail with Small Purchases and Micropurchases Percentages of Total Enrollment and Purchases



Almost half of all vendors are enrolled in five areas: other professional services (13%), other standardized services (11%), construction goods (10%), maintenance and repair services (8%) and other non-durable goods (8%). As shown above, these areas of high enrollment correspond to many of the top areas reflected in agency small purchase and micropurchase volumes, indicating a match between the products and services vendors are seeking to sell to the City, and actual patterns of agency purchasing. To register with the Vender Enrollment Center, vendors can complete an online application at http://www.nyc.gov/html/mocs/html/business/bidderform.shtml or call 212-857-1683. Once enrolled, vendors should contact agencies directly to make them aware of their interest and capacity to supply the City. Agency contact information is available at www.nyc.gov/selltonyc or by calling 311.

2. "Sell to NYC" Website

"Sell to NYC" is a dedicated section of the City's website (at www.nyc.gov/selltonyc) providing information to vendors on how to sell goods or services to City agencies. The site includes:

- An overview of the procurement process, and copies of relevant forms;
- Links to critical resources such as the web-based Vendor Enrollment Application and the City Record Online, which lists upcoming procurement opportunities; and
- Answers to Frequently Asked Questions.

3. First Time Vendors

Each fiscal year the City renews dozens of contracts with established partners to continue providing pivotal services to New Yorkers. But the City also strives to open opportunities for future partnerships by identifying new vendors that can contribute to New York in unique and varied ways. During Fiscal 2011 first-time vendors successfully bid for services ranging from construction to first aid supply. For example, DPR awarded a $198,000 contract to VIF Corp, a local construction company, to renovate the Memorial Grove section of Van Cortland Park in the Bronx. The memorial, originally built in 1949, honors the brave Americans who lost their lives fighting in WWII and the Korean War.

B. Expanding Opportunity: Minority- and Women-Owned Business Enterprises

The City created its M/WBE program pursuant to Local Law 129 of 2005 (LL 129). The program, created to expand opportunities for City-certified M/WBEs, has yielded almost 2.5 billion dollars in procurements for those certified firms to date. In Fiscal 2011 alone, 870 M/WBE firms (about one quarter of those certified) were awarded at least one contract or subcontract with City agencies.

Table III-1: Awards to M/WBEs Since LL 129						
	Fiscal 2011	**Fiscal 2010**	**Fiscal 2009**	**Fiscal 2008**	**Fiscal 2007**	**All Years**
Prime Contracts	$376,384,185	$332,453,548	$306,969,169	$340,184,159	$194,840,881	$1,550,831,942
Subcontracts	$186,473,196	$381,946,178	$180,378,560	$127,505,932	$59,182,856	$935,486,722
All Contracts	**$562,857,381**	**$714,399,726**	**$487,347,729**	**$467,690,091**	**$254,023,737**	**$2,484,726,811**

The City's M/WBE program aims to increase awards to certified firms, but the City is subject to Federal and State legal constraints. Federal constitutional law requires that the program be narrowly tailored to address gender- and race/ethnic-based disparity established in an empirical study. "Disparity" means the difference between the City business awarded to M/WBEs and the amount that would have been awarded based on the availability of M/WBEs capable of doing that work within the relevant industries and market area. Accordingly, the M/WBE program does not apply to all City contracts. The City's disparity study demonstrated disparity for prime contracts awards under one million dollars and for construction and professional subcontracts under one million dollars, so larger-scale procurements are not covered by the M/WBE goals. Within the industries and procurement methods covered by LL 129, only about 9% of the City's dollars were awarded in prime contracts valued at less than one million dollars.[9]

State competitive bidding laws also limit the City's ability to increase contract awards to M/WBEs. State law mandates that most of the City's prime contracts over $100,000 be awarded by competitive sealed bid. Thus, although LL 129 sets "aspirational" goals for prime contracts, an agency may not award such a contract to an M/WBE unless it submits the lowest responsible bid. Even if the M/WBE falls short by only a small amount, its bid cannot be accepted. The City pursues its aspirational prime goals by conducting outreach and providing training to enable M/WBEs to bid successfully.

The City's overall procurement volume declined by 12% in Fiscal 2011, although the sharpest decline occurred in awards valued above the one million dollar mark, i.e., awards not covered by the M/WBE goals program. As shown in Table III-2 below, the M/WBE goals program covered $346 million worth of prime contracts in Fiscal 2011, down from $382 million in Fiscal 2010, in keeping with the overall decline in construction procurements.[10]

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[9] The City's program is based on a 2005 study, which did not show disparity in several key areas: subcontracting in standardized services or goods, and certain race and gender groups, e.g., women-owned construction companies and Asian-American professional services firms. It also did not find disparity for standardized services or goods subcontracting, because it did not substantiate significant subcontracting (of any kind) in those industries. Similarly, it showed participation by WBEs in construction subcontracts and by Asian-American firms in professional services subcontracts to be commensurate with their marketplace availability, hence no disparity and no applicable goals. The City's goals program also excludes emergency procurements and sole source contracts, as well as human services contracts, which are typically awarded to nonprofits.

[10] See Table III-3, All Industries <= $5K, >$5K - $100K, and $100K - <$1M. The table excludes contracts procured with Federal or State goals, and those excluded from the goals program (human services, sole source and emergency contracts).

1. Prime Contracting Opportunities

Table III-2: Fiscal 2011 M/WBE Prime Contracts											
Industry/ Dollar Range	Total Dollar Volume	African American		Asian American		Hispanic American		Caucasian Women		All M/WBE	
		Value	%	Value	%	Value	%	Value	%	Value	%
Architecture/ Engineering	$249,056,257	$15,381	0.0%	$28,752,064	11.5%	$0	0.0%	$13,644,507	5.5%	$42,411,952	17.0%
<=$5K	$67,678	$4,500	6.6%	$1,120	1.7%	$0	0.0%	$5,014	7.4%	$10,634	15.7%
>$5K - $100K	$878,597	$10,881	1.2%	$218,999	24.9%	$0	0.0%	$0	0.0%	$229,880	26.2%
>$100K - $1M	$7,080,176	$0	0.0%	$2,211,622	31.2%	$0	0.0%	$1,639,493	23.2%	$3,851,115	54.4%
>=$1M	$241,029,806	$0	0.0%	$26,320,323	10.9%	$0	0.0%	$12,000,000	5.0%	$38,320,323	15.9%
Construction Services	$1,363,518,902	$801,198	0.1%	$57,089,997	4.2%	$3,802,254	0.3%	$21,958,526	1.6%	$83,651,974	6.1%
<=$5K	$35,395	$0	0.0%	$13,675	38.6%	$3,500	9.9%	$1	0.0%	$17,176	48.5%
>$5K - $100K	$1,930,482	$62,198	3.2%	$172,301	8.9%	$27,943	1.4%	$99,805	5.2%	$362,247	18.8%
>$100K - $1M	$36,327,386	$739,000	2.0%	$1,179,256	3.2%	$503,852	1.4%	$1,074,968	3.0%	$3,497,076	9.6%
>=$1M	$1,325,225,638	$0	0.0%	$55,724,764	4.2%	$3,266,959	0.2%	$20,783,752	1.6%	$79,775,475	6.0%
Goods	$1,265,896,384	$5,539,273	0.4%	$4,806,910	0.4%	$5,941,821	0.5%	$20,080,593	1.6%	$36,368,597	2.9%
<=$5K	$31,077,144	$1,147,347	3.7%	$1,460,968	4.7%	$1,403,334	4.5%	$4,698,256	15.1%	$8,709,906	28.0%
>$5K - $100K	$59,516,283	$3,439,135	5.8%	$3,013,199	5.1%	$2,326,363	3.9%	$9,705,448	16.3%	$18,484,145	31.1%
>$100K - $1M	$72,411,917	$952,791	1.3%	$332,742	0.5%	$610,198	0.8%	$2,090,842	2.9%	$3,986,573	5.5%
>=$1M	$1,102,891,040	$0	0.0%	$0	0.0%	$1,601,925	0.1%	$3,586,048	0.3%	$5,187,973	0.5%
Professional Services	$152,085,220	$597,701	0.4%	$7,080,760	4.7%	$1,828,429	1.2%	$816,854	0.5%	$10,323,744	6.8%
<=$5K	$3,174,347	$23,666	0.7%	$34,755	1.1%	$26,173	0.8%	$52,795	1.7%	$137,389	4.3%
>$5K - $100K	$11,512,338	$574,035	5.0%	$577,365	5.0%	$120,500	1.0%	$477,059	4.1%	$1,748,959	15.2%
>$100K - $1M	$14,315,780	$0	0.0%	$468,640	3.3%	$0	0.0%	$287,000	2.0%	$755,640	5.3%
>=$1M	$123,082,754	$0	0.0%	$6,000,000	4.9%	$1,681,756	1.4%	$0	0.0%	$7,681,756	6.2%
Standardized Services	$693,664,714	$4,749,842	0.7%	$5,859,729	0.8%	$1,826,179	0.3%	$3,717,434	0.5%	$16,153,184	2.3%
<=$5K	$21,722,525	$374,838	1.7%	$1,261,880	5.8%	$204,318	0.9%	$352,911	1.6%	$2,193,947	10.1%
>$5K - $100K	$46,327,858	$1,828,143	3.9%	$3,283,624	7.1%	$1,621,861	3.5%	$2,143,799	4.6%	$8,877,426	19.2%
>$100K - $1M	$39,837,497	$839,150	2.1%	$1,314,225	3.3%	$0	0.0%	$1,220,725	3.1%	$3,374,100	8.5%
>=$1M	$585,776,834	$1,707,711	0.3%	$0	0.0%	$0	0.0%	$0	0.0%	$1,707,711	0.3%
All Industries	**$3,724,221,476**	**$11,703,395**	**0.3%**	**$103,589,459**	**2.8%**	**$ 13,398,683**	**0.4%**	**$60,217,915**	**1.6%**	**$188,909,452**	**5.1%**
<=$5K	**$56,077,089**	**$1,550,351**	**2.8%**	**$2,772,398**	**4.9%**	**$1,637,325**	**2.9%**	**$5,108,978**	**9.1%**	**$11,069,052**	**19.7%**
>$5K - $100K	**$120,165,559**	**$5,914,392**	**4.9%**	**$7,265,488**	**6.0%**	**$4,096,667**	**3.4%**	**$12,426,110**	**10.3%**	**$29,702,658**	**24.7%**
>$100K - $1M	**$169,972,756**	**$2,530,941**	**1.5%**	**$5,506,485**	**3.2%**	**$1,114,050**	**0.7%**	**$6,313,027**	**3.7%**	**$15,464,504**	**9.1%**
>=$1M	**$3,378,006,072**	**$1,707,711**	**0.1%**	**$88,045,087**	**2.6%**	**$6,550,640**	**0.2%**	**$36,369,800**	**1.1%**	**$132,673,238**	**3.9%**

As reflected in Table III-3, during Fiscal 2011 M/WBE vendors obtained nearly 20% of the City's micropurchases, up slightly from Fiscal 2010. M/WBEs also obtained almost 25 % of small purchases, up

significantly from 19% in Fiscal 2010. For both types of purchases, City policy and rules strongly encourage agencies to seek out M/WBEs for enhanced opportunities.

Table III-3: Local Law 129 Prime Contracting Fiscal 2008-2011									
Industry / $ Range	Fiscal 2011			Fiscal 2010		Fiscal 2009		Fiscal 2008	
	Total	M/WBE		Total	% M/ WBE	Total	% M/ WBE	Total	% M/ WBE
		%	$						
Micropurchase	$56,077,089	19.7%	$11,069,052	$51,289,921	18.0%	$53,711,252	14.8%	$58,609,206	11.8%
A/E	$249,056,257	17.0%	$42,411,952	$408,793,265	10.1%	$361,709,262	13.0%	$341,719,943	2.3%
>$5K - $100K	$878,597	26.2%	$229,880	$303,062	41.8%	$1,630,305	12.6%	$1,354,415	29.1%
>$100K -$1M	$7,080,176	54.4%	$3,851,115	$3,300,718	57.0%	$10,845,043	1.1%	$9,339,255	0.0%
>=$1M	$241,029,806	15.9%	$38,320,323	$405,115,325	9.7%	$349,047,490	13.3%	$331,026,272	2.3%
Construction	$1,363,518,902	6.1%	$83,651,974	$5,152,164,039	3.2%	$2,502,205,913	3.9%	$5,399,156,535	1.5%
>$5K - $100K	$1,930,482	18.8%	$362,247	$7,006,285	18.2%	$19,763,979	15.7%	$14,886,190	10.7%
>$100K -$1M	$36,327,386	9.6%	$3,497,076	$69,678,971	11.2%	$112,300,328	15.9%	$77,367,843	11.6%
>=$1M	$1,325,225,638	6.0%	$79,775,475	$5,075,406,542	3.0%	$2,370,046,951	3.2%	$5,306,902,502	1.3%
Goods	$1,265,896,384	2.9%	$36,368,597	$1,171,742,701	2.0%	$723,824,878	1.5%	$740,856,029	2.5%
>$5K - $100K	$59,516,283	31.1%	$18,484,145	$58,528,269	24.5%	$59,902,176	10.7%	$67,508,084	11.1%
>$100K -$1M	$72,411,917	5.5%	$3,986,573	$78,946,614	0.8%	$66,735,297	0.8%	$90,795,597	1.3%
>=$1M	$1,102,891,040	0.5%	$5,187,973	$1,005,631,024	0.1%	$567,270,551	0.6%	$582,552,348	1.6%
Prof'l Services	$152,085,220	6.8%	$10,323,744	$215,693,274	5.6%	$444,229,271	1.7%	$737,938,837	1.2%
>$5K - $100K	$11,512,338	15.2%	$1,748,959	$12,484,128	11.3%	$17,692,282	6.3%	$16,363,109	6.0%
>$100K -$1M	$14,315,780	5.3%	$755,640	$12,178,139	20.2%	$25,491,546	8.7%	$19,070,381	7.4%
>=$1M	$123,082,754	6.2%	$7,681,756	$187,440,994	4.3%	$397,499,639	1.0%	$702,505,347	0.9%
Std. Services	$693,664,714	2.3%	$16,153,184	$1,516,490,008	0.9%	$1,135,049,977	6.1%	$5,118,338,993	2.3%
>$5K - $100K	$46,327,858	19.2%	$8,877,426	$41,059,048	12.5%	$40,461,822	8.3%	$33,869,865	8.4%
>$100K -$1M	$39,837,497	8.5%	$3,374,100	$47,544,995	6.5%	$68,804,319	8.4%	$45,946,968	6.9%
>=$1M	$585,776,834	0.3%	$1,707,711	$1,408,969,254	0.2%	$1,005,816,322	5.8%	$5,038,522,159	2.2%
All Industries	**$3,724,221,476**	**5.1%**	**$188,909,452**	**$8,464,883,288**	**3.0%**	**$5,167,019,301**	**4.6%**	**$12,338,010,337**	**1.9%**
<=$5K	**$56,077,089**	**19.7%**	**$11,069,052**	**$51,289,921**	**18.0%**	**$53,711,252**	**14.8%**	**$58,609,206**	**11.8%**
>$5K - $100K	**$120,165,559**	**24.7%**	**$29,702,658**	**$119,380,792**	**18.7%**	**$139,450,564**	**10.1%**	**$133,981,664**	**9.9%**
>$100K -$1M	**$169,972,756**	**9.1%**	**$15,464,504**	**$211,649,437**	**7.5%**	**$284,176,534**	**9.3%**	**$242,520,045**	**6.1%**
>=$1M	**$3,378,006,072**	**3.9%**	**$132,673,238**	**$8,082,563,138**	**2.5%**	**$4,689,680,952**	**4.0%**	**$11,961,508,628**	**1.7%**

For prime contracts between $100,000 and one million dollars, M/WBEs also won $15.5 million worth of business in Fiscal 2011, which amounts to 9.1% of that category, up from 7.5% in Fiscal 2010. Similarly, for prime contracts over one million dollars (which fall outside of the City's current M/WBE goals), M/WBEs won nearly 4% of the awards, up from 2.5% in Fiscal 2010. M/WBEs also won prime contracts – another $187 million worth – in areas that for various reasons fell outside of the coverage of the goals programs. Thus, while results in specific categories fluctuated, M/WBEs obtained over $562

million worth of City procurements in Fiscal 2011, including almost $377 million worth of prime contract awards, notwithstanding the significant challenges City agencies face as they strive to meet M/WBE participation goals for such awards.[11] However, the portion of the total Fiscal 2011 portfolio covered by the M/WBE program decreased to 8%, from 19% of the total Fiscal 2010 portfolio.[12]

The number of M/WBE vendors certified by SBS increased by 16.2%, rising to 3,244 from 2,791 at the end of Fiscal 2010.[13] While the City continues to strive for ever-increasing levels of participation, M/WBE procurement success rates to date demonstrate that the goals program has substantially increased opportunities for new firms to participate in City procurement.

2. Subcontracting Opportunities

During Fiscal 2011 City agencies registered 218 prime contracts valued at about $871 million within the industries for which subcontractor goals are authorized: construction, professional and architecture/engineering (A/E) services.[14] This represents a decrease from last year's total, consistent with the overall decrease in construction procurements. Under the City's program, participation goals are set for each individual contract that will generate subcontracts valued below one million dollars for construction, professional or A/E work. City agencies determine the percentage of the prime contract likely to be awarded for those three types of work in subcontracts valued below one million dollars. That amount is termed the "target subcontracting percentage" (TSP). Agencies apply the appropriate M/WBE goals to the dollar value of the TSP, based on the estimated value of the prime contract. To set goals, agencies consider such factors as the scope of work and availability of M/WBEs able to perform the required work. M/WBE participation goals become contract terms in the prime contract.

LL 129 Subcontracting on Fiscal 2011 Prime Contracts

Much of the dollar value of prime contracts awarded during Fiscal 2011 (or any given fiscal year) occurs over a multi-year period as the project is built out. For this reason, the subcontracts intended to meet the goals for those prime contracts will typically be awarded incrementally over several years. As shown in Table III-4 below, for the 218 Fiscal 2011 contracts within the universe to which M/WBE participation goals could be assigned, based on the TSPs and goals identified at the time of bid, M/WBE subcontractors are slated to eventually obtain $54 million, or about 40% of the target subcontracting amounts projected for those prime contracts. This amount is consistent with, and indeed slightly ahead of, the citywide goals. The TSPs for these contracts average about 16% of the contract value, which falls within industry norms for how much subcontracting typically occurs, how much of that would occur in subcontracts valued below one million dollars and how much would occur in the covered industries, i.e., construction, A/E and professional services.

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[11] Agency-by-agency tables for prime contracts are included in Appendix G. Year-to-year comparisons of prime contracts for the entire period of the City's M/WBE program to date (Fiscal 2007 through 2011) are included in Appendix H.

[12] The net amount covered by the program is $1.2 billion. Because subcontracting goals apply to about $27 million worth of the prime contracts that are subject to goals, the $1.2 billion total nets those out, rather than double-count them.

[13] The data reported reflect City contracts won by *certified* M/WBEs, i.e., approved by SBS. Other "minority-owned" or "women-owned" companies that may qualify to be certified but have not yet sought to do so are not included.

[14] The City program treats A/E as a component of professional services. MOCS tracks A/E separately, as utilization rates differ somewhat between A/E and other professional services.

Table III-4: Value of Fiscal 2011 Primes Targeted for M/WBE Subcontractors									
Prime Contracts with Target Subcontracting Percentage			Target Sub-K % Value	Goals					
Industry	Total Value	#		African American	Asian American	Hispanic American	Caucasian Women	Unspecified M/WBE	Total M/WBE
A/E	$55,402,843	16	$15,715,231	$764,115	$0	$628,833	$1,016,701	$304,000	$2,713,648
Construction Services	$809,399,661	198	$120,417,164	$5,563,967	$2,900,505	$4,166,624	$0	$38,706,206	$51,337,301
Professional Services	$5,700,356	4	$525,275	$38,714	$0	$21,508	$70,975	$2,877	$134,074
Total	**$870,502,861**	**218**	**$136,657,670**	**$6,366,795**	**$2,900,505**	**$4,816,964**	**$1,087,677**	**$39,013,084**	**$54,185,024**

In Fiscal 2011, the vast majority of the $1.5 billion value of contracts in industries for which participation goals could be established was, in fact, subject to participation goals either under the City's program (60%) or under applicable Federal and State participation programs (31%). Of the 352 total contracts, some 277 fell into one of those two categories. For the 60% of the Fiscal 2011 contracts covered by the City goals program, the prime contractor must submit a subcontractor utilization plan to meet its goals as part of its bid, proposal or other solicitation response, although the subcontractors to be retained need not be identified until the agency orders work commences. Thus, most of the 218 prime contracts that were awarded with goals have not yet reached a point where substantial amounts of work are underway, much less reached their full potential to generate subcontracting opportunities.

Table III-5: Fiscal 2011 Construction, Professional Services & Architecture/Engineering Contracts>$100,000										
Industry		Total	Goals Established		No Relevant Subcontracting Anticipated		State/Federal Goals		Waiver/ Nonprofit/Other	
			#	%	#	%	#	%	#	%
A/E	#	37	16	43%	6	16%	15	41%	0	0%
	$	$187,515,279	$55,402,843	30%	$38,873,446	21%	$93,238,990	50%	$0	0%
Construction Services	#	269	198	74%	26	10%	43	16%	2	1%
	$	$1,166,314,752	$809,399,661	69%	$23,471,376	2%	$327,665,489	28%	$5,778,225	0%
Professional Services	#	46	4	9%	36	78%	1	2%	5	11%
	$	$98,159,211	$5,700,356	6%	$63,050,195	64%	$24,000,000	24%	$5,408,660	6%
Total	**#**	**352**	**218**	**62%**	**68**	**19%**	**59**	**17%**	**7**	**2%**
	$	**$1,451,989,242**	**$870,502,861**	**60%**	**$125,395,017**	**9%**	**$444,904,479**	**31%**	**$11,186,885**	**1%**

Subcontracting Not Covered by LL 129

Many large contracts are exempt from the City's M/WBE program, as they are supported by State or Federal funds, which trigger State and Federal goals programs instead. Just under one third (31%) of the dollar value of Fiscal 2011 contracts in the three covered industries was exempt for this reason. State and Federal programs assign goals for minority- or women-owned business enterprises (MBE or WBE), and/or for "disadvantaged business enterprise" (DBE) firms. Agencies registered $547 million of prime

Table III-6: Fiscal 2011 Federal & State Goals				
Goals	**Fiscal 2011**	**Fiscal 2010**	**Fiscal 2009**	**Fiscal 2008**
MBE	$40,870,886	$232,301,799	$237,639,669	$444,000,000
WBE	$29,360,766	$79,591,744	$71,897,396	$131,000,000
DBE	$20,108,175	$156,067,788	$18,627,540	$69,000,000
Total Subcontract Value	**$90,339,826**	**$467,961,331**	**$328,164,605**	**$644,000,000**
Total Prime Contract Value	**$547,081,217**	**$2,603,158,839**	**$1,570,900,701**	**$3,340,779,736**
Goals as % of Total Values	**17%**	**18%**	**21%**	**19%**

contracts subject to State or Federal goals. These are projected to generate $90 million in MBE, WBE or DBE work, about 17% of the total value.[15]

For 68 contracts in the covered industries, agencies concluded there would be no relevant subcontracting[16] These tended to be smaller in value – they amounted to only 9% of the total.

EDC also provides work for many M/WBE subcontractors. While not covered by the City's M/WBE program directly, EDC implements similar participation goals through its contracts and also supports a significant amount of work subject to State and Federal goals. In Fiscal 2011 EDC had over $361 million in prime contracts subject to subcontractor participation goals, which generated just over $20 million (6%) in such subcontracts. Of that, almost $7.3 million was generated in DBE subcontracts, $2.8 million in State MBE or WBE subcontracts and almost $10 million in subcontracts for City certified M/WBEs. Like those of its City agency counterparts, EDC's contracts will continue to generate additional M/WBE and DBE subcontracts as work continues on projects begun in Fiscal 2011.

Subcontracting on Prime Contracts Awarded in Prior Years

Agencies continue to approve subcontractors on prime contracts that were subject to M/WBE goals set in Fiscal 2007-2010, as work under those contracts progressed. As Table III-7 reflects, for goals-covered prime contracts that were either first awarded and/or remained open during Fiscal 2011, agencies this year approved over $52 million worth of subcontracts for certified M/WBE firms to perform construction, A/E or professional services work. This amounts to more than 43% of the total subcontracting dollars approved on those contracts within the relevant dollar range and industries.[17] These subcontracts are detailed in Appendix I. Based on an average TSP of 33%, these prime contracts will eventually yield about $976 million worth of subcontract work in the categories to which the M/WBE goals apply. Many of these, particularly the large construction contracts, will generate work for as long as a decade.

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[15] Some of the contracts shown in Table III-6 as subject to state or federal subcontracting goals belong to categories not covered by the City's goals program, and thus are not included in Table III-5 above.

[16] Types of contracts which typically do not result in subcontracting are litigation support, medical services and other specialized professional services; street lighting installation and maintenance; and tree planting. Agencies may not set M/WBE goals for anticipated subcontracts for goods or standardized services, even if the prime contract falls within the construction or professional services arena.

[17] Within that universe of prime contracts, certified M/WBEs obtained just under $1 million worth of subcontracts in non-covered industries (primarily standardized services) and $22 million worth of subcontracts valued at or above one million dollars, although the City's M/WBE program does not provide for goals for those categories. In addition, $4.4 million of the $52 million total does not count toward the City's M/WBE goals, as the program does not authorize subcontractor participation goals for all race and gender groups in all industries.

Table III-7: Fiscal 2011 Subcontracting Subject to LL 129 on All Primes With TSP (By Industry)												
Prime Industry	**Total Value of Primes**	**Avg. TSP**	**Sub. Industry**	**Value**	**African American**		**Asian American**		**Hispanic American**		**Caucasian Women**	
A/E	$1,347,309,208	30%	A/E	$1,839,827	$0	0%	$0	0%	$0	0%	$51,700	3%
			Const.	$809,061	$400,000	49%	$0	0%	$0	0%	$350,000	43%
			Prof.	$3,367,697	$250,000	7%	$46,801	1%	$0	0%	$0	0%
Const.	$1,646,042,011	35%	Const.	$26,032	$0	0%	$0	0%	$0	0%	$0	0%
			Prof.	$112,105,074	$16,559,290	15%	$13,275,275	12%	$16,493,611	15%	$3,706,614	3%
			Const.	$1,994,157	$27,000	1%	$300,000	15%	$0	0%	$395,216	20%
Prof.	**$2,000,000**	5%	Prof.	$100,000	$0	0%	$0	0%	$0	0%	$0	0%
Total	**$2,995,351,219**	**33%**	**Total**	**$120,241,849**	**$17,236,290**	**14%**	**$13,622,077**	**11%**	**$16,493,611**	**14%**	**$4,503,530**	**4%**

Finally, to provide a more comprehensive picture of the rate of progress the City is achieving in providing procurement opportunities to certified M/WBEs, we present data on subcontractors newly approved during Fiscal 2011 for all prime contracts open during Fiscal 2011. The table below includes both contracts covered by the City's M/WBE goals program and the many contracts that fall outside its purview. It presents information on all of the subcontracts approved for certified M/WBEs for all City contracts – including those under State or Federal participation goals and those that are not subject to any goals program. Certified M/WBEs won 18% of *all* subcontracts approved during Fiscal 2011. For subcontracts below one million dollars in the construction, professional services and A/E industries targeted by the City's goals program, that proportion rose to 39% for M/WBEs.

Table III-8: All Subcontracts Approved in Fiscal 2011 (Grouped by Relevance to Goals Program)											
Subcontract Size	**Prime/Sub Industry**	**Value**	**African American**		**Asian American**		**Hispanic American**		**Caucasian Women**		**All M/WBEs (%)**
			$	**%**	**$**	**%**	**$**	**%**	**$**	**%**	
< $1M	Goals industry	$223,076,247	$24,657,146	11%	$23,470,265	11%	$23,692,832	11%	$15,121,442	7%	**39%**
	Non-Covered	$24,353,080	$1,992,735	8%	$423,345	2%	$2,255,888	9%	$2,359,713	10%	**29%**
	Subtotal	$247,429,327	$26,649,881	11%	$23,893,610	10%	$25,948,720	10%	$17,481,155	7%	**38%**
$1M & Over	Goals industry	$612,043,431	$11,396,145	2%	$26,171,380	4%	$8,804,360	1%	$17,274,984	3%	**10%**
	Non-Covered	$184,952,653	$0	0%	$2,708,211	1%	$24,000,000	13%	$2,144,750	1%	**16%**
	Subtotal	$796,996,083	$11,396,145	1%	$28,879,591	4%	$32,804,360	4%	$19,419,734	2%	**12%**
All Sizes	Goals industry	$835,119,678	$36,053,291	4%	$49,641,645	6%	$32,497,192	4%	$32,396,426	4%	**18%**
	Non-Covered	$209,305,733	$1,992,735	1%	$3,131,556	1%	$26,255,888	13%	$4,504,463	2%	**17%**
	Grand Total	**$1,044,425,411**	**$38,046,026**	**4%**	**$52,773,201**	**5%**	**$58,753,080**	**6%**	**$36,900,889**	**4%**	**18%**

Note: Goals industry subcontracts are those where the prime contract and the subcontract are both covered by the City's program, and non-covered subcontracts are those in industries not covered by the City's program. All contracts of $1M or more fall outside of the program, but the table provides data on subcontracts in the industries relevant to the program, i.e., construction, professional and A/E services.

As the table below indicates, the M/WBE share of the City's total subcontracting volume below $1 million has increased over the course of the program's now four-year trajectory, although this year's 18% overall figure for M/WBE subcontracting (at all dollar values) has returned to the levels shown in Fiscal 2008 and 2009, rather than the higher 30% level achieved in Fiscal 2010.

Table III-9: M/WBE Subcontracting

Dollar Range	Fiscal 2011			Fiscal 2010			Fiscal 2009			Fiscal 2008		
	Total	M/WBE		Total	M/WBE		Total	M/WBE		Total	M/WBE	
		%	$		%	$		%	$		%	$
<$1M	$247,429,327	38%	$93,973,366	$268,342,772	33%	$89,575,033	$283,525,634	28%	$78,774,883	$162,516,337	22%	$35,991,872
>=$1M	$796,996,083	12%	$92,499,830	$984,746,997	30%	$292,371,145	$659,756,886	15%	$101,603,677	$619,525,082	15%	$91,514,060
Total Subs	$1,044,425,411	18%	$186,473,196	$1,253,089,769	30%	$381,946,178	$943,282,520	19%	$180,378,560	$782,041,418	16%	$127,505,932

Certified Success Stories

Oriental Lumberland: *Owner Joan Chao first heard about the M/WBE program from the organization Asian Women in Business. Since getting certified in December 2006, Oriental Lumberland's contracts with the City have grown steadily from just under $50,000 in Fiscal 2007 to $242,000 in Fiscal 2011. It has expanded to sell its products to several City agencies including the Department of Correction (DOC), DEP, DSNY, DOT, DPR, NYPD and FDNY. Oriental Lumberland was awarded 38 contracts in Fiscal 2011. Joan is pictured above, fourth from the left, with employees of Oriental Lumberland.*

"Oriental Lumberland's competitive prices, quality delivery and responsive customer service make them a pleasure to do business with, and help the City to be more efficient."

Ava Walker, DOC Chief Contracting Officer

"Find your specialty. Invest your time with an agency or a prime contractor and then you will get recognized and then you will be able to take it to the next level."

Errol A. Grant, Owner, Mainstream Electric Inc.

Mainstream Electric, Inc: *Errol A. Grant founded Mainstream Electric in December 1994 in the Bronx. He started the company because he wanted to be self-employed and independent, but it wasn't easy. "I had to use my own resources and borrow money from family because we had no track record; it's a difficult and arduous process." Getting certified in 2004 helped open up new opportunities for his firm."I think it was like my second or third contract with DPR when the general contractor (I was the Electrical prime), noticed the quality of my work and began talking to me about using me as a subcontractor." During Fiscal 2011, Mainstream Electric was awarded 8 subcontracts on DPR projects, for over $353,000.*

Afax Business Machines*: As a child in Cuba, Nilda Marques was absorbed in the running of her family's small business. So it came as no surprise that she would go on to found and run her own company, Afax Business Machines Inc., a provider of office equipment, supplies and services. As President, Nilda ensures Afax "consistently delivers what we promise — very high quality service, merchandise, and delivery." In Fiscal 2011, Afax won 202 contracts with numerous City agencies, worth almost $2.3 million and won SBS' M/WBE of the year award in Fiscal 2011. To the right, Nilda is pictured receiving the "M/WBE of the Year Award," accompanied by SBS Commissioner Rob Walsh, City Chief Procurement Officer Marla Simpson and Councilmember Diana Reyna.*

For information on M/WBE certification, visit nyc.gov/html/sbs/nycbiz/html/selling_to_government/wbe.shtml

3. Large-Scale Procurement Approvals

Local Law 129 requires City agencies to obtain MOCS approval before they solicit procurements anticipated to be valued at over $10 million, in order to evaluate whether they are designed to maximize competition and M/WBE participation. In Fiscal 2011, there were 137 registered contracts for which MOCS conducted such large-scale procurement reviews.[18] Of these, 12 were both solicited and awarded in Fiscal 2011; the other 125 were registered in Fiscal 2011 based on approvals that occurred earlier. The value of the 137 registered contracts is just over $5.3 billion dollars. Approximately 34% were solicited via competitive sealed bid and accelerated procurements, and 66% via competitive sealed proposal.

Table III-10: Fiscal 2011 Large-Scale Procurements

Basis of Determination	# of Contracts	Dollar Value	% of Total
Human Services	84	$3,256,991,156	61%
Indivisible purchase/project/service	6	$105,023,762	2%
Large-scale construction project	24	$765,354,042	14%
Multiple site contract	5	$70,991,806	1%
Requirements contract	8	$865,311,547	16%
Unique/unusual goods/services	10	$278,450,780	5%
Total	**137**	**$5,342,123,092**	**100%**

More than half of the approvals were for human services contracts with anticipated awards to nonprofit providers, which are not covered under LL 129. About 16% of the total dollar value of large-scale approvals was for various requirements contracts for DCAS (e.g., biodiesel and fuel) and DSNY (for the removal, handling and processing of electronic waste). These approvals were for projects in which separate and smaller contracts would not enhance M/WBE opportunities and would not be practical based on cost considerations. Approximately 14% of the large-scale approvals were for construction projects, which achieved economies of scale and already included subcontracting goals for M/WBEs.

4. Waivers, Modifications and Complaints

Vendors may seek waivers, i.e., to do less subcontracting than the solicitation has projected, during the pre-bid or pre-proposal stage. Agencies and MOCS then evaluate the extent to which a vendor's history of subcontracting construction and professional services is consistent with the request. To qualify for a full or partial waiver, a vendor must show both legitimate reasons and the capacity to execute the contract without subcontracting. In Fiscal 2011, only two contracts were awarded to vendors that qualified for full waivers, and four were awarded to vendors that qualified for partial waivers.[19] The total dollar value of contracts subject to a full waiver was about $2.1 million. Vendors filed 136 requests for waivers. Of those, 19 were denied, 48 were approved as full waivers and 69 as partial waivers, but the vast majority of the vendors did not win the contracts for which they were bidding. Some of the waivers involved repeated requests from the same firms; of the 117 full or partial waivers that were granted, 62 waivers went to a total of only 11 individual firms. Waiver determinations are detailed in Appendix K.

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[18] A full list of these determinations is included in Appendix J. Approvals that occurred in Fiscal 2011 but have not yet resulted in the release of any solicitation are reported only after the contract is awarded, in order to protect the integrity of the bidding/proposal process.

[19] Full waivers are those in which vendors provide documentation that they plan to do no subcontracting. Partial waivers allow firms to do less subcontracting than the target subcontracting percentage and thus retain partial M/WBE goals.

Unlike waivers, which are granted or denied before contract award, modifications occur after a contract is already in place, where the vendor seeks to change the M/WBE participation goals for a particular contract. Vendors seeking modifications must show that they have made reasonable, good faith efforts to meet the goals set by agencies, but have been unsuccessful for various reasons.

MOCS approved five modifications during Fiscal 2011. In each case, to support the modification the prime contractors demonstrated good faith efforts to award M/WBE subcontracts, and demonstrated specific circumstances outside the contractor's control. In one contract, DEP eliminated from the project some of the work the prime contractor had planned to award to M/WBEs and the location of the project upstate made it difficult for the prime contractor to make up the shortfall as there were no City-certified M/WBE firms in the area.[20] On two contracts, DPR eliminated work that the prime contractors had planned to award to M/WBEs; the prime contractors conducted outreach to other M/WBEs, but could not reach the dollar value of the subcontract participation goal. On the other two DPR contracts, the M/WBE subcontractors selected by the prime contractors to perform most of the work covered by the M/WBE goals proved unable to perform such work. The prime contractors, despite best efforts, could not to find alternative M/WBEs. Appendix L provides further details on these modifications.

During Fiscal 2011, two complaints were made regarding compliance of LL 129 by M/WBE vendors, neither of which yielded any evidence or indication of non-compliance by the City agency.[21]

DPR made one finding of LL 129 non-compliance against a prime contractor for failure to make good faith efforts to meet M/WBE subcontractor goals. Although the contractor was provided an opportunity to address the agency's findings, ultimately DPR enforced its finding by entering a caution against the contractor in the VENDEX system (for more information on VENDEX, see page 40).

Enhancements to the M/WBE Program

In May 2011, Mayor Bloomberg announced a set of initiatives designed to enhance the City's M/WBE program, including new programs to build capacity and eliminate market barriers, along with efforts to streamlining the purchasing processes and improve compliance. Capacity-building efforts will include bid and proposal preparation support, a bond readiness program, joint venturing workshops, a mobilization loan program and a mentorship program. Initiatives to streamline the purchasing process range from expanded use of the City Record Online, making contract opportunity solicitation materials more readily available, an increase to the micropurchase threshold (to permit agencies to award small contracts to M/WBEs without competition), and an increase to the bond threshold for construction contracts and an elimination of bonds for other types of contracts. Meanwhile, the City will ramp up compliance efforts by expanding training of agency buyers, ensuring that M/WBE requirements are addressed at pre-bid and pre-proposal contracts, improving the subcontract tracking process and increasing penalties for non-compliance with program requirements.

[20] DEP cannot set workable M/WBE goals on contracts located in upstate New York, as the distance makes it improbable that City-certified M/WBEs will be available for the work due to the travel time required.

[21] One vendor complained that fencing work was improperly categorized as non-construction work for purposes of LL 129. At the time of this complaint, in September 2010, such work was not deemed to be construction. In January 2011, MOCS issued clarification on this matter such that if the scope of a contract requires the prime contractor to secure the site, such installation and removal of temporary fencing is classified as construction services. At the time that the complaint was made, however, such guidance was not available and accordingly, the agency did not violate LL 129. In the other complaint, an M/WBE subcontractor alleged that a prime contractor was engaging in fraudulent actions with regard to its compliance with LL 129. Following the appropriate protocols, MOCS referred her allegations to the Department of Investigation (DOI).

C. Responsiveness Determination

In addition to checking bid or proposal packages to ensure that vendors have submitted any required subcontractor participation plans under the City's M/WBE program, City agencies carefully review each bid or proposal once it is opened to determine if it is "responsive," i.e. it meets all of the applicable specifications and complies with all procedural requirements. This process both protects the City's interests and maintains a level playing field for all vendors. Reasons for non-responsiveness determinations may range from technical issues like late submittal to substantive issues such as failing to meet minimum experience standards. Once an agency finds a bid or proposal non-responsive, that submission is no longer under consideration and the agency moves on to the next submission in line.

Agencies made 451 non-responsiveness determinations during Fiscal 2011 due lack of required bonding or insurance (10%); lack of required experience or capacity (14%); failure to comply with M/WBE subcontracting requirements (10%); unrealistic prices (2%); failure to comply with material terms, conditions and requirements of the solicitation (36%); procedural flaw(s) in the submission (16%); or more than one of the above factors (14%). If a bid or proposal is determined to be non-responsive, the vendor may appeal to the Agency Head. Agency Heads received a total of 123 appeals during Fiscal 2011; of these, the Agency Heads upheld 110 non-responsiveness determinations and reversed 13.

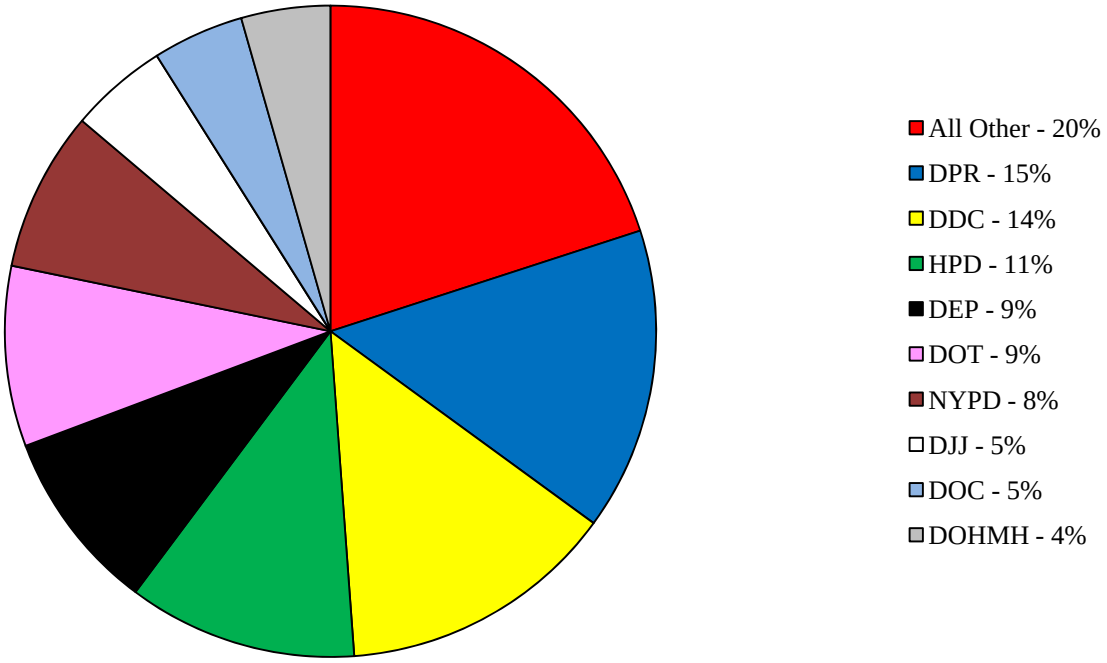
D. Construction Contracting – Controlling Costs and Protecting Workers' Rights

1. Prevailing and Living Wage Compliance – Due Diligence Reviews

Another important review that agencies undertake early in the procurement award process for most construction contracts, as well as many standardized services and human services contracts, is their evaluation of the prospective vendor's compliance with State and City labor laws that secure the wage rights of the vendor's employees. Under the State Labor Law, prevailing wage requirements apply to public work projects and building services.[22] In addition, City law establishes Living Wage requirements for certain types of contracts such as contracts for building services, day care, Head Start programs, home care, food services, temporary workers and services to persons with cerebral palsy. In Fiscal 2011, the City awarded 905 contracts, valued at $2.2 billion, subject to prevailing wage requirements and 437 contracts, valued at $533 million, subject to the Living Wage Law. EDC also processed 36 contract actions, valued at $467 million, for work subject to prevailing wage requirements.

[22] Projects for construction, reconstruction or maintenance on behalf of a public entity are generally considered public work. Building services are defined as work, on behalf of a public entity, which is associated with care and upkeep of an existing building (e.g., cleaners, gardeners and security guards) and valued at more than $1,500.

Chart III-2: Prevailing Wage Contracts by Agency
Total Number of Contracts = 905



Pursuant to Executive Order 102 (EO 102), MOCS and City agencies are required to oversee and ensure compliance by City vendors with prevailing and living wage laws. In particular, EO 102 triggers enhanced agency inspection of bids when the price difference between the apparent low bid and the next lowest responsive bid exceeds specified thresholds. The agency must obtain detailed information from the low bidder to make sure that the low bid has not been made in disregard of the obligation to pay all workers their legally-mandated wages. For contract awards subject to this EO 102 "due diligence" requirement, MOCS must review the contracting agencies' determinations before such contracts can be awarded. MOCS imposes detailed tracking requirements and conducts frequent agency training sessions.

MOCS conducted 34 EO 102 reviews during Fiscal 2011, approving 31 awards and rejecting 3 awards.[23] Of the 31 approved awards, 22 resulted in registered contracts during Fiscal 2011; the other 9 contracts remained pending as of the end of the fiscal year.[24] In those instances where contracts failed to secure EO 102 approval, the contracting agency awarded the contract to the next lowest responsive and responsible bidder. In conducting the EO 102 due diligence review for these contracts, it was apparent that the vendor's pricing was unusually low because the firm did not plan to use the correct trade classifications for the work required by these contracts. The EO 102 due diligence review process revealed that in these cases, the low bidder did not have the required licensing for the contract work, so the vendor was deemed non-responsive. Enforcing labor standards assures fairness in the bidding process and the ability to obtain the best value for the City and its taxpayers.

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[23] MOCS reviews bid tabulations, certified payroll records, engineers' estimates, VENDEX data and other sources of information to validate agency determinations that vendors have both the intention and ability to comply with wage mandates.

[24] In addition, 12 awards that were reviewed and approved in Fiscal 2010 were registered in Fiscal 2011.

2. Project Labor Agreements

Since Fiscal 2010, the Bloomberg Administration has engaged in a series of Project Labor Agreements with the Building and Construction Trades Council of Greater New York (BCTC), aimed at realizing potential savings of more than $300 million dollars, while preserving approximately 1,800 construction jobs during one of the worst economic downturns the City and the construction industry have faced in recent years. PLAs are agreements between the City and the building trade unions that provide common labor provisions that apply to all contractors and subcontractors working on a project, lowering cost and promoting job stability. For instance, the agreements standardize holidays and work hours while reducing shift and overtime costs. In addition, when a contract is subject to a PLA, the City is permitted to save time and money by awarding construction work to a single general contractor instead of to multiple contractors as would otherwise be required by the State's Wicks Law.

The PLAs include a groundbreaking "bring along" provision for M/WBE contractors, even if they are not affiliated with the building trade unions. MOCS and SBS have joined with the Mayor's Committee on Construction Opportunity to promote M/WBE participation on PLA projects. During Fiscal 2011, agencies awarded $79 million worth of prime contracts under a PLA to thirteen certified M/WBE firms, and on the twenty-six active PLA projects 71 M/WBE subcontractors received almost $52 million in subcontracts.

The PLAs cover multiple types of projects, including:

- Specific new construction projects by DDC, DSNY and DPR, such as the new Police Academy in College Point, Queens; the PSAC2 center in the Bronx, an EMS Station for Greenpoint, Brooklyn; and the Sanitation Garage for Manhattan Community Boards 1, 2 and 5 on Spring Street.

- Projects at DEP plants/buildings within New York City, such as on-call work at all the water pollution control plants; boiler and generator repair at numerous locations; engine room ventilation at the North River WPCP; and several sewage pumping station renovations.

- Renovation, rehabilitation and repair projects of city-owned buildings by multiple agencies, such as City Hall, Engine Company 63, the Nelson Avenue Homeless Family Residence, the Homecrest Health Center, the Police Laboratory and the Louis Armstrong Community Center.

In Fiscal 2011 alone a total of 60 contracts were registered under a PLA, for a total value of $445 million. To date, 69 contracts have been registered under a PLA, for a total value of $1.8 billion.

3. Building the Future – Apprenticeship Training

Mayor Bloomberg has also exercised authority granted to the City under State Labor Law to require vendors on City construction projects to offer enhanced apprenticeship opportunities. Apprenticeship programs teach a skilled trade through classroom instruction and offer paid on-the-job training under the guidance of experienced workers, providing a chance for New Yorkers to advance toward well-paying jobs in the construction industry. The City requires all vendors awarded significant construction contracts to show participation in apprenticeship programs that are approved by the State

Department of Labor and to have at least three years of demonstrated experience in such apprenticeship programs. [25]

Table III-11: Fiscal 2011 Newly-Awarded Construction Contracts – Apprenticeship Program Coverage											
Agency	**Total $**	**App. Dir.**		**PLA**		**Union**		**Gov't/Non-Profit/Utility**		**Uncategorized**	
		$ Value	**%**	**$ Value**	**%**	**$ Value**	**%**	**$ Value**	**%**	**$ Value**	**%**
DCAS	$32,804,805	$15,874,317	48%	$15,794,000	48%	$265,300	1%	$0	0%	$871,188	3%
DDC	$691,666,380	$519,723,709	75%	$100,828,798	15%	$56,952,627	8%	$2,458,144	0%	$11,703,103	2%
DEP	$225,110,285	$139,548,771	62%	$63,459,392	28%	$3,649,918	2%	$16,182,029	7%	$2,270,175	1%
DOT	$71,325,011	$23,527,573	33%	$0	0%	$44,877,458	63%	$2,451,279	3%	$468,700	1%
DPR	$167,461,857	$65,954,968	39%	$3,166,528	2%	$32,294,124	19%	$8,197,100	5%	$57,849,138	35%
DSNY	$203,490,326	$0	0%	$197,678,727	97%	$853,995	0%	$0	0%	$4,957,604	2%
HPD	$8,000,580	$0	0%	$0	0%	$5,802,192	73%	$0	0%	$2,198,389	27%
All Others	$37,306,161	$0	0%	$11,941,645	32%	$21,300	0%	$0	0%	$25,343,216	68%
Citywide	**$1,437,165,405**	**$764,629,337**	**53%**	**$392,869,089**	**27%**	**$144,716,914**	**10%**	**$29,288,552**	**2%**	**$105,661,512**	**7%**

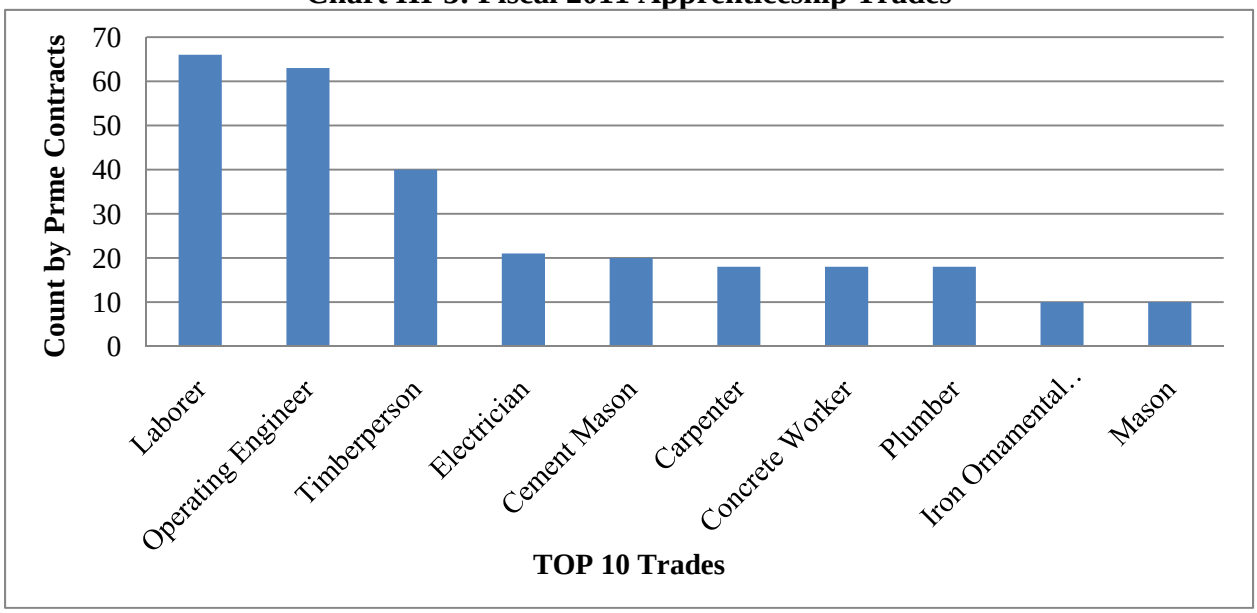
In Fiscal 2011, City agencies registered 76 newly-awarded construction contracts that fell under the apprenticeship directive, representing a total value of nearly $765 million.[26] These contracts cover work in a variety of trades, the most prevalent being laborers, operating engineers, and timberpersons. In addition to this, the City awarded 61 contracts under the City's PLAs (see page 33). While they are not covered by the directive, all PLAs separately provide for full coverage of apprenticeship programs; similarly, union-affiliated vendors typically provide apprenticeship programs through their agreements with the various trades. Thus, close to $400 million in additional construction contracts provided for apprenticeship participation via a PLA or union affiliation, bringing the total value of Fiscal 2011 apprenticeship participation contracts to $1.2 billion.[27] While the total is down from $3.2 billion in Fiscal 2010, this decline is in line with an overall decline in construction volume during Fiscal 2011. At least 90% of the City's newly-awarded Fiscal 2011 construction contracts are covered by apprenticeship programs, either directly or indirectly. See Appendix M.

[25] For the purposes of the apprenticeship requirements, this includes individual contracts valued at over $3 million and contracts over $1 million that are part of a project with a combined value of over $5 million. In addition, on any contract subject to apprenticeship requirements all subcontracts greater than $1 million are also subject to the requirements.

[26] In addition, EDC awarded 15 contracts valued at $342 million to vendors affiliated with apprenticeship programs.

[27] These values include construction industry contracts only; the PLAs also cover a limited number of standardized services contracts, some of which also provide apprenticeship programs.

Chart III-3: Fiscal 2011 Apprenticeship Trades



Most of the State-approved apprenticeship programs are affiliated with unions, although a few programs are contractor-sponsored. During Fiscal 2011, all vendors covered by the apprenticeship mandate (i.e., non-PLA contracts) complied by participating in programs affiliated with a union, usually a union affiliated with or historically related to the BCTC. See Appendix N. The trades most commonly included in those prime contracts are those associated with heavy, highway or site construction, as distinct from work within a building, which is more likely to be covered by a PLA.

Table III-12: Fiscal 2011 Apprenticeship Subcontracts

Agency	#	$ Value
DCAS	2	$182,754
DDC	56	$21,680,347
DEP	6	$12,770,594
DOT	9	$12,290,435
DPR	13	$2,139,975
Total	**86**	**$49,064,105**

During Fiscal 2011, there were a total of 86 subcontracts, valued at $49 million, on projects covered by the apprenticeship directive but not by a PLA. This amounts to 6% of the total value of the prime contracts in this category. To avoid potential conflict with M/WBE goals under LL 129, the apprenticeship directive only applies to subcontracts of one million dollars or more, even where the prime contract itself is subject to the apprenticeship mandate. Not all of the subcontracts listed above involved trades relevant to the apprenticeship program – for instance, many were for professional engineering services or lab testing. Of the 86 subcontracts awarded thus far, as reflected in the table below, 57% were awarded to M/WBEs, mostly on prime contracts covered by LL 129. See Appendix O.

Table III-13: Fiscal 2011 Subcontracting on Non-PLA Construction Contracts Subject to Apprenticeship Requirements

Type of Goals Program	Total Subcontracts		M/WBE Subcontracts			Non-M/WBE Subcontracts		
	Count	Value	Count	Value	%Value	Count	Value	%Value
State/Federal Goals	12	$21,325,002	4	$7,296,408	34%	8	$14,028,594	66%
LL129 Goals	74	$27,739,104	29	$20,621,945	74%	45	$7,117,159	26%
Total	**86**	**$49,064,105**	**33**	**$27,918,352**	**57%**	**53**	**$21,145,753**	**43%**

The table below lists the trades associated with Fiscal 2011 subcontracts under the directive. As with prime contracts, trades associated with these subcontracts were overwhelmingly related to heavy, highway, or site construction work, since other types of work often fall under PLAs.[28]

Table III-14: Trades Listed in Fiscal 2011 Apprenticeship Subcontracts

Trade Classification	# Subcontracts Including Listed Trade	Trade Classification	# Subcontracts Including Listed Trade
Asbestos	2	Ornamental Iron	2
Brick	1	Structural Iron	1
Carpenter	2	Laborer	41
Cement Mason	4	Painter	2
Cement Worker	2	Painter Struc	1
Dockbuilder	4	Plumber	6
Electrician	19	Sheet Metal	1
Engineer	5	Sign Erector	1
Operating Engineer	15	Steamfitter	1
Glazier	1	Taper	1
Grand Total			**112**

[28] Not all subcontractors on Fiscal 2011 contracts are known; new subcontractors are added over the life of the contract.

E. Guarding Against Undue Influence – Doing Business Accountability

Since 1988, New York City's Campaign Finance Program has aimed to reduce corruption and diminish the influence of special interests. In 1998, City voters passed a referendum in support of "pay-to-play" reform, but the absence of a comprehensive list of the entities and individuals "doing business" impeded implementation of this mandate. In 2007, Local Law 34 added sweeping pay-to-play reform measures to this system.[29] LL 34 requires the disclosure of contributions from people and entities that do business with the City, in order to limit their actual or perceived influence on the City's procurement, land use and other award processes by reducing the amounts that candidates may accept from such contributors and eliminating public matching funds for such contributions.

Table III-15: Doing Business Data Forms Processed

Type of Business Dealings	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008
Contracts, Franchises & Concessions	12,498	12,729	11,165	2,735
Discretionary Allocations	270	293	1,513	1,694
Grants	56	133	763	n/a
Economic Development Agreements	31	180	487	n/a
Pension Investment Contracts	114	166	423	n/a
Real Property & Land Use	591	365	758	n/a
Not Transaction Specific	379	97	3,474	3,921
Total	**13,939**	**13,963**	**18,583**	**8,350**

Note: Lobbyist information is collected by the City Clerk

LL 34's cornerstone is the Doing Business Database, unique in the nation, which allows the public to see which vendors, organizations and individuals do business with the City. LL 34 is comprehensive in the types of activity that constitute "doing business" with the City. Lower campaign contribution limits apply to the principal officers, owners and senior managers of all entities that participate in these transactions, and such contributions are not eligible for the City's 6:1 public campaign financing matching program.

The database includes data on contracts, grants, franchises and concessions, as well as agreements for economic development, pension investments and City debt, and a variety of real property transactions and land use actions. The database also tracks entities and individuals that engage in lobbying. The database includes the entities (and affiliated persons) that submit proposals for the transactions listed above, to make it possible to monitor the potential influence of large contributions during the proposal consideration period.

The database covers a wide range of governmental entities and City-affiliated public authorities including the Department of Education, New York City Housing Authority, Health and Hospitals Corporation and the School Construction Authority, along with all of the agencies governed by City procurement rules. Vendors and organizations that engage in transactions covered by LL 34 must complete and submit Doing Business Data Forms.

MOCS receives and processes data on entities, people and transactions covered by LL 34 and oversees City agency compliance with the law. Each month, MOCS transmits this data to DoITT, which furnishes the database to CFB in order to administer and enforce LL 34's contribution limits. Non-confidential information from the database is available on the MOCS website at nyc.gov/html/mocs/html/programs/local_law_34.shtml, to allow the public, media, contributors and campaigns to determine who is covered by the law.

[29] LL 34 was amended by Local Law 67 of 2007. "LL 34" refers to the law as amended.

Table III-16: Number of Entities and People Listed in the Doing Business Database								
Doing Business Type	**Fiscal 2011**		**Fiscal 2010**		**Fiscal 2009**		**Fiscal 2008**	
	Entities	**People**	**Entities**	**People**	**Entities**	**People**	**Entities**	**People**
Contracts, Franchises, Concessions & Discretionary Allocations	4,872	17,745	6,322	19,282	6,433	18,995	4,581	11,981
Grants	109	357	87	295	77	249	n/a	n/a
Economic Development Agreements	378	1,152	410	1,222	392	943	n/a	n/a
Pension Investment Contracts	303	1,357	323	1,375	311	1,336	n/a	n/a
Real Property & Land Use	591	1,444	650	1,393	528	1,003	n/a	n/a
Lobbying	363	1,591	345	1,579	343	1,377	n/a	n/a
Total	**6,616**	**23,646**	**8,137**	**25,146**	**8,084**	**23,903**	**4,581**	**11,981**
Unique Entities and People	**6,116**	**22,106**	**7,692**	**23,419**	**7,707**	**22,772**	**4,581**	**11,981**

The number of entities and associated individuals listed in the database as "Doing Business" fluctuates according to type and value of transactions an entity has a given time. As the table above shows, from Fiscal 2010 to Fiscal 2011 the number of entities listed in the database declined from 8,137 entities to 6,116, and the number of individuals declined from 23,419 to 22,106.

Impact of the Doing Business Accountability Project on the 2009 Citywide Election

Reducing the volume of campaign contributions from individuals doing business with the City is a central goal of the City's Campaign Finance program, in order to reduce the perception or actuality of improper influence. LL 34's limitation on campaign contributions from those who do business with the City helped to heighten the importance of small donors during the City's 2009 election cycle. Creation of the Doing Business Database thus strengthened a campaign finance program that was already among the strongest in the nation.

Using the Doing Business Database, the Campaign Finance Board (CFB) tracks contributions that are above the legal limit for individuals considered to be "doing business" with the City. According to the CFB's report on the 2009 election cycle, 80 campaigns accepted at least one over-the-limit contribution (based on the LL 34 limits), with total overages amounting to $300,000. The CFB issued 223 notifications of LL 34 violations.

Additionally, contributions from individuals doing business with the City dropped from roughly 22% of total funds raised in 2005 elections, to less than 4% of the total in 2009. This key indicator of progress, reflecting the imposition of lower contribution limits for those doing business with the City, occurred even though the LL 34 requirements were phased in during the 2009 cycle, and not all transactions in which firms do business with City had yet been covered. Looking forward to future City campaign cycles, LL 34 appears well on the way to achieving the ambitious goals envisioned by New York City voters in passing the referendum demanding "pay-to-play" reforms.

F. Finalizing the Award – Responsibility Determination and Hearings

Pursuant to the PPB Rules and the New York City Charter, the City may award contracts only to responsible vendors. A responsible vendor is defined as one that has the technical capability and financial capacity to fully perform the requirements of the contract, as well as the business integrity to justify the award of public tax dollars. Prior to the award of each contract, the contracting agency must make a determination of vendor responsibility based on factors such as integrity, financial resources, technical qualifications and performance history.

Determinations of responsibility or non-responsibility are made by each Agency Chief Contracting Officer ("ACCO") on a contract–by-contract basis. If a vendor is found responsible, the contract award may proceed. If the vendor is found non-responsible, the agency may either reissue the solicitation or choose another vendor by following the selection procedure of the relevant procurement method. When considering a vendor's responsibility, agencies are required to review and evaluate information from a variety of sources, consider the context of the particular solicitation and make a responsibility determination appropriate for that solicitation.

Negative information, whether disclosed by the vendor itself on a VENDEX questionnaire, presented by DOI in its VNC letter (see below) or uncovered by an agency's own research, does not automatically result in an agency finding that the vendor is not a responsible business partner. Assessing vendor responsibility requires the awarding agency to balance the seriousness of the negative information, the evidence (if any) that the vendor has remedied the problem and the City's own needs for particular expertise the vendor may bring to a particular project. In some circumstances, DOI, MOCS and the contracting agencies protect the City's interest in vendor integrity by negotiating detailed responsibility agreements with vendors to permit them to receive contract awards, while providing for monitoring and other specific protections for the City.

However, agencies retain the discretion – and indeed the obligation – to find bidders or proposers for City contracts to be non-responsible when the facts warrant such a finding. A vendor may appeal an ACCO's determination of non-responsibility to the respective Agency Head within 10 days of receipt of the ACCO's decision. If an Agency Head upholds the ACCO's determination of non-responsibility, the vendor may appeal to the City Chief Procurement Officer (CCPO) within 10 days of the receipt of the Agency Head's decision. The CCPO, who is the Director of MOCS, is the final administrative appeal available for a finding of non-responsibility.

Agencies made 18 non-responsibility findings within Fiscal 2011, for reasons that included poor product quality, failure to meet legal requirements and problems with business integrity. For example, during Fiscal 2011 DCAS determined a seller of canvas sneakers to be non-responsible due to a history of late deliveries and inferior product quality. In another instance, DPR found a vendor non-responsible because it had failed to comply with the apprenticeship program requirements contained in two of its prior contracts. The vendor appealed this decision, and the CCPO affirmed DPR's non-responsibility finding. In total, vendors appealed two decisions to the CCPO during Fiscal 2011 and the CCPO determined three appeals, including two that had initially been filed prior to Fiscal 2011. All three CCPO determinations made during Fiscal 2011 upheld the agency determinations of non-responsibility. See Appendix P.

One of the primary tools agencies use to determine vendor responsibility is VENDEX, a database maintained by MOCS pursuant to Local Law and comprised of detailed information on City vendors and any related entities, such as principal owners and officers, subsidiaries, parent companies and affiliates.

Table III-17: VENDEX Filings Received

Questionnaire Type	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008
New Questionnaires	22,187	22,501	21,083	23,810
-Principal Questionnaires	*13,919*	*13,878*	*12,896*	*14,912*
-Vendor Questionnaires	*8,268*	*8,623*	*8,187*	*8.898*
Certificates of No Change	8,909	9,651	8,599	8,344
Total Number of Filings	**31,096**	**32,152**	**29,682**	**32,154**

Information is supplied both by City agencies and vendors and covers performance evaluation history, City tax status and business integrity and contract sanction history including defaults, non-responsibility determinations, debarments and suspensions. Questionnaires must be filed by vendors with $100,000 or more in cumulative annual awards, including contracts, subcontracts, franchises and concessions.[30] Vendors file new questionnaires every three years, and must update and certify the accuracy of their information with each new award during that three-year period.

When an agency is preparing to make an award, the VENDEX system generates a referral to DOI for a "Vendor Name Check," commonly referred to as a "VNC." DOI determines whether the prospective vendor or those affiliated with it have been the subject of a DOI investigation, and summarizes any relevant information in a response letter sent to the agency for consideration when making a responsibility determination.

Agencies hold public hearings on proposed contract awards to provide transparency and give the public an opportunity to comment. Agencies are required to hold public hearings on most types of proposed contracts for more than $100,000. The major exception to the hearing requirement is contracts that are awarded as a result of competitive sealed bids, or by accelerated procurements, which are a type of competitive bids. In those cases, contracts are awarded to the responsive and responsible vendor that agrees to provide the goods or services at the lowest price. All told, during Fiscal 2011 City agencies awarded approximately 3,000 contracts that were subject to hearings, representing $12.8 billion of procurements. Of those, MOCS conducted hearings for 510 contracts, worth approximately $8.9 billion.[31]

G. Vetting Contracts Designated by Elected Officials

Some nonprofits receive contract awards because they are directly designated for such awards, termed "discretionary" or "line item" contracts, by the City Council or a Borough President.[32] Although the amount of these awards is a small percentage of the total procurement volume, and strict contract requirements apply, these awards recognize the connection between local elected officials and the communities they represent. Discretionary awards support large institutions and small nonprofits alike

[30] VENDEX questionnaires must also be filed by vendors receiving any sole source award valued at $10,000 or more.

[31] Many agencies with large contracting volumes conduct their own public hearings, separate from MOCS.

[32] Section 1-02(e) of the PPB Rules authorizes awards "to community-based not-for-profit organizations or other public service organizations identified by elected City officials other than the Mayor and the Comptroller."

with expense funding that is processed via line item contracts or grants, or capital funding that results in a grant, contract or funding agreement.

Some examples of Fiscal 2011 line item expense funding include:

- **Volunteer Heart Resuscitation Unit and Ambulance** received two Council awards through FDNY, totaling $6,000. Located in Staten Island, "Volly Heart" responds to 911 emergency calls and provides on-the-spot care for sick and injured, extrication for those trapped in motor vehicles, and primary stabilization for the victim. These awards supported ambulance equipment purchases, medical supplies and fuel.

Photo: "Volly Heart"

- Since 1893, **Helen Keller Services for the Blind** has provided services to the blind and visually impaired to help them gain independence. In Fiscal 2011, Helen Keller Services for the Blind received a $3,125 award from the Brooklyn Borough President through the Department for the Aging (DFTA). This award supported services to senior citizens with low vision.

- The Council also acts as a whole to fund discretionary citywide initiatives. **GrowNYC**'s Household Composting Program received $45,000, to be administered by the Department of Youth and Community Development (DYCD), to allow New Yorkers to drop off fruit and vegetable scraps at selected green markets to be transported to a compost facility. These scraps will become fertile soil for local farming projects and other uses.

Discretionary line item contracts, amendments and grants with a total value of $156 million were processed in Fiscal 2011, including awards allocated and cleared in Fiscal 2011, awards allocated and cleared in previous years, and awards allocated through the capital budget.

Table III-18: Top Ten Agencies Administering Line Item Awards

Top Ten Agencies	Expense Awards from Fiscal 2011		Expense Awards from Prior Years		Capital Awards		Total Fiscal 2011 Awards	
	Value	Count	Value	Count	Value	Count	Value	Count
EDC	N/A	N/A	N/A	N/A	$32,479,537	11	$32,479,537	11
DYCD	$28,190,815	1,352	$12,983,310	829	N/A	N/A	$41,174,125	2,181
DFTA	$19,549,385	1,134	$1,428,655	130	N/A	N/A	$20,978,040	1,264
DHMH	$14,167,155	329	$1,022,735	35	$2,613,106	9	$17,802,996	373
DCLA	$8,245,567	335	N/A	N/A	$1,772,634	4	$10,018,201	339
SBS	$8,207,776	113	$55,000	2	N/A	N/A	$8,262,776	115
CJC	$13,800,644	26	$72,500	6	$795,214	4	$14,668,358	36
DDC	N/A	N/A	N/A	N/A	$6,200,054	18	$6,200,054	18
HPD	$5,714,339	141	$113,943	4	N/A	N/A	$5,828,282	145
HRA	$2,255,200	22	N/A	N/A	N/A	N/A	$2,255,200	22
Other	$9,089,556	125	N/A	N/A	N/A	N/A	$9,089,556	125
Total	**$109,220,437**	**3,577**	**$15,676,143**	**1,006**	**$43,860,545**	**46**	**$168,757,125**	**4,629**

Since discretionary award recipients are chosen directly by elected officials, the competition requirements of the PPB Rules do not apply, making the vetting process crucial. As part of this process, the City Council requires nonprofits seeking more than $10,000 to demonstrate that they are qualified to provide services. This "prequalification" process is initiated through a filing with DYCD, and is overseen by MOCS; the relevant agencies overseeing each program area make the substantive determinations as to whether each applicant is qualified. Organizations receiving $10,000 or less are vetted by Council staff. MOCS distributes a consolidated list of all cleared awards to agencies as reviews are completed to facilitate contract processing.

Beginning in Fiscal 2011, as a result of a new directive from the Speaker of the City Council, each funded organization receiving over $10,000 in cumulative City Council discretionary funding must have a member of its senior staff or board of directors attend a MOCS-sponsored Capacity Building Training session.[33] These sessions bring together experts to help nonprofits expand their capacity in fundraising, leadership skills, board development, internal controls, the City contracting process, legal compliance, nonprofit lobbying and leadership development. During Fiscal 2011 alone, MOCS trained 545 nonprofit leaders at eight Council funded sessions, one or more in every borough. By the end of Fiscal 2011, a total of 1,555 nonprofit leaders had satisfied this requirement, representing 1,381 organizations.

Table III-19: Fiscal 2011 Top Five Agencies Discretionary Council Expense Allocations

Agency	Council Allocation Value	Cleared Allocation Value	Value Processed in Fiscal 2011
DYCD	$38,816,458	$38,271,430	$28,190,815
DHMH	$19,832,412	$18,033,795	$14,037,992
CJC	$19,234,436	$19,057,982	$13,800,644
DFTA	$15,391,199	$15,255,949	$13,861,701
DCA	$8,285,567	$8,245,567	$8,245,567
Top 5 Subtotal	$101,560,072	$98,864,723	$78,136,719
Other Agencies	$25,774,371	$25,651,919	$25,266,871
Total	**$127,334,443**	**$124,516,642**	**$103,403,590**

In Fiscal 2011 the City Council allocated $127 million expense budget dollars in over 5,000 awards. Agencies processed these awards as efficiently as possible, bundling multiple awards into one contract or amending an existing contract, once the vetting process was completed. To speed contract processing for qualified organizations, those that were prequalified in a prior year were required simply to certify to their contracting agency that no material changes in programming or key staff have occurred since their last submission of an application. Any changes that could affect prequalification status were required to be disclosed.

MOCS clears these awards as quickly as possible, but delays may occur, for example, when awardees become delinquent with applicable State Charities Bureau registration and annual filings. Nevertheless, MOCS maintained the 98% award clearance rate achieved in Fiscal 2010. By the end of Fiscal 2011, agencies had registered 83% of the value of cleared Fiscal 2011 discretionary awards, slightly above last year's 82% completion rate.

[33] Nonprofit organizations that receive over $1 million in programmatic funding from City agencies are exempt from the training mandate as they are reviewed by MOCS' Capacity Building and Oversight unit (see page 51). In addition, large nonprofits may apply for a waiver of the mandate based on their in-house expertise in the areas covered by the training.

IV. Procurement Timeliness: Balancing Thoroughness and Efficiency

A. Cycle Time for Competitive Sealed Bids and Accelerated Procurements

In this section, we present data on "cycle time" – how long agencies take to process competitive sealed bids, which are typically used for goods, standardized services, and construction, as well as similar fuel and food procurements done by DCAS via the accelerated procurement method.[34]

In Fiscal 2011, average cycle time for competitive bids increased to 165 days from 137 days in Fiscal 2010. Cycle times are affected by various factors, such as complicated vendor integrity issues, as well as budget challenges, insurance and labor law compliance. MOCS works with City agencies to help address these issues, balancing the overall goal of efficient procurement processing with the need to resolve these vendor responsibility issues with care and thoroughness.

Table IV-1: Competitive Bid Processing Time

Agency	Average Number of Days			
	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008
ACS	310	N/A	218	225
DCAS	168	135	116	120
DDC	141	150	151	144
DEP	169	130	154	140
DHS	136	139	120	185
DOC	199	176	144	125
DOHMH	153	121	N/A	130
DOT	167	150	127	114
DPR	98	124	140	98
DSNY	190	162	192	118
FDNY	220	157	188	143
Citywide	**165**	**137**	**136**	**127**

But in Fiscal 2011, the backlog in its operation to process VENDEX filings (required for nearly all such bid awards) became a significant factor in causing longer cycle times. MOCS upgraded the VENDEX system to ensure that the City actually receives the information from vendors that is required by law. The system thus catches incomplete filings and omissions within the vendors' questionnaires; as a result, processing time for complex submissions has slowed considerably. MOCS is working to streamline the existing process and implement a paperless, online VENDEX system.

DCAS' Fiscal 2011 average cycle time for its accelerated procurements, which are similar to competitive bids, was 52 days, a slight improvement over the 55 days recorded for Fiscal 2010.

B. Timeliness in Human Services Contracting

Procurement planning is critical in all areas in which the City does business, but perhaps nowhere more so than in the area of human services contracting. City agencies contract with a dedicated network of community-based organizations and other nonprofit service providers to deliver critical services that many New Yorkers depend upon. Poorly planned contracting actions can disrupt those service partners' cash flow, diminish the effectiveness of their programs and create service continuity problems for their clients. When contracts lapse and new contracts are not timely registered, or when program goals and expected outcomes are unclear, nonprofit vendors continue to pursue their core missions of serving their clients as they struggle to identify the resources they need. Earlier, in the Planning Human Service Procurements section on page 9, we presented tools the City employs to meet its goal of sound procurement planning in

[34] In order for this indicator to reflect only typical processing times and provide a meaningful average, information is included only where the agency handled more than three contract actions for the method reported. The aggregate cycle time for contracts awarded from "atypical" procurements, such as those delayed by litigation or investigations, is also excluded.

the human services arena. Here, we discuss efforts to manage the contracting process and remediate problems when agencies fall short in attaining this goal.

1. Monitoring and Remedying Retroactivity in Human Services Contracting

The City seeks to achieve 100% timeliness in contracting. A contract is considered late or "retroactive" when its start date occurs before the contract is registered by the City Comptroller. Retroactivity may cause cash flow and service continuity problems for human services vendors because the City cannot pay the vendors prior to registration, although they continue to provide services. In addition to the cash flow problems it causes individual vendors to experience, such lateness drives up the City's costs, as vendors sometimes increase prices to compensate for anticipated delays.[35]

City procurement rules establish sanctions for late processing of human services contracts that fund the continuation of existing services. MOCS evaluates agencies for compliance with timeliness benchmarks for renewals and extensions (amendment extensions and negotiated acquisition extensions), as well as RFP awards that are used to continue pre-existing programs, i.e., awards that are not for new or substantially-modified programs. In all those cases, when agencies fail to register contracts on time, the nonprofit providers must divert scarce resources to pay for salaries, rent and insurance as they continue to serve clients' needs, even though their City payments can be interrupted.

Table IV-2: Major Human Service Agencies Overall Retroactivity for Contract Continuations

Agency	Fiscal 2011					Percent Retroactive by Dollar Value			
	All Continuations		Retroactive Continuations						
	Count	$ Value	Count	$ Value	Average Days Retro	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008
ACS	736	$3,575,770,877	280	$809,595,083	31	23%	69%	89%	50%
DFTA	238	$114,868,493	35	$41,918,386	37	36%	9%	10%	27%
DOHMH	110	$258,764,758	36	$112,849,743	50	44%	43%	36%	22%
DHS	61	$483,015,345	23	$181,058,397	24	37%	34%	52%	74%
DYCD	315	$127,308,741	90	$36,433,253	39	29%	64%	54%	90%
HRA	69	$253,316,530	50	$174,604,661	94	69%	91%	84%	100%
All Other Agencies	54	$118,194,719	28	$64,524,452	65	55%	73%	97%	37%
Total	**1,583**	**$4,931,239,463**	**542**	**$1,420,983,975**	**41**	**29%**	**61%**	**64%**	**39%**

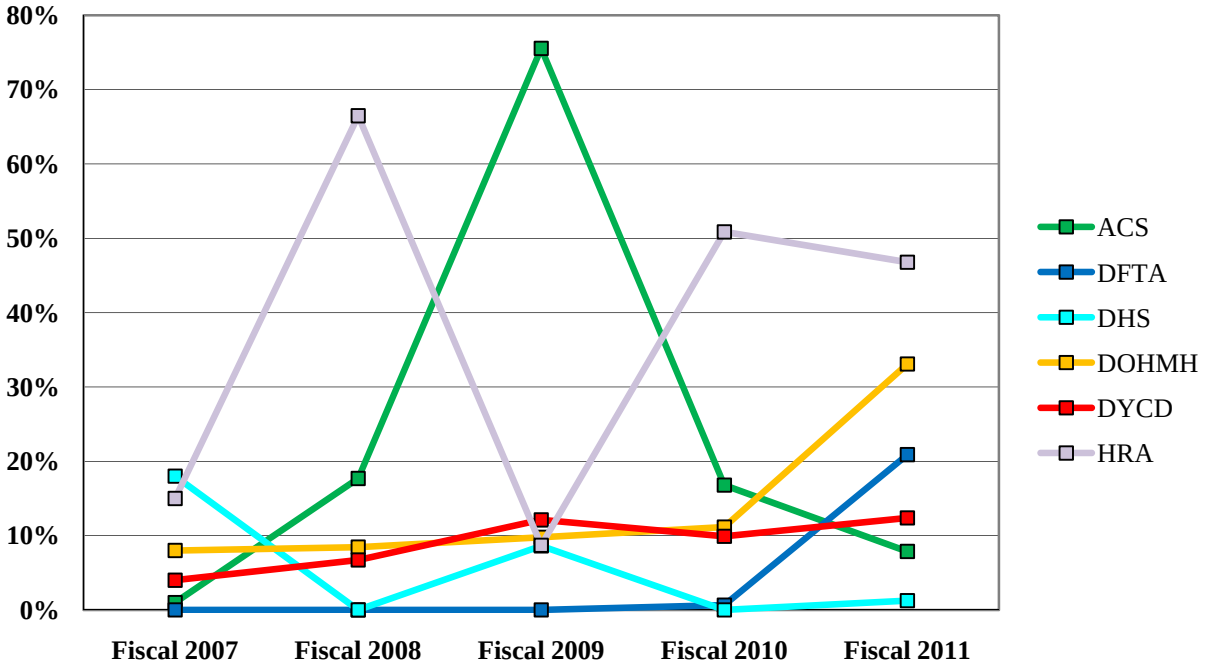
[35] We monitor retroactivity in other types of procurement, and report agency-by-agency and year-to-year comparative data in Appendix Q. We exclude from our reports those types of procurements, such as discretionary awards or emergency procurements that are retroactive by definition, and we also exclude "atypical" contracts, where vendor responsibility problems, litigation or investigations substantially cause the delays. For industries other than human services, moreover, we have not identified any significant harm occurring to vendors as a result of occasional retroactivity. Vendors in such other industries are either accustomed to providing services well in advance of billing (e.g., many types of professional services) or simply wait for registration before incurring any significant costs. Accordingly, we do not treat retroactivity as a meaningful indicator of agency performance other than for human services continuations.

Agency performance on this indicator declined substantially. Average retroactivity increased to 41 days in Fiscal 2011 compared to 27 days in Fiscal 2010. Although we strive to improve on retroactivity, it should be noted that in Fiscal 2011 there was an 86% increase in the total dollar value of all continuation actions, and yet fewer total contracts were retroactive (542 in Fiscal 2011 vs. 721 in Fiscal 2010). Retroactivity at some the agencies with large volumes of human services contracts increased in Fiscal 2011. For example, DFTA's total percent retroactive by dollar value increased to 36% in Fiscal 2011 compared to only 9% in Fiscal 2010. ACS and DYCD registered significant improvements, lowering their percent of retroactive contracts closer to benchmark goals.

A more significant indicator than overall retroactivity is the level of "long-term" retroactivity. When agencies are able to register their contracts very soon after their start dates (i.e., within the first 30 days), payments to vendors typically do not lapse. Thus, to more accurately review agencies' performance and determine if any sanctions are warranted, MOCS focuses on the rates of long-term retroactivity, i.e., for periods longer than 30 days.

Here, the results are mixed. Of the six agencies responsible for the bulk of the City's major human services programs, most posted long-term retroactivity rates that showed some departure from the progress made in prior fiscal years. DHS maintained its record of only 1% long-term retroactivity. Only ACS improved its performance on this indicator significantly, lowering its long-term retroactivity from 17% in Fiscal 2010 to 8% in Fiscal 2011, all the more impressive an accomplishment, in light of ACS' huge procurement volume in Fiscal 2011. Cumulatively, the six agencies posted an 11% rate of long-term retroactivity.

Chart IV-1:
Major Human Service Agencies: Long-Term (>30 Days) Contract Retroactivity



Some agencies' performance declined on this indicator, with DOHMH increasing its percentage of long-term lateness from 11% in Fiscal 2010 to 33% in Fiscal 2011, and DFTA from 1% to 21%, respectively. HRA improved its timeliness slightly (from 51% late to 47%). Agencies continue to face significant challenges in their efforts to register contracts in a timely manner, as they simultaneously confront major budgetary constraints in the human services sector. The backlog in VENDEX processing also had some impact in delaying already late contracts, although in many cases waivers were issued, allowing nonprofit vendors to complete VENDEX processing post-registration. All three agencies noted above – DFTA, DOHMH and HRA – showed significant improvement at the end of Fiscal 2011 in achieving on-time submission of their Fiscal 2012 contracts for registration in advance of their start dates. We continue to work closely with all of the human services agencies to mitigate and correct late contracting patterns.

In addition, MOCS works closely with affected agencies to try to ensure that any shortfalls that burden nonprofit providers can be swiftly addressed via the use of the City's now much-expanded cash flow loan fund, administered through the Fund for the City of New York.

2. Addressing Cash Flow Problems: The Returnable Grant Fund

As described above, in some circumstances a City contract is registered retroactively, i.e. after the start date of the contract. The City's cash flow loan fund, termed the Returnable Grant Fund (RGF), was created in 1992 to help nonprofits pay for program expenses while awaiting late contract registration. Since its inception the RGF has made over 3,600 interest-free loans, totaling more than $283 million. Administered by the Fund for the City of New York in conjunction with MOCS, the RGF provides a safety valve by offering interest-free loans to address short-term cash flow gaps, ensuring continuity of crucial services to human service clients.

Table IV-3: Fiscal 2011 Returnable Grant Fund Loans, Top Five Processing Agencies by Dollar Value

Agency	Fiscal 2011		Fiscal 2010	
	Value	Count	Value	Count
HRA	$10,343,771	22	$1,108,143	4
ACS	$8,276,006	61	$14,634,078	68
CJC	$7,095,039	17	$3,537,459	22
DHS	$5,501,036	13	$2,801,516	4
DYCD	$4,583,862	35	$3,305,021	42
Top Five	$35,799,714	148	$25,386,217	140
All Others	$6,975,086	56	$3,992,153	46
Total	**$42,774,800**	**204**	**$29,378,370**	**186**

The RGF provides loans to vendors that meet the eligibility criteria and demonstrate a short-term cash flow need. Fiscal 2011 loan amounts varied in size from $2,117 to $3,000,000. In total, the RGF made 204 loans to 132 vendors, totaling $42.7 million, reflecting a 45% increase over Fiscal 2010. Examples of Fiscal 2011 loans include:

- DHS processed a $524,995 loan for Palladia, Inc. The loan covered Palladia's payroll, rent and necessary money for security, office supplies, food and utilities while DHS registered an $18.6 million dollar contract, resulting from a competitive sealed proposal, to develop and operate a new stand-alone transitional residence for single men. The loan allowed Palladia to provide these critical services while the contract went though the City's registration process.

- CJC processed a $612,621 loan for the Police Athletic League to cover its payroll while CJC registered a $2,189,820 negotiated acquisition contract to support the Play Streets program, which

closes streets and other public areas throughout the City to give at-risk youth a safe, supervised and fun-filled place to play and learn.

- ACS processed a $53,682 loan for the Children's Aid Society to cover payroll while ACS registered a $4,268,721 contract for its Family Assessment Program (FAP), procured by RFP. ACS and the Department of Probation (DOP) jointly administer FAP, which helps parents and young people successfully resolve problems such as running away, skipping school or unruly behavior.

C. Incentivizing Best Practices: Sanctions Payment and Contracting Delays

Under PPB Rule 4-12, MOCS is required to determine whether any City agencies have fallen sufficiently short of the long-term retroactivity benchmarks, such that they must be required to make interest payments to vendors for costs incurred as a result of late registrations. While HRA's track record for timeliness fell short of the relevant benchmark in Fiscal 2011, as it had the year before, much of the Fiscal 2011 track record stemmed from contracts processed early in the fiscal year. HRA made significant progress at the end of Fiscal 2011, submitting the substantial majority of its Fiscal 2012 contracts for registration in advance of their respective start dates. DFTA and DOHMH, which both posted high rates of long-term retroactivity for Fiscal 2011, also achieved higher rates of on-time submission of their Fiscal 2012 contracts for registration in advance of their start dates.

While it is important to ensure that agencies are held accountable for delays that they can and should control, it is equally important to note that any funds an agency may use for the payment of interest would reduce available funds for program services. In order to prevent losses of much-needed programmatic funding, even where MOCS has found that particular agencies have registered their contracts with unacceptable levels of lateness, MOCS generally addresses the impacts on providers through the provision of no-interest loans, rather than through mandates for the payment of interest. Accordingly, MOCS has not designated any agencies for payment of late-contracting interest as of the conclusion of Fiscal 2011.

Although the issue is most pressing for human services vendors, payment delays to contractors in any sector can disrupt business operations and impose costs that are ultimately passed back to the City. To incentivize timely payment, PPB Rule 4-06 requires agencies to pay interest to contractors if payments are delayed on registered contracts. In Fiscal 2011 the net interest paid by agencies citywide for these delays totaled $10,049, a negligible figure relative to overall procurement volumes.

V. Managing the Contract

A. Vendor Evaluations – Documenting Satisfactory Performance

Documenting how a vendor performs is critical to agencies in helping determine whether a vendor's contract should be renewed, extended or terminated and whether there is a need for a vendor to implement a corrective action plan or otherwise address its problems, preferably before performance is adversely affected. Under the City's procurement rules, a prospective vendor that has performed unsatisfactorily is presumed to be non-responsible, unless the agency determines that the circumstances were beyond the vendor's control or that the vendor has appropriately corrected the problems.

The PPB Rules require that all open contracts must be evaluated for performance at least once per year.[36] The three major evaluation criteria are timeliness of performance, fiscal administration and accountability, and overall quality of performance. Agencies complete evaluations on line through the VENDEX system and MOCS handles communications with vendors centrally. Once the vendor has been given time to review and respond to the evaluation, MOCS posts it in the VENDEX system. The ratings provide an important resource to agencies that are involved in new contract actions. During Fiscal 2011, MOCS expanded the pool of contracts for which performance evaluations are required and tightened the timeframes for their completion. As a result, agencies' completion rate for performance evaluations fell slightly to 88%, from over 90% in Fiscal 2010. MOCS will continue to work with agencies to ensure that all vendors are appropriately evaluated for performance on their contracts.

Overall performance across all of the City's vendors in Fiscal 2011 matched last year's level, with 97% receiving a rating of satisfactory or better. Approximately 90% received such a rating with no underlying problems reported. For the 7% of such vendors that had at least one sub-criterion rating of less than satisfactory, the most frequently identified shortcoming was in financial administration.

B. Cost Containment Initiative

MOCS launched a citywide Cost Containment Initiative in Fiscal 2010, aiming to leverage the City's buying power and capitalize on current market conditions to realize immediate cost savings by renegotiating current contacts on a voluntary basis with vendors. In addition to identifying short-term savings, the Cost Containment Initiative explored contract requirements and aspects of the procurement process that result in unnecessary costs to the City, identifying targets for future reform.

In Fiscal 2011, piggybacking on an existing contract held by a state agency, DoITT registered a master agreement with Accenture LLP to facilitate these cost containment renegotiations on a gain-share basis, meaning that Accenture's fees were based solely on commissions for any successful renegotiations. This eliminated risk to the City since payment to Accenture was contingent on identification of saving proposals that agencies could and would implement.

One hundred of the City's top vendors were targeted, representing $4.3 billion in total spending. Eleven agencies (DDC, DEP, DOHMH, DOT, DSNY, DPR, DCAS, DoITT, FDNY, HPD and NYPD) were identified as lead agencies for particular vendors. The vendors and contracts spanned multiple industries including technology, waste management, architecture and engineering, transportation,

[36] Evaluations need not be prepared for small purchases or for goods purchased via competitive bids, except in the latter case when the vendor performs unsatisfactorily.

communication, energy and other goods. Some 89 of the 100 targeted vendors actively participated in the program, engaging in the requested discussions.

As a result of these renegotiations, in Fiscal 2011, 25 contract modifications with seventeen vendors were registered for a net savings of just over $4 million. As the project wraps up during Fiscal 2012, City agencies anticipate that the total savings will climb to just over $13 million.

These cost saving proposals emerged from lengthy negotiations and reflect cooperation between MOCS, City agencies and their business partners. The negotiations included a variety of concessions from vendors and the City. Vendors agreed to unit price reductions, foregoing cost of living adjustments, locking in contract rates for a set period of time, freezing or reducing overhead rates and restructuring shift hours. In turn, in some cases, City agencies agreed to extend current contracts, remove unnecessary bonding and retainage requirements and modify certain costly specifications on construction projects.

One example of a productive negotiation was that held with Camelot Communications, which has an $83 million contract with DoITT for hardware and support services for telephone and data systems. Camelot identified excess costs to the City generated by staffing requirements that led to overtime. The vendor proposed a staggered shift approach, which would allow it to meet DoITT's needs while eliminating a full-time technician position and reducing overtime for technicians and administrative staff. This change is estimated to save the City almost $1.9 million over the life of the contract. In addition, DoITT offered Camelot a one year contract extension in exchange for a two percent across the board discount. These additional savings are expected to total almost $1.2 million over the life of the contract.

In addition to immediate short-term savings the Cost Containment Initiative also worked with vendors to identify mid- to long-term savings opportunities:

- Some DSNY and DOT contracts contained bonding requirements that were unnecessary because the contracts were for services or maintenance. These requirements were removed from current contracts for immediate savings. DOT removed retainage, granted time extensions, applied the option of productivity improvements for some contracts, and in return, received credits on some maintenance costs. DSNY had open solicitations for similar services which it revised to remove the bonding requirements, thus saving costs for contracts it had not yet awarded.

- In the construction industry, vendors suggested several long-term savings opportunities that would require changes to State laws. Vendors supported the repeal of the Wicks Law, which requires multiple prime contractors on some projects, and authorization of owner-controlled insurance policies ("OCIP") as key cost-saving options for City contracts. Both proposals were included in the City's legislative agenda and the City will continue to pursue them.

- Two other common themes in areas City agencies control included modifying or eliminating "no damages for delay" clauses, and reducing processing time for change orders. The City is already targeting these areas as part of Mayor Bloomberg's construction reform initiatives. For more information on the Damages for Delay pilot, see page 51; for more information on change orders, see page 50.

Moving forward, MOCS will continue to explore the possible implementation of many of these vendor suggestions in an effort to lower contracting costs.

C. Managing Construction Contracts

1. Change Order Reform

Change orders are amendments to construction contracts to authorize additional work necessary to complete the project, or to add work that does not amount to a material change to the original contract scope. We report separately change orders on architectural and engineering contracts relating to such projects (design change orders or DCOs) and those on the actual construction services component of the projects (construction change orders or CCOs). Improvements to change order timeliness (processing time) represent a key challenge for the City, as yet not fully met.

In Fiscal 2011, design change orders averaged 9% of the original contract value. This is significantly lower than the 20% level posted in Fiscal 2010. The average processing time for design change orders decreased by 30%, from an average of 156 days to 109 days.

Table V-1: Design Change Order (DCO) Processing

Agency	Count	Original Contract Value	DCO Value	DCOs as a % of Contracts				Processing Time (Days)			
				Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008
DDC	53	$317,000,094	$30,045,549	9%	23%	16%	17%	89	196	98	51
DEP	117	$1,245,582,703	$112,637,345	9%	20%	4%	15%	123	158	160	176
DOT	45	$240,346,836	$20,275,257	8%	17%	27%	39%	89	156	138	141
DPR	36	$35,552,449	$3,546,714	10%	17%	6%	50%	144	97	91	261
All Others	7	$15,607,844	$1,139,326	7%	22%	26%	13%	153	93	99	147
Total	**258**	**$1,854,089,927**	**$167,644,192**	**9%**	**20%**	**5%**	**17%**	**109**	**156**	**128**	**141**

For construction change orders, most agencies performed comparably to last year. With the continued economic downturn leading to lower construction prices, City agencies benefitted as the value of construction change orders relative to original contract values remained low, at 3%.

Table V-2: Construction Change Order Processing

Agency	Count	Original Contract Value	CCO Value	CCOs as a % of Contracts				Processing Time (Days)			
				Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008	Fiscal 2011	Fiscal 2010	Fiscal 2009	Fiscal 2008
DSNY	236	$910,138,218	$1,226,288	0%	3%	15%	17%	121	81	212	244
DPR	416	$656,388,398	$46,017,450	7%	11%	12%	2%	155	179	210	216
DOT	74	$2,302,689,000	$70,801,634	3%	4%	5%	7%	76	141	130	111
DEP	1437	$10,927,475,710	$277,972,863	3%	3%	2%	12%	132	179	167	193
DDC	535	$1,620,904,409	$113,146,074	7%	5%	10%	14%	112	105	80	98
DCAS	56	$74,936,971	$3,797,355	5%	3%	15%	17%	83	80	98	94
All Others	60	$159,299,062	$10,058,608	6%	3%	7%	29%	94	108	84	100
Total	**2814**	**$16,651,831,768**	**$523,020,272**	**3%**	**3%**	**4%**	**4%**	**125**	**150**	**147**	**147**

Construction change order processing times improved somewhat, as the citywide average declined from 150 days in Fiscal 2010 to 125 days in Fiscal 2011. Some of this shift is attributable to improved tracking systems, which are permitting agencies to include very small change orders in the indicator, along with those that are more material to vendors' ability to progress the affected jobs. Processing time for larger change orders remains relatively unchanged. MOCS will continue to work with the major construction agencies toward the goal of continued improvement in swift change order processing. Delays in change order registration result in payment delays for vendors, and may thus contribute to higher bid prices, which the City can ill afford.

2. Damages for Delay Pilot

The City's standard contract does not compensate vendors for the cost of project delays, even when the delay is caused by the City. The risk of having to bear the costs associated with these delays, including overhead and labor costs, has caused some vendors to build cost premiums into their bids and others to avoid City work altogether. As part of the Mayor's construction reform initiative, in 2008 the City launched the "Damages for Delay" pilot program, substituting new, more flexible contract provisions that under some circumstances allow vendors to claim reimbursement for damages resulting from City-caused delays. Under the pilot program, this language is now included in at least 25% of larger construction contracts. City agencies are also including in the Damages for Delay pilot all contracts that are subject to Project Labor Agreements (for more information on Project Labor Agreements, see page 33). In Fiscal 2011, 50 contracts containing the new language were registered, at a value of $496 million. 35 contracts, representing $335 million, are subject to a PLA. Since the start of the program, 89 of these Damages for Delay pilot contracts have been registered, at a total value of over $1 billion.

Since most projects take three to five years to complete, final data is not yet available, but results to date indicate that this provision will prove a useful tool for lowering costs and making the City a more attractive business partner, as well as for incentivizing City agencies to avoid delays.

D. Managing Human Services Contracts

1. Nonprofit Capacity Building

Government-funded fee-for-service contracts constitute the largest source of funding for health and human services throughout the City. City agencies alone processed contracts and grants with nonprofits that had a total value of $8.6 billion in Fiscal 2011. The Capacity Building and Oversight (CBO) initiative, launched by MOCS in 2007, provides dedicated technical assistance to the City's vendors. Over the last four years, MOCS has supported the City's nonprofit partners through a free training program, the CBO Review program and a helpdesk function for nonprofits to access instant assistance. In Fiscal 2011 alone, CBO staff responded to almost one thousand requests for nonprofit assistance.

CBO conducted 17 free nonprofit training sessions during Fiscal 2011, with a total attendance of 869 nonprofit leaders and staff, representing 812 organizations. This includes two types of trainings: full-day "Capacity Building Trainings," which combine comprehensive compliance information with skill-building workshops, and half-day topical trainings through the Procurement Training Institute (see page 5). In total, topical trainings attracted 324 nonprofit leaders, representing 285 organizations, as well as staff from City agencies who are charged with working with nonprofits.

Table V-3: Attendance at Fiscal 2011 CBO Trainings	
Training Topic	**Attendees**
What are your Financial Statements Communicating: Tips and Tools for Effective Financial Management	83
Board Development: Oversight and Effective Governance	50
Internal Controls	23
Best Practices for Managing a City Contract	37
Effective Volunteer Management	5
Best Practices for Administering Nonprofit Discretionary Awards	52
Best Practices for Nonprofit Contract Management	39
Best Practices for Auditing Procedures for Nonprofits	35
Capacity Building Training for Community Funded Partners	545
Total	**869**

MOCS conducts CBO Reviews of internal controls, governance structures and fiscal oversight, using a report completed by the vendor and submitted with copies of relevant documents. Reviews are not linked to particular contract awards but are conducted with each nonprofit provider that holds contracts with an aggregate value of one million dollars or more, as well as with smaller organizations referred by City agencies or that elect to participate. Of the 2,857 nonprofits holding contracts in Fiscal 2011, 674 met the CBO threshold. The value of their contracts makes up nearly 99% of the value of all open contracts with the nonprofit sector.

The CBO unit opens new reviews by choosing nonprofits from those 674 on a random basis. In Fiscal 2011, CBO opened 91 and completed 41 reviews. Additional reviews remained active as of the close of Fiscal 2011 as organizations implement CBO recommendations. During Fiscal 2011, CBO made one or more recommendations to 10 nonprofits. These included ideas for improved board structure and governance policies, stronger financial controls, stricter conflicts of interest and other organizational policies, and best practices for executive compensation approvals. Many recommendations are intended to be implemented over a period of time, particularly those that require adoption by a board of directors that may meet monthly or quarterly. CBO reviews closed in Fiscal 2011 had an average duration of just over a year. During the CBO review and the implementation period, an organization's relationships with its contracting agencies proceed on a normal basis and are not affected by the open CBO Review.

CBO Review Highlight: Jewish Community Council of Greater Coney Island

In Fiscal 2011, CBO initiated and completed a review of Jewish Community Council of Greater Coney Island, Inc. (JCCGCI). Established in 1973, this Brooklyn-based nonprofit organization had an annual budget of about $9 million, with 60% of its revenue coming from City contracts. JCCGCI held $5.4 million worth of contracts with multiple agencies, to provide a wide range of human and social services including vocational services to public assistance recipients, senior center operation, cultural enrichment and technical assistance to other community organizations.

At the time of CBO review, JCCGCI was already operating with many "best practices" in good governance and fiscal management. The organization provides training for relevant staff in the areas of board management, planning and evaluation, technology, financial management and accounting, fundraising and resource development, human resources and personnel issues, leadership, organizational development, legal issues and risk management. JCCGCI's board was very involved in the CBO Review process and wanted to ensure that the organization fully met the City's expectations for good governance.

Seniors take English as a Second Language class (photo courtesy of: JCCGCI)

"The Jewish Community Council of Greater Coney Island is grateful to the Capacity Building & Oversight division of MOCS for the professional and courteous manner in which their review process was conducted. Although JCCGCI was always overwhelmingly in compliance with internal control, financial oversight and board governance standards, we are always striving to enhance our management capacity and we are thus pleased to learn about newly emerging best practices and the recommendations MOCS provided us with."

Rabbi Moshe Wiener, Executive Director

CBO made four preliminary recommendations to improve the organization's financial controls, board structure and legal compliance: 1) create a Financial Policies and Procedures Manual, 2) initiate regular financial reports by the treasurer to the board, 3) create an audit committee and 4) require board approval to write off bad debt.

CBO staff discussed the benefits of these practices with the board president and vice president, and JCCGCI readily agreed to implement these four recommendations. CBO provided sample financial policies and procedures manual to assist JCCGCI with implementation. JCCGCI later submitted documentation to demonstrate the recommendations had been implemented, and CBO closed the review.

2. Ensuring Quality – Audits

City agencies have multiple tools to ensure that vendors are providing quality services in accordance with their contract. One common practice is to conduct an audit to ensure that City funds are spent on authorized expenses that conform to contract terms and meet federal, state, and local directives governing the administration of public funds. Programmatic or technical audits ensure that the City is getting a quality product according to the specifications in the contract. Fiscal audits ensure that vendors follow appropriate accounting procedures and that no costs are improperly billed to the City.

Especially in the human service sector, made up of mainly nonprofit vendors, fiscal audits are a common practice to ensure vendors are charging a fair portion of expenses shared by more than one

program or funding source. The City has implemented, beginning with contracts registered in Fiscal 2012, a new Standard Human Service Contract, which requires human service providers with revenues over $250,000 to engage a licensed Certified Public Accountant to conduct an independent audit of the organization's accounts and records, a provision that most nonprofits already satisfy to comply with State law. In addition, City agencies may, at their discretion, choose to conduct an audit of the contract. Some agencies use in-house auditors for these purposes, while others procure outside audit contractors.

For example, DYCD's auditing unit conducts audits and oversees DYCD's contracted audit vendors. DYCD holds over 3,000 contracts, and to manage the fiscal review of this large volume of contracts in a cost-efficient manner, it retains various CPA firms to do audits of contracts valued over $75,000 and fiscal field reviews for contracts valued between $25,000 and $75,000. In-house auditors review the audit findings of those CPA firms and prepare any resulting corrective action plans. The in-house auditors also perform desk reviews of small contracts (less than $25,000), follow-up on audit findings from other sources, including federal agency-wide (OMB A-133) audits, and conduct special projects. In Fiscal 2011 DYCD renewed a contract for audit services with Dadia Valles Vendiola LLP in the amount of $585,192. This was the largest Fiscal 2011 audit contract, making up almost a third of the $1.5 million of audit contracts newly registered by City agencies during Fiscal 2011.

3. Controlling Costs – Central Insurance Program

The City helps meet the insurance needs of its nonprofit partners through its innovative Central Insurance Program (CIP). CIP provides human services vendors with comprehensive general liability, workers' compensation, disability, property and some health insurance at no additional cost to the vendor. CIP's current agency portfolio, which covers more than 800 nonprofit providers operating at more than 1,000 sites, includes specific programs of ACS, DYCD, DFTA and HRA.

In Fiscal 2011, the City spent $285.5 million to provide insurance coverage to nonprofits through CIP, up 13% from the $253 million spent in Fiscal 2010. All covered providers receive coverage for disability, workers' compensation and general liability (WC/GL), at a total cost of over $149 million. HRA's home attendant program accounted for more than 90% of citywide WC/GL costs and more than 77% of citywide disability costs. Health insurance, offered to DFTA providers and ACS day care/Head Start providers, accounted for $123 million, or more than 43% of total CIP expenditures, although this coverage is offered to only a small fraction of employees covered by other CIP insurance.

Table V-4: Fiscal 2011 Central Insurance Program Costs

Program	ACS	DFTA	DYCD	HRA	Total by Category
WC/GL	$11,369,362	$2,988,092	$275,103	$128,616,660	$143,249,217
Disability	$1,055,857	$252,088	$43,913	$4,656,501	$6,008,359
Other Coverage	$68,096	$232,684	$2,785	$102,711	$406,276
Health Insurance	$98,609,792	$24,734,626	n/a	n/a	$123,344,418
Add'l Costs	$1,051,345	$383,035	$0	$11,064,869	$12,499,249
Total by Agency	**$112,154,452**	**$28,590,525**	**$321,801**	**$144,440,741**	**$285,507,519**

In Fiscal 2011, WC retrospective claims costs rose 29% from the prior year, helping to drive the increase in CIP's expenditures. Retrospective claims include those filed up to five years after an injury, as well as previously filed claims that remain unsettled. Changes to workers' compensation laws, when fully implemented, will reduce the cost of some claims, although these costs remain difficult to predict.

CIP has streamlined its business processes in order to improve efficiency and position itself to expand coverage to additional nonprofits, reducing its administrative role and focusing more on risk management. CIP has trained HRA's home attendant providers so they report claims directly to the insurance carriers. This model is standard in the insurance industry, reduces administrative burdens and serves CIP's goal of reducing late claims (i.e., more than 15 days after injury), as such delays add to costs. HRA's home attendant providers make up over 80% of all workers compensation claims. To date, this streamlined process has successfully reduced late WC claims submitted from 34% to 24%. More impressively, the percentage of claims submitted within 5 days has increased from 20% to 44%.

The success of this initiative positions CIP for a potential expansion of the program in the future. As the City continues to explore ways to strengthen nonprofits, CIP plans to leverage its buying power to offer WC, GL and disability insurance to many more of the nonprofits doing business with the City.

E. Promoting Health Insurance Coverage – Equal Treatment

Table V-5: Vendors' Health Insurance Availability

Health Insurance Availability	% of Total			
	2011	2010	2009	2008
All full-time employees provided /offered coverage	87%	85%	86%	83%
All full-time employees are not provided /offered coverage	5%	7%	5%	7%
Not applicable (< 2 employees)	5%	6%	7%	7%
Refuse to answer	3%	2%	2%	2%

While the recent marriage equality law will move New Yorkers closer to the goal of equal access to health insurance for all families, under Mayor Bloomberg's Executive Order 72 (EO 72), MOCS continues to collects information from vendors to measure whether spouses and domestic partners are treated equally for purposes of health insurance coverage provided to full-time employees. EO 72 reflects the City's strong commitment to equal availability of coverage for all New Yorkers, including those families with same- and opposite-sex domestic partners.

In Fiscal 2011, 1,539 vendors received surveys.[37] Of the 818 respondents (53%), 87% indicated that all full-time employees are provided or offered health insurance coverage. Among vendors offering health coverage, 48% said they offered equal coverage to spouses and domestic partners; 8% said they did not offer coverage to either. Another 29% stated that only spouses were offered coverage and 7% reported spouses and domestic partners were both offered coverage, but not on equal terms. The remaining 8% of respondents declined to answer. Survey results have remained relatively unchanged over the course of the four years this data has been collected, with a slow increase in the percentage of vendors providing equal coverage to spouses and domestic partners. MOCS will continue to work with the Office of Citywide Health Insurance Access to encourage the provision of such equal coverage.

[37] EO 72 requires agencies to collect this information from any construction or services vendor that receives a new contract if such vendor has a total annual procurement volume with the City exceeding $100,000, and from any goods vendor whose cumulative annual volume has exceeded $100,000 each year for the past three years. The information requests and responses do not affect vendors' ability to obtain contracts, and vendors are informed that they may refuse to answer questions without penalty. Vendors with two or fewer employees i.e., self-employed, are instructed that the questionnaire does not apply.

VI. Meeting Ongoing Needs

A. Requirement Contracts, Master Agreements and Task Orders

To acquire necessary goods and services quickly, efficiently and at the lowest possible cost, the City often enters into a single contract that is used by one or more agencies on an "as needed" basis.

1. Requirement Contracts

A requirement contract is entered into by one of the City's two major goods purchasing agencies – DCAS for most types of products and DoITT for some information technology (IT) goods. Each DCAS or DoITT requirement contract is made available to multiple agencies, often including both Mayoral and non-Mayoral agencies. Through this vehicle, a vendor contracts to supply the City's entire "requirement" for a particular good or service. When an item is available through a requirement contract, City policy requires agencies to use that contract, rather than procure that item separately.

On behalf of all City agencies, DCAS purchases most goods valued at more than $100,000. Mayoral and non-Mayoral agencies used 469 requirement contracts in Fiscal 2011, placing orders valued at just over $762 million.[38] DCAS holds 458 contracts and accounted for $722 million in usage. DoITT holds 11 multiple agency requirement contracts, accounting for $40 million. Nearly all such contracts have multi-year terms, and 91% were competitively bid. A total of 59 were registered during Fiscal 2011.

The City benefits from requirement contracts in several ways. First, rather than having each agency perform market research, develop product specifications and release solicitations separately, these functions are performed centrally, yielding multi-year contracts that meet all agencies' needs. Additionally, economies of scale are obtained since requirement contract pricing is based on the total purchases the City expects to make, rather than on smaller single agency totals. Moreover, requirement contracts allow agencies to place orders without going through the more lengthy procurement process that would be required for one-time purchases.

Both DCAS and DoITT maintain a complete online list of all requirement contracts for agencies to use. For purchases against DCAS requirement contracts, agencies use "release orders" to purchase a single product or set of items, or if the agency anticipates multiple purchases from a particular vendor, "blanket orders" for use throughout the year. During Fiscal 2011, agencies created 10,969 orders against multi-agency requirement contracts.

Of the approximately $762 million in purchasing from multiple agency DCAS and DoITT requirement contracts, 98% was for the purchase of goods, overwhelmingly for fuel. As the table below shows, the top 10 most heavily used requirement contracts (by amount encumbered) account for $361 million, or 50% of all such contract usage. The most frequently used requirement contract (by number of orders) was for purchase and rental of Konica Minolta copy machines, with 498 orders totaling $7.2 million.

[38] This total excludes single agency requirement contracts, e.g. fire trucks for the sole use of the FDNY. DCAS holds 632 such single agency use requirement contracts and DoITT holds two. During Fiscal 2011 agencies made payments totaling approximately $197 million through single agency requirement contracts.

Table VI-1: Fiscal 2011 Top 10 DCAS Requirement Contract Encumbrances		
Vendor	**Purpose**	**Orders**
Allied Barton Security Services	Unarmed Security Guard	$62,033,280
Mack Trucks	Truck, Collection, Rear Loading	$53,429,810
Sprague Energy Corp.	Diesel, Bio fuel	$50,841,799
Castle Oil Corp.	Diesel & Biodiesel, Bulk Delivery & Rack Pick-Up	$38,450,000
Metro Terminals Corp.	Gasoline	$35,728,339
Sprague Energy Corp.	Fuel Diesel	$30,401,820
Sprague Energy Corp.	Gasoline & Ethanol Blends: Bulk Delivery	$29,111,032
International Salt Comp.	Salt: Highway De-Icing	$22,432,715
Vanguard Direct	Commercial Printing And Direct Mail	$22,005,157
Sprague Energy Corp.	Gasoline	$17,193,996

2. Master Agreements and Task Orders

Master agreements allow agencies to use a fast-track solicitation process to obtain specific services from firms that already hold a general or "master" contract with the City, providing flexibility when the scope of a project or task cannot be defined in advance or the nature of services needed cannot be determined at the time the contract is solicited and registered. Single agency master agreements afford flexibility in meeting requirements within an agency, e.g., for small repairs or upgrades.

City procurement rules also provide for multiple agency task order contracts, in which one agency registers and administers a master agreement, assisting user agencies with the processing of individual task orders as their needs arise. Having multiple City agencies utilize the same master agreement to fulfill their collective requirements saves time and resources in the procurement process.

Master agreements are often awarded to multiple vendors that provide a similar service. When an agency has a need for this type of service, these vendors re-compete to win the task order for such work. DDC accounted for the largest number of individual master agreements with 118, followed by DoITT with 72; together, the two agencies account for 70% of all master agreements. In Fiscal 2011, agencies processed 752 task orders, with a value of $967 million, against 271 master agreements (each agreement representing one vendor for one type of service).

DDC offers agencies the use of master agreements including two pools of design firms (architects and engineers), with one pool targeting smaller-scale projects and the other aimed at larger jobs; a pool for resident engineering services; and a pool for construction management services. DDC's task order structure enabled a pool of smaller design firms to compete for City work. This saved money for the City as additional competitors entered City work, while also allowing innovate new designers to flourish.

DoITT offers agencies master agreements for systems integration, project management and quality assurance services, and IT and telecommunications consulting services. For example, during Fiscal 2011, 21 agencies issued task orders from a DoITT master agreement with Language Line Services Inc. to assist in communicating with non-English-speaking clients. Services included over-the-phone interpretation, operator training and document and webpage translation. DoITT task orders accounted for 83% of the total volume.

HHS Accelerator

Launched by Mayor Bloomberg and spearheaded by the Deputy Mayor for Health and Human Services, the HHS Accelerator initiative will simplify and speed the contract process for client- and community-based services by building a web-based system and eliminating redundant paper-based requirements, so as to enable service providers to devote more of their resources to delivering mission-critical services. After a study of the current procurement system, HHS Accelerator has identified key priorities for quickly increasing efficiency and savings, including:

- ***Provider Profile**: An online profile and central data repository, to streamline document submission requirements for providers.*
- ***Centralized Business Review**: A single, centralized review of an organization's legal compliance and organization capacity, and the development of a master agreement approach for client and community-based service providers, to speed up the RFP process.*
- ***HHS Taxonomy**: A cross-agency system, to organize providers according to common program types, thus increasing agency collaboration and improving program design.*

During Fiscal 2011, HHS Accelerator utilized a citywide task order contract held by DoITT to engage a "project management and quality assurance" vendor to quickly move this design to reality. DoITT issued a Request for Services to the four vendors on the citywide contract, which resulted in a registered task order with Gartner Inc. to define the technical scope of the web-based system. Launch of the new system is slated to occur in Fiscal 2012. The full HHS Accelerator report is posted at http://www.nyc.gov/html/nonprofit/downloads/pdf/hhs_accelerator.pdf.

B. Shared Services Procurement

Mayor Bloomberg has directed City agencies to create a smaller, smarter and more fiscally sustainable City government, while at the same time improving the quality of services provided to New Yorkers. As the City's primary purchasing entity, DCAS has been a key player in saving money and modernizing operations by consolidating redundant "back-office" functions shared by multiple agencies. This effort also includes building closer operational relationships between DCAS and the other City agencies it serves.

DCAS establishes citywide requirement contracts for many frequently purchased commodities. Through its new Chief Acquisition and Re-Engineering Officer, DCAS is enhancing its customer services, with specific staff members now assigned as liaisons to City agencies, to strengthen relationships and improve communications.

"Agency needs are as diverse as NYC itself. To help agencies fulfill their various missions while providing the best possible services to the public, consideration of these differences must be built into the procurement process."

Sergio Paneque, DCAS Chief Acquisition & Re-Engineering Officer

In a continuing effort to stretch every dollar, MOCS and DCAS have been working with City agencies to identify new opportunities to bring the requirement contract approach to bear wherever a coordinated "shared services" procurement may hold promise of significant administrative savings. Some examples of Fiscal 2011 purchases that demonstrate the potential for this shared service model include:

- **Janitorial and Cleaning Services:** 20 agencies registered 95 contracts with 49 vendors, totaling $22 million, many with the New York State Industries for the Disabled (NYSID). DCAS is

working with NYSID to develop a preferred source "service catalog" contract for janitorial, shredding, mail processing, messenger and temporary administrative services.

- **Elevator Inspection, Maintenance and Repair Services:** 15 agencies registered 53 contracts with 31 vendors, totaling $3 million. DCAS is developing a potential intergovernmental "piggyback" approach, using an existing state contract to best meet the City's needs.
- **HVAC Repair and Maintenance:** 9 agencies registered 25 contracts with 18 vendors, totaling $9 million. DCAS is exploring how best to meet the City's needs in this area, as well as other recurring needs such as electrical, general contracting and plumbing.

With this more coordinated approach, City government can cut costs and deliver a better product to residents. In the coming year, agencies plan to increase the use of shared service contracts.

C. Small- and Micro-Purchases

Available for smaller dollar value procurements, these two methods allow City agencies to secure needed goods and services swiftly. These purchases allow agencies to fulfill their immediate or high-priority operational needs, when requirement contracts are not available for particular items.

Table VI-2: Fiscal 2011 Top Five Agencies Awarding Micropurchases

	Agency	Fiscal 2011		Fiscal 2010		Fiscal 2009		Fiscal 2008	
		Value	#	Value	#	Value	#	Value	#
1	HPD	$10,390,994	15,969	$9,363,832	15,032	$9,149,251	15,405	$7,431,484	13,699
2	DEP	$8,380,445	2,957	$8,909,090	2,971	$10,248,762	3,519	$10,554,999	3,760
3	NYPD	$7,292,618	3,833	$6,366,073	3,070	$6,381,312	3,123	$6,425,822	3,249
4	DPR	$6,041,445	2,771	$4,372,042	2,070	$4,455,065	2,136	$4,518,642	2,389
5	DSNY	$4,068,398	2,174	$4,190,867	2,231	$2,924,575	1729	$3,058,300	1987
	Top 5 Subtotal	$36,173,900	27,704	$33,201,905	25,374	$33,834,671	25,591	$34,779,271	25,652
	Other	$19,944,657	8,965	$18,254,140	8,335	$19,990,386	9,687	$23,626,712	12,362
	Total	**$56,118,557**	**36,669**	**$51,456,044**	**33,709**	**$53,825,057**	**35,278**	**$58,405,983**	**38,014**

Micropurchases (up to and including $5,000) permit agencies to choose vendors based on convenience, efficiency and price, without formal competition, for non-recurring purchases. Micropurchases accounted for $56.1 million during Fiscal 2011, in a total of 36,669 actions. This is 66% of all procurement actions during Fiscal 2011, but less than 1% of spending. The agencies with the largest dollar value of micropurchases were HPD, DEP, NYPD, DPR and DSNY, which collectively accounted for 65% of all micropurchase dollars. In Fiscal 2011, small purchases (procurements greater than $5,000 and up to and including $100,000) totaled nearly $112.7 million, in 4,397 purchases. They accounted for less than 1% of procurement dollars but 8% of the total number of contracts. Five categories account for 57% of the value: construction goods (16%), maintenance/repair services (14%), IT goods (11%) other professional services (9%) and other standardized services (7%).

Table VI-3: Fiscal 2011 Top Five Agencies Awarding Small Purchases									
	Agency	Fiscal 2011		Fiscal 2010		Fiscal 2009		Fiscal 2008	
		Value	#	Value	#	Value	#	Value	#
1	NYPD	$13,690,068	656	$12,472,596	535	$13,615,035	658	$13,883,645	647
2	DOHMH	$11,794,482	479	$11,834,277	470	$11,763,275	486	$14,169,284	599
3	DOT	$8,734,284	245	$10,143,343	283	$10,355,230	323	$11,296,288	366
4	FDNY	$8,369,498	299	$7,756,693	294	$7,304,939	275	$8,925,055	331
5	DEP	$8,279,003	212	$8,591,915	250	$10,970,447	344	$12,522,552	379
	Top 5 Subtotal	$50,867,335	1,891	$50,798,824	1,832	$54,008,926	2,086	$60,796,824	2,322
	Other Agencies	$61,910,430	2,506	$59,229,241	2,292	$66,759,640	2,811	$65,373,565	2,284
	Total	**$112,777,765**	**4,397**	**$110,028,065**	**4,124**	**$120,768,566**	**4,897**	**$126,170,389**	**4,606**

D. Procurement Cards

City agencies continued during Fiscal 2011 to expand use of the purchasing card program. A purchasing card, or "P-card," is an agency-issued credit card that facilitates quick processing of micropurchases at a reduced administrative cost, while providing financial controls, oversight and transparency. An online card management system assists agencies in monitoring and managing card usage, quickly identifying purchases that have been declined and displaying real-time information about authorized transactions. MOCS administers the program, provides technical assistance in fraud prevention, conducts regular audits of P-card transactions to ensure purchases are consistent with an agency's expected usage and encourages greater P-card expansion efforts through training and marketing.

The P-card process continues to yield significant agency benefits. Notably, this year DSNY increased its P-card use during the winter's snowstorms (see page 7). To expedite its efforts to clear the streets, DSNY used the P-card to ensure swift payments to small businesses and other vendors that assisted in clearing snow from city roads.

During Fiscal 2011, City agencies made $13.8 million in P-card purchases, up 32% from Fiscal 2010. Overall, agencies made 21,386 purchases from 5,695 vendors, up 25% and 17%, respectively, from Fiscal 2010. The top five P-card agencies accounted for 76% of all P-card spending.[39] Fiscal 2011 spending using the card amounted to 20% of total agency micropurchase spending, up from 17% in Fiscal 2010. Five agencies increased P-card use by more than 50%, and 18 more than doubled their usage.

P-cards continue to be an effective mechanism to introduce new vendors into agency procurement portfolios. Agencies are strongly encouraged to use M/WBE vendors for their micropurchases, including P-card transactions. In Fiscal 2011, City agencies made 1,946 P-card transactions with 174 certified M/WBE vendors, for a total of $2.1 million – up 23% from $1.7 million in Fiscal 2010. Also, six of the top ten P-card vendors by dollar value were certified M/WBEs. Two agencies, NYPD and HRA, used M/WBE vendors for more than fifty percent of all their P-card purchases (59% and 54%, respectively.)

[39] The top 5 P-Card agencies during Fiscal 2011 were DOT, DEP, DOHMH, DPR and FDNY.

GLOSSARY – AGENCY PROCUREMENT INDICATORS FISCAL 2011

Accelerated Procurement. A procurement method used to buy commodities, such as fuel, that must be obtained quickly due to significant shortages and/or short-term price fluctuations.

Amendment. A change made to a contract. For purposes of this report, amendments are considered to be changes to contracts that add or subtract funds to reflect programmatic needs, and do *not* extend the contract's term. See *Amendment Extension*).

Amendment Extension. A procurement method to continue a contract for up to one year, most often for a human services program, that would otherwise expire but has no renewal provisions available. These extensions ensure that services can continue without interruption.

Apprenticeship Programs. Apprenticeship agreements appropriate for the type and scope of work to be performed that have been registered with and approved by the New York State Commissioner of Labor. The City mandates that contractors and subcontractors required to use apprentices show that such programs have three years of current, successful experience in providing career opportunities.

Architecture/Engineering Services. A class of services specifically related to the preparation of plans and specifications for construction projects. This category does not include construction management or construction management and build contracts, nor the preparation of environmental studies. Contracts to hire licensed architects or professional engineers are included.

Assignment. An agreement to transfer from one vendor to another the right to receive payment and the responsibility to perform fully under the terms of the contract. For purposes of this report, assignments are considered to be such transfers that occur under circumstances such as when a vendor defaults, fails to fulfill its responsibilities or otherwise becomes unable to continue, and *not* transfers that occur when a vendor undergoes a corporate change such as a merger, acquisition or name change.

Buy-Against. The process by which an agency may obtain from a successor vendor, selected with competition to the maximum practical extent, the goods and services needed to fulfill its requirements after a vendor defaults or fails to fulfill its contract responsibilities.

Change Order. An agency-authorized, written modification of a contract that adjusts price or time for performance. A change order permits the vendor to complete work that is included in the scope of the contract and permits the agency to make non-material changes to the scope.

City Chief Procurement Officer (CCPO). Position delegated authority by the Mayor to coordinate and oversee the procurement activity of mayoral agency staff, including ACCOs. The Mayor has designated the Director of MOCS as the CCPO.

Competitive Sealed Bid (CSB). The most frequently used procurement method for purchasing goods, construction and standardized services, as well as concessions. CSBs are publicly solicited. Contracts are awarded to the responsive and responsible vendor that agrees to provide the goods or services at the lowest price, or in the case of concessions, the highest amount of revenue to the City.

Competitive Sealed Proposal. Also known as a Request for Proposals (RFP), this method is used when an agency must consider factors in addition to price, such as the vendor's experience and expertise. RFPs are most frequently used when procuring human services, professional services, architecture/engineering services; RFPs are also used for some concessions, where the agency, in determining which proposal is most advantageous to the City, wishes to consider both the revenue to the City and such other factors or criteria as are set forth in the RFP. RFPs are publicly solicited.

Competitiveness. Competitiveness is achieved when multiple vendors contend for a contract. For competitive sealed bids, requests for proposals and competitive innovative procurements a contract is competitive when the agency receives three or more responses. For small purchases, competitiveness is defined as soliciting a minimum of 10 vendors.

Concept Report. City agencies are required to issue a detailed concept report prior to the release of a Request For Proposals (RFP) that establishes a new client services programs or a substantial reorganization of an existing program. These reports must describe anticipated changes in the number or types of clients, geographic areas to be served, evaluation criteria, service design, price maximums and/or ranges per participant. Concept reports, together with the comments received from the public, are used by agencies to draft the subsequent RFP.

Concession. Income generating contract for the *private* use of City-owned property to serve a public purpose. Examples include pushcarts, recreational facilities such as golf courses and tennis courts, parking lots, etc. Concessions do not include franchises, revocable consents or leases.

Construction Change Order. Amendments to construction contracts, used to implement necessary changes to ongoing construction projects, e.g., unanticipated conditions discovered in the field.

Construction Services. Construction services provide construction, rehabilitation and/or renovation of physical structures. This category includes Construction Management and Build contracts as well as other construction related services such as: painting, carpentry, plumbing and electrical installation, asbestos and lead abatement, carpet installation and removal, and demolition.

Construction Trades. This term refers to classifications of work in construction that have historically defined by the labor unions. New York State defines trades for both the purposes of prevailing wage classifications and apprenticeship program qualifications similarly but not always identically. For example, operating engineers cover a wide variety of work in operating and maintaining equipment, timber persons are a type of carpenter associated with heavy/highway construction, ornamental iron workers do work with metal that is not a structural component of a building and cement masons do formwork and finishing associated with poured concrete.

Contract Dispute Resolution Board (CDRB). Pursuant to the PPB Rules, CDRB panels arbitrate and resolve most types of disputes that arise under contracts between vendors and City agencies. A CDRB panel is made up of the City Chief Procurement Officer, an Administrative Law Judge from the Office of Administrative Trials and Hearings (OATH) and an independent panel participant chosen from a pre-qualified list reflecting persons with expertise. The CDRB makes final administrative determinations of City contract disputes in cases where vendors' claims have been rejected by the contracting agency and the City Comptroller.

Cycle Time. The length of time it takes agencies to process competitive sealed bids and RFPs.

Default. Inability of a contractor to fulfill the requirements of a contract, usually a result of poor performance, inability to perform, unreasonable delays, loss of insurance or bond or other deviation from the contract.

Demonstration Project. A short-term, carefully planned pilot exercise to test and evaluate the feasibility and application of an innovative product, approach or technology not currently used by the City. At the conclusion of the contract term, based upon the documented results of the project, the agency determines whether to competitively acquire or to discontinue the use of the product, approach or technology.

Design Change Order. An amendment to a design consultant contract, e.g., architecture or engineering.

Discretionary Award. See *Line Item Appropriation.*

Emergency Procurement. Method of procurement used to obtain goods and services very quickly, in many instances without competition, when an agency must address threats to public health or safety, or provide a necessary service on an emergency basis.

Emerging Business Enterprises (EBE). Local Law 12 of 2006 establishes participation goals for EBEs, defined as businesses owned and operated by individuals who have experienced social disadvantage as a result of causes not common to those who are not disadvantaged, and whose ability to compete in the market has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. EBE goals for prime contracts and subcontracts apply to the same industries as M/WBE goals. DSBS certifies participating businesses as EBEs.

Encumbrance. An action to earmark budgeted funds for a stated purpose.

Environmentally Preferable Purchasing Laws (EPP). Local Law 118 of 2005 establishes a Director of Citywide Environmental Purchasing (DCEP) to implement the City's EPP program. Mayor Bloomberg appointed the City's Chief Procurement Officer as DCEP. Local Law 119 of 2005 requires energy-using products purchased by the City to comply with ENERGY STAR® requirements, and meet the federal Energy Management Program energy and water efficiency standards. The law also requires that the City purchase more energy efficient lighting. Local Law 120 of 2005 requires City agencies to follow the Comprehensive Procurement Guidelines established by the federal EPA to ensure the use of products with recycled content. Local Law 121 of 2005 requires the City to purchase electronic equipment and fluorescent lighting with low levels of potentially hazardous substances. Local Law 123 of 2005 authorizes the City to develop a pilot program to test environmentally preferable cleaning products and establish standards requiring the purchase and use of such "green cleaning" products.

Fiscal Year. The City's fiscal year runs from July 1st of the preceding year to June 30th of the given year. Fiscal 2010 runs from July 1, 2009 through June 30, 2010.

Franchise. An income generating contract that confers the right to occupy or use City property, such as streets or parks, to provide a *public* service, such as telecommunications or transportation services.

Franchise and Concession Review Committee (FCRC). FCRC has six members: two appointees of the Mayor, one each of the Corporation Counsel, Office of Management and Budget and the Comptroller, and one voting seat shared by the five Borough Presidents, who rotate voting control based on the location of the item under consideration. MOCS oversees agency compliance with the applicable laws and regulations on behalf of the Mayor. Concession awards solicited by competitive sealed bid require neither a hearing nor a FCRC approval vote. For concessions other than those procured by CSB, the awarding agency and FCRC hold joint public hearings for any award that has a total potential term of at least ten years *or* will result in annual revenue to the City of more than $100,000 *or* is considered to have major land use impacts. Concessions awarded by RFP do not require an approval vote. Concessions awarded pursuant to methods such as a sole source or negotiated concession typically require two FCRC approvals, one to authorize the agency to proceed with the concession and one to approve the resulting agreement.

Goods. This category includes all purchases of physical items. Most purchases of goods above the small purchase limit of $100,000 are made by the Department of Citywide Administrative Services (DCAS).

Government to Government Procurement. The procurement of goods, services, construction or construction-related services directly from another governmental entity.

Green Buildings Law. Local Law 86 of 2005 sets standards designed to reduce the City's electricity consumption, air pollution and water use, as well as improve occupant health and worker productivity for certain capital projects. Capital projects that cost $2 million or more and entail new buildings, additions to existing buildings and/or substantial reconstruction, must achieve Leadership in Energy and Environmental Design (LEED®) Silver certification from the United States Green Building Council (USGBC). In addition, the law requires higher standards for energy and water consumption depending upon the project type or other alternations.

Green Cleaning Products. Environmentally preferable cleaning products.

Human Services. A class of services that are provided directly to clients in various at-need groups. This category includes homeless shelters, counseling services, youth programs, after-school programs, homes for the aged, home care and other similar services. Vendors in this category are primarily nonprofit; some services, such as home care, also have for-profit providers.

Innovative Procurement. Agencies are permitted by the PPB Rules to experiment with new procurement methods. They may test any new method on a limited number of procurements. Once the tested methods are evaluated, PPB determines whether to codify the new methods for future use.

Intergovernmental Purchase. A fast-track method that enables City agencies to buy goods or services using pre-existing contracts between vendors and other government agencies, typically New York State.

Job Order Contracts (JOCS). A type of requirement contract for repair and building renovation where contractors bid a cost multiplier that applies to a whole book of unit items of work. It is distinct from unit price requirement contracts where a price is given for each item specified.

Joint Bidding. This term applies to the letting of public work by the City for infrastructure work such as streets, water mains and sewers, where the work of private utilities such as electricity, steam and telecommunications is in one contract, along with the City work, and the winning bidder is responsible for all of the work, public and private.

Line Item Appropriation. As part of the City's budget process, the City Council and Borough Presidents provide funding to specific vendors, typically community-based human services organizations, cultural institutions or other nonprofit groups. The contracts through which those funds flow are classified as line item or discretionary appropriations.

Living Wage Law. New York City establishes a pay rate requirement for certain types of contracts for building services, day care, Head Start, home care, food services, temporary workers and services to persons with cerebral palsy. See NYC Administrative Code 6-109.

Mayor's Management Report (MMR). The MMR provides elected officials, oversight entities and the public with information about agency performance at key points in the planning and budgetary process.

Micropurchase. A method used to buy goods, services or construction valued at up to $5,000. Agencies may buy from any available vendor at a fair price, without formal competition.

Minority- and Women-Owned Businesses (M/WBEs). **Local Law 129 of 2005** establishes citywide participation goals by race, ethnicity and gender for vendors that are certified to be owned by women and/or minorities for contracts less than $1 million dollars. The citywide goals for Black Americans, Hispanic Americans, Asian Americans and Caucasian Women represent the anticipated percentage of contracts by dollar value between City agencies and M/WBE firms during the course of the year. Prime contract participation goals exist in four industry categories: construction, professional services, standardized services and goods. Local Law 129 also establishes participation goals for subcontracts under $1 million for construction and professional services. Each City agency that does at least $5 million in procurement annually is responsible for developing an M/WBE utilization plan and meeting the citywide participation goals. DSBS certifies participating businesses as M/WBEs through an application process in order to prevent fraudulent claims under this program.

Negotiated Acquisition. A method of contracting used when only a few vendors are available to provide the goods or services needed, when there is limited time available to procure necessary goods or services or when a competitive procurement is otherwise not feasible. This method is often used for a variety of litigation support services.

Negotiated Acquisition Extension. The only option to extend a contract when renewal terms have been exhausted or are unavailable, and after the one year maximum amendment extension has been used, in order to provide an agency sufficient time to draft, issue and make new awards under an RFP. These extensions ensure that services may continue uninterrupted. Negotiated acquisition extensions are also used to ensure the completion of ongoing construction projects that are not finished by the contract's expiration date, and may extend the amount of time, money or both allocated to complete a project.

Negotiated Concession. A method of soliciting concessions generally used only when use of a CSB or RFP is not practicable and/or advantageous due to the existence of a time-sensitive situation, where an agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to proceed via a competitive award method. In addition, DCAS may award a negotiated concession to an owner of property that is adjacent to the concession property, or to a business located on such adjacent property, where due to the layout or some other characteristic of the property, or because of some unique service that can be performed only by the proposed concessionaire, it is in the best interests of the City to award the concession to the adjacent owner.

Non-Responsible. A vendor that lacks the business integrity, financial capacity and/or ability to perform the requirements of a particular contract will be determined by the ACCO to be a "non-responsible bidder/proposer" and thus ineligible for a contract award. A vendor that is found non-responsible may appeal that determination to the head of the City agency responsible for the contract, and if the determination is upheld by the agency head, the vendor may appeal again to the CCPO.

Non-Responsive. A vendor that submits a bid or proposal that fails to conform to the requirements for documentation/information specified in a Request for Bids or Proposals for a particular solicitation will be determined to be "a non-responsive bidder/proposer" and will not be considered for the contract. A vendor may appeal a finding of non-responsiveness to the head of the agency responsible for the contract.

Prequalification. Process used by agencies to evaluate the qualifications of vendors for provision of particular categories of goods, services, construction or construction-related services, based on criteria such as experience, past performance, organizational capability, financial capability and track record of compliance and business integrity.

Prevailing Wages. Wage schedules mandated by New York State Labor Law (§§ 220 and 230) that define the wages to be paid for certain types of work under construction and building service contracts and subcontracts.

Procurement. The City's purchasing process, which includes vendor selection, contract registration, payment, performance evaluation and contract administration.

Procurement Policy Board (PPB). Pursuant to the New York City Charter, the PPB establishes the rules that govern the methods of selecting procurement types, soliciting bids and proposals, awarding and administering contracts, determining responsibility, retaining records and resolving contract disputes. The PPB must review its rules, policies and procedures on an annual basis and submit a report to the Mayor, Comptroller, and City Council with recommendations on agency organization and personnel qualifications in order to facilitate efficient procurement. The PPB consists of five members, three of whom are appointed by the Mayor and two of whom are appointed by the Comptroller.

Procurement Training Institute. The Procurement Training Institute (PTI) of the Department of Citywide Administrative Services' (DCAS) Citywide Training Center (CTC) is responsible for the training and certification of NYC procurement professionals ensuring they are well trained to meet their complex responsibilities. PTI is overseen by MOCS. The PTI develops a full curriculum of classes on best practices and compliance with City procurement laws and regulations; schedules classes on various topics; assists agencies with registration; and, tracks the certification of those requiring certification.

Project Labor Agreement. An agreement between an owner of real property and building trades unions that provides for common labor provisions applicable to all bidders (contractors) and their subcontractors.

Protest. Vendors that object to any aspect of a procurement and/or the resulting award, such as the qualifications of the winning vendor, may file a vendor protest with the head of the City agency responsible for the contract. This does not apply to accelerated procurements, emergency procurements and small purchases.

Public Hearing. Public hearings are held on contract awards to make the process transparent and give the public an opportunity to comment on proposed terms. The City conducts hearings on most contracts valued above $100,000. Agencies may cancel a public hearing if, after notice is published, no member of the public indicates an interest in testifying. For concessions procured through a method other than CSB, the awarding agency and FCRC hold joint public hearings on any proposed concession that has a total potential term of at least ten years *or* will result in annual revenue to the City of more than $100,000 *or* is considered to have major land use impacts as determined by the Department of City Planning.

Public Work. Public work is defined as construction, reconstruction or maintenance work done by a public entity that takes place on public property with the primary objective of benefiting the public.

Registration. The process through which the Comptroller (1) encumbers or holds funds to insure payment to the vendor on successful completion of the contract; (2) records all City contracts and agreements; (3) tracks City payments and revenue associated with each contract or agreement; and (4) objects if there is evidence of corruption related to the procurement process itself or with the selected vendor. After a City agency submits a contract package the Comptroller has 30 days to either register or reject the contract.

Renewal Contract. Method used to continue operation of a registered contract beyond its initial terms, as stipulated in the original contract.

Request for Proposals (RFP). See *Competitive Sealed Proposal*.

Required/Authorized Source or Method. On occasion, a state or federal agency or a private entity (such as a nonprofit) that is funding a particular purchase through a City agency mandates either the specific vendor to be used for the provision of goods or services, or a specific process for selecting a vendor. In other instances, state law provides a "preferred source" procurement method for particular types of vendors, e.g., those employing disabled New Yorkers.

Requirement Contract. A contract entered into by a City agency, usually DCAS or DoITT, with a vendor that agrees to supply the City's entire requirement for a particular good.

Responsible Bidder or Proposer. A vendor that has the capability in all respects to perform all contract requirements, and the business integrity and reliability that will assure performance in good faith.

Responsive Bidder or Proposer. A vendor whose bid or proposal conforms to the terms set out by the City in the solicitation.

Retroactive. A retroactive contract is one registered by the Comptroller after the contractual start date.

Revocable Consent. Grant for the private use of City-owned property for purposes authorized in the City Charter (e.g., for cafés and other obstructions), which may be revoked at the City's discretion.

Small Purchase. Method used for buying goods, services and construction valued at up to $100,000.

Sole Source. For contracts, this procurement method may only be used when only one vendor is available to provide the required goods or services. This method is also used to "pass through" funds that support the NYC Economic Development Corporation and the capital construction projects of City-owned cultural institutions. For concessions, agencies may award without competition when it is determined that there is either only one source for the required concession or that it is to the best advantage of the City to award the concession to one source.

Solicitation. A solicitation is the process of notifying potential vendors that an agency wishes to receive bids or proposals for furnishing goods, services or construction. The process may include public advertising, mailing invitations for bids and requests for proposals, posting notices and/or delivery of telephone or fax messages to prospective vendors.

Standardized Services. Standardized services typically do not require the provider to have experience in a specialized field or hold an advanced degree. A standardized service is clearly defined and highly commoditized; procurements for these services are generally awarded based on the lowest price. Examples include: security, janitorial, secretarial, transportation, collection and food related services. Contracts for services such as plumbing, electrical and HVAC for maintenance and repair not related to new construction also fall into this category.

Task Order Contract: A type of requirement contract under which a vendor or pool of vendors hold a master agreement defining a general scope of services, with specific assignments determined through subsequently-issued work orders.

Vendor Enrollment Center (VEC). Any business wishing to sell goods or services to the City may complete an enrollment form and be added to the citywide bidder lists used by all Mayoral agencies to distribute notices of City procurement opportunities.

Vendor Information Exchange System (VENDEX). A computerized citywide system providing comprehensive information on vendors. Data is added to the VENDEX system from questionnaires completed by vendors. Vendors are required to file both Business Entity Questionnaires and Principal Questionnaires every three years if they have done $100,000 or more worth of business with the City (contracts, franchises and concessions) during the preceding twelve months, or if they have sole source contracts totaling more than $10,000.

Vendor Rehabilitation. An administrative proceeding available to vendors that have negative information indicated in VENDEX, but can demonstrate that they have adequately addressed those problems and can prove their readiness to be awarded new contracts.

Vendor. An actual or potential contractor.

Mayoral Agencies and Acronyms	
Acronym	**Agency**
ACS	Administration for Children's Services
BIC	Business Integrity Commission
CCHR	City Commission on Human Rights
CCRB	Civilian Complaint Review Board
CJC	Office of the Criminal Justice Coordinator
CSC	City Civil Service Commission
DCA	Department of Consumer Affairs
DCLA	Department of Cultural Affairs
DCAS	Department of Citywide Administrative Services
DCP	Department of City Planning
DDC	Department of Design & Construction
DEP	Department of Environmental Protection
DFTA	Department for the Aging
DHS	Department of Homeless Services
DJJ	Department of Juvenile Justice
DOB	Department of Buildings
DOC	Department of Correction
DOF	Department of Finance
DOHMH	Department of Health and Mental Hygiene
DOI	Department of Investigation
DoITT	Department of Information Technology & Telecommunications
DORIS	Department of Records and Information Services
DOT	Department of Transportation
DPR	Department of Parks & Recreation
DSNY	Department of Sanitation
DYCD	Department of Youth & Community Development
FDNY	Fire Department
HPD	Department of Housing Preservation & Development
HRA	Human Resources Administration
Law	Law Department
LPC	Landmark Preservation Commission
NYPD	Police Department
OEM	Office of Emergency Management
PROB	Department of Probation
SBS	Department of Small Business Services
TLC	Taxi & Limousine Commission