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EXECUTIVE SUMMARY AND OVERVIEW

An efficient, fair and transparent procurement system is vital to the government of the City of New York. Procurement affects the City's delivery of essential services, our efforts to encourage economic growth, and our development of infrastructure. We buy supplies that range from the paper and computers used in agency offices, to the gardening equipment to maintain the parks, to the salt for snow removal. We purchase services as varied as foster care for children, janitorial services for public facilities, and architects to design new buildings. We hire construction contractors to rehabilitate roadways and bridges, build new facilities to protect the City's drinking water, and improve playgrounds throughout the City.

The Mayor's Office of Contract Services (MOCS) is the City's compliance and oversight agency for procurement. The City's procurement system spans an enormous range of subject areas, but three overarching goals guide our efforts:

- First, we aim to achieve the best *value* for the taxpayers' dollar: high quality goods and services, with timely delivery, at fair and reasonable prices.
- Second, and of equal importance, we seek *responsible* business partners, i.e., vendors whose records of integrity, financial capacity and successful performance justify the use of tax dollars.
- Third, so that we can continue to obtain best value from responsible partners, we must ensure that our contracting process delivers *fair treatment* to all vendors.

To help achieve these goals, and in keeping with the hallmark of the administration of Mayor Michael R. Bloomberg, MOCS works to make the City's contracting process accountable and transparent, for vendors and the public. To that end, in this report, we tell the story of the City's procurements during Fiscal 2009,¹ through the presentation of detailed data – including comparative year-to-year summaries – as well as illustrative examples. The report is organized into four chapters, as outlined below.

I. Agency Procurements: Taking Inventory

In Fiscal 2009, New York City procured more than \$13.4 billion worth of supplies, services, and construction, through more than 54,400 transactions. With the economic downturn, and resulting budget downsizing, the purchasing volume for Fiscal 2009 declined by more than 25% relative to Fiscal 2008, although some portion of that reflects the cyclical nature of multi-year procurements. New York City is one of the largest contracting jurisdictions in the nation. Highlights from the City's Fiscal 2009 procurement inventory include:

- Major infrastructure investments by the Department of Environmental Protection (DEP) and the Department of Sanitation (DSNY) top the list of largest contracts. Ten City agencies account for 82% of the purchasing dollars, and the largest 25 contracts of the year, for 41% of the total dollars.

¹ Fiscal 2009 runs from July 1, 2008 through June 30, 2009. 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 in Appendix A, and legislative and regulatory changes that occurred during Fiscal 2009 are described in Appendix B.

- Federal stimulus-funded contracting kicked off, with three agencies awarding \$40 million worth of such contracts. Most stimulus-funded work will be awarded during Fiscal 2010 and 2011.
- The City’s Economic Development Corporation (EDC), awarded \$488 million in contracts, up 12% from last year, with 83% of that supporting construction and development projects.
- Over half of City purchasing resulted from competitive procurements, while 5% used selection methods controlled by governmental agencies, 17% relied upon methods with limited competition and 26% reflected continuations of contracts from prior years. Because Fiscal 2009 reflected a higher proportion of contracts for human services, the percentage of continuations was also higher.
- The size of City contracts was comparable to prior years. About 79% of all purchasing dollars flowed in contracts that exceeded \$3 million, with 3% in contracts of \$100,000 or less.
- Small purchases (\$100,000 or less), totaled more than \$120 million, with the Police Department (NYPD), Department of Health and Mental Hygiene (DOHMH) and DEP leading in this category.
- Micropurchases (\$5,000 or less) accounted for \$54 million, with DEP and the Department of Housing Preservation and Development (HPD) leading City agencies in such awards. In the micropurchase category, some 11% of City spending was accomplished through the use of innovative “procurement card” technology.
- Using more than 1,100 multi-agency and single agency requirement contracts, offered mainly under the auspices of the City’s chief goods-purchasing agency, the Department of Citywide Administrative Services (DCAS), agencies placed over \$800 million worth of orders for supplies and services. At the top of the list for total dollars were requirement contracts for trucks and other vehicles and for fuel, while the most frequently-used requirement contract was for office supplies.
- The City awarded 210 new concessions and collected over \$45 million in revenue from 600 operating concessions. Restaurants and golf courses led in total dollars and the Department of Parks and Recreation (DPR) was the leading revenue raiser. The City collected \$180 million from 81 franchises, with the Department of Information Technology and Telecommunications (DOITT) and the Department of Transportation (DOT) as the top revenue raisers, for cable television and street furniture franchises. Sidewalk cafés and similar permits from DOT and the Department of Consumer Affairs (DCA) raised \$7 million.



II. Vendor Responsibility: Choosing Responsible Business Partners

For every one of the more than 54,400 procurement actions included in this report, the awarding agency must first determine that the prospective vendor is “responsible.” A responsible vendor must have the capability to fully perform the contract requirements and the business integrity to justify the award of public tax dollars or, in the case of franchises or concessions, the use of public property. In this chapter,

we describe how the City works to ensure vendor responsibility and business integrity, including our vendor evaluation system, efforts to enforce workers' rights, targeted initiatives to protect and support responsible nonprofit service providers, and reforms aimed at guarding against undue influence in the procurement process. Examples of these efforts include:

- MOCS rolled out a new database for the City's Vendor Exchange Information (VENDEX) system, which processed nearly 30,000 vendor filings during Fiscal 2009. Over 1,800 agency staff members received training on the new system.
- Under the oversight of the Department of Investigation (DOI), City agencies imposed detailed business integrity monitoring agreements on ten vendors with current City contracts. Agencies issued 20 non-responsibility determinations on vendors, primarily on business integrity grounds.
- Agencies evaluated the performance of over 92% of their contracts, rating 96% of their vendors as satisfactory ("fair") or better.
- The City awarded over 1,200 contracts, worth \$3.1 billion, subject to New York State's prevailing wage laws and 176 contracts, worth \$134 million, subject to the City's Living Wage Law. EDC also awarded 25 contracts, worth \$370 million, subject to prevailing wage requirements. During the fiscal year, MOCS conducted 67 detailed reviews of proposed contracts for which prevailing wage compliance questions were raised, ultimately approving 58 awards, and disallowing the rest.
- In Fiscal 2009, the City partnered with almost 1,500 nonprofit human services providers holding contracts worth \$10.8 billion cumulatively (including multi-year awards). Total City support for the nonprofit sector exceeded \$5.3 billion
- Through its Capacity Building and Oversight (CBO) unit, MOCS conducts detailed reviews of the internal controls and governance systems of the nearly 700 human services providers with contracts exceeding one million dollars annually – collectively, about 98% of the human services portfolio. In Fiscal 2009, 75 such reviews were commenced, and comprehensive compliance training was provided to 380 nonprofit leaders and agency staff.
- Elected official discretionary awards, i.e., "line items," accounted for less than 2% of the City's purchasing dollars. In Fiscal 2009, MOCS strengthened protections against potential abuses, by requiring agencies to conduct more detailed compliance reviews prior to processing these awards. At the request of the City Council, MOCS joined with the Department of Youth and Community Development (DYCD) to administer a prequalification process aimed at ensuring that those nonprofits receiving larger discretionary awards are fully qualified to provide services to their communities. MOCS researched and cleared over 1,300 prequalification applications.
- Through the unique Doing Business Database created to enforce the City's "Pay-to-Play" statute, Local Law 34 of 2007 (LL 34), MOCS made available to the public data from City agencies, city-affiliated public authorities and similar entities, concerning the businesses and nonprofits that were awarded (or sought) procurement contracts, franchises and concessions, grants, economic development agreements, pension investment contracts, debt contracts, real property transactions and land use actions, as well as the key individuals responsible for such matters at each entity, and their lobbyists. The goal of LL 34 is to limit the actual or perceived influence on those award processes by those responsible for municipal campaign contributions.

- MOCS processed over 18,500 filings for the Doing Business Database, more than doubling last year's volume. As of the end of Fiscal 2009, the Database included over 7,700 entities and nearly 23,000 individuals.

III. Contract Process: Promoting Competition and Efficiency

In this chapter, we describe how vendors learn of business opportunities. We also look at the level of competition for City purchases, as well as the efficiency with which the City processes procurements. While some indicators of competition and efficiency remain strong, others warrant additional efforts to improve:

- Over 56,700 vendors are enrolled on the City's bidders' lists, up 7% from last year. The top lines of business include professional services, maintenance and other standardized services, and construction goods and services.
- Competitiveness contracts increased, with 80% of contracts showing high levels of competition (three or more competitors), up from 64% last year. Construction climbed from last year's low of 27% to 61% highly competitive in Fiscal 2009. Competitiveness dropped somewhat in human services and professional services. Competition for small purchases remained strong, with nearly 90% reflecting ten or more competitors.
- The processing cycle for competitive bids – the time between public advertisement and contract registration – increased 7%, to 136 days. Particularly for construction agencies, some bids raised unusually complicated issues of vendor integrity and labor law compliance, as well as budgetary challenges, but MOCS has identified shorter bid cycle time as a goal for Fiscal 2010.
- Processing timeliness for human services program continuations also remains a cause for concern. Nonprofits must have their new contracts in place before the start of each new service year, so that their City payments can flow uninterrupted. For the six major human services agencies, overall rates of lateness ranged from 10% at the Department for the Aging (DFTA) to 89% at the Administration for Children's Services (ACS), with a citywide average of 64%.
- Most agencies reduced the length of the "retroactive" or late period for human services contracts, with five of the six major agencies posting rates between zero and 12% for contracts that were more than 30 days late. Only ACS posted a higher rate (76%), averaging 41 days late.
- Toward the end of Fiscal 2009, as part of the Mayor's Nonprofit Assistance Initiative, MOCS and City human services agencies stepped up efforts to curb and address late contracting. The City increased the size of its cash flow loan program – administered by the Fund for the City of New York – by 150%, to \$20 million. As the economic downturn presented increased challenges for nonprofit vendors, the number of loans rose by 5% and their total value increased 47% to \$21.3 million, with average funds in circulation up by 39%, to \$3.5 million.
- Efficiency in the construction and design change order process is another key performance indicator. Design change orders averaged 5% of the original contract value, a significant improvement over last year's 17%, indicating agencies' success in controlling change orders.
- Processing time for construction change orders – the time between initial approval on-site and submission for registration – remained at last year's figure of 147 days. Processing time for

design change orders decreased by 9%, to an average of 128 days. While all construction agencies posted gains (shorter times) in one or both categories, improved change order timeliness remains a high priority.

IV. Contract Policy: Leveraging Our Buying Power

In this final chapter of the report, we track progress under a number of laws, Executive Orders and policy initiatives. Topics include apprenticeship opportunities, environmentally-preferable purchasing, the City's minority- and women-owned business enterprise (M/WBE) program and health insurance coverage equity and availability. Among the results of these programs are:

- ***Apprenticeships:*** For 106 contracts, worth just over \$2 billion, the City mandated that its vendors participate in apprenticeship programs to afford opportunities for New Yorkers to advance toward good-paying jobs in the construction industry.
- ***Environmentally Preferable Procurement (EPP):***
 - The City purchased over \$65 million worth of EPP goods, including a \$36.6 million five-year requirement contract for office paper.
 - Nearly one billion dollars worth of the City's construction contracts were subject to at least one of 14 EPP specifications, and more than one billion dollars worth of contracts were designed to implement "Green Buildings" projects under Local Law 86 of 2005.
 - MOCS completed a pilot program to test products and then developed an implementation plan to require the use of "green cleaning" products in City facilities, in such categories as general purpose, glass and bathroom cleaners, air fresheners and disinfectants.
- ***Local Law 129 of 2005 (LL 129) and M/WBE Contracting and Subcontracting:***
 - As of Fiscal 2009, City agencies have awarded over \$1.2 billion worth of contracts and subcontracts to certified M/WBE firms, since the effective date of LL 129 (Fiscal 2007).
 - Approximately \$1.4 billion worth of Fiscal 2009 contracts were covered by LL 129 M/WBE participation goals, including more than \$477 million covered by the prime contract goals and just under one billion dollars covered by subcontracting goals. These totals amount to 11% of the year's total dollar volume, up from 8% the prior year.
 - M/WBE participation on prime contracts over one million dollars more than doubled and increased by 46% for contracts between \$100,000 and one million dollars. M/WBEs won \$213 million worth of contracts in those two categories, along with \$21.5 million worth of the City's smaller purchases.
 - M/WBE certifications rose by 37%, to a total of 2,200 certified firms at the end of Fiscal 2009.
 - City agencies awarded 217 prime contracts valued at nearly one billion dollars, subject to the LL 129 M/WBE subcontractor participation goals. Based on these goals, such contracts are projected to generate \$63 million in construction and professional services work for M/WBEs.
 - To date, M/WBEs have won 44% of all subcontracts approved, \$68 million in total, on the full universe of work under LL 129, along with over \$15 million worth of subcontracts not covered by the LL 129 goals, e.g., because they are larger in value or cover other industries.



- Similar goals under state and federal programs that apply to about \$1.6 billion worth of Fiscal 2009 contracts will yield over \$328 million worth of subcontracting work for M/WBEs and disadvantaged businesses. EDC’s subcontractor participation goals will generate nearly \$27 million in similar awards (on a total of \$210 million in prime contracts).
- All told, counting all subcontracts on all prime contracts, regardless of whether LL 129 or any goals program applies, M/WBEs won over \$180 million of subcontracts during Fiscal 2009, amounting to 19% of the subcontract dollars approved – and as much as 30% of the construction and professional services subcontracts valued below one million dollars.
- While the City must continue to expand opportunities for M/WBEs and other small business partners, City agencies have met the “substantial progress” standard for the three year (Fiscal 2007-2009) “ramping up” period established by LL 129, as M/WBEs continue to grow and win larger subcontracts and prime contracts within the City’s portfolio.
- ***Insurance Equity and Availability*** –
 - Based on extensive surveys conducted under Mayor Bloomberg’s Executive Order 72, 86% of the City’s vendors provide or offer health insurance coverage to their full-time employees, and of those, 46% offer such coverage equally to spouses and domestic partners.
 - Through its Central Insurance Program (CIP), at a cost of \$86 million for Fiscal 2009, the City provides comprehensive general liability, workers’ compensation, disability and property insurance to more than 850 nonprofit human service providers, who operate day care, Head Start, senior services, home health care, after-school and various other programs out of more than 1,300 sites. In addition, CIP provides health insurance coverage to a smaller portfolio (day care, Head Start and senior services providers), at a cost of \$116 million.

In the pages that follow, and in the appendices at the back of the report, we expand on each of the topics outlined above. More information on the City’s procurement process 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, www.nyc.gov/mocs
- For a copy of the City’s PPB Rules, www.nyc.gov/ppb
- For general information for vendors and potential vendors, www.nyc.gov/selltonyc
- For information on assistance available to nonprofits, www.nyc.gov/nonprofits
- For more on the City’s M/WBE and small business assistance initiatives, www.nyc.gov/sbs



I. AGENCY PROCUREMENTS: TAKING INVENTORY

A. Introduction

New York City procures more goods and services than any other municipality in the country. Ten large agencies account for 82% of the City's total procurement dollar value and 32% of the total number of contract actions in Fiscal 2009.

Total procurement volume declined in Fiscal 2009 by more than 25% relative to Fiscal 2008. Each year, the cycle of large, multi-year procurements causes citywide and agency procurement volumes to shift, but the economic downturn and resulting budget changes also contributed to this decline.

In Fiscal 2009, the Department of Environmental Protection (DEP) had the highest overall procurement volume, led by its substantial investments in City water- and sewer-related infrastructure. The Department of Sanitation (DSNY) had the second-highest volume, based on several procurements for the City's Solid Waste Management Plan. The Department of Small Business Services (DSBS) posted the third-highest volume due to its economic development master contracts with the New York City Economic Development Corporation (EDC) and the Brooklyn Navy Yard Development Corporation (BNYDC). See Part I.B below.

Table I-1: Fiscal 2009 Top Ten Agencies by Dollar Value

Rank	Agency	Fiscal 2009	Fiscal 2008	Fiscal 2007	Fiscal 2006
1	DEP	\$2,531,400,587	\$4,618,004,861	\$1,244,450,222	\$1,279,884,540
2	DSNY	\$2,359,162,082	\$2,129,384,229	\$820,480,229	\$734,338,368
3	DSBS	\$1,281,129,990	\$1,559,824,077	\$1,613,008,846	\$786,883,162
4	DDC	\$965,001,394	\$978,670,684	\$770,835,527	\$704,022,186
5	ACS	\$802,808,030	\$263,565,973	\$3,494,059,130	\$1,831,381,259
6	DOHMH	\$690,307,354	\$1,032,892,497	\$1,365,653,957	\$602,916,132
7	DOT	\$684,435,678	\$3,226,361,452	\$411,449,817	\$749,489,797
8	DCAS	\$651,663,626	\$732,301,428	\$2,051,544,983	\$1,010,984,130
9	DHS	\$606,966,907	\$321,311,173	\$581,298,405	\$304,387,106
10	DOITT	\$451,570,204	\$502,710,515	\$1,818,529,550	\$693,477,482
	Top Ten Totals	\$11,024,445,851	\$15,365,026,889	\$14,171,310,663	\$8,697,764,162
	All Other Agencies	\$2,393,995,624	\$2,600,666,638	\$1,552,016,351	\$2,469,775,891
	Total	\$13,418,441,475	\$17,965,693,527	\$15,723,327,014	\$11,167,540,053

Note: Fiscal 2008 DSBS and Total entries have been adjusted to reflect three economic development sole source contracts inadvertently omitted from the Fiscal 2008 report.

B. 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 top 25 largest contracts ranked by dollar value; together, they equal more than 41% of the overall citywide procurement dollar volume during Fiscal 2009.

Infrastructure investments continued to be a major source of the City's procurement spending in Fiscal 2009, with a significant dollars going to meet the City's water and sanitation needs. Many of the top 25 contracts, including five for DEP alone, support major infrastructure upgrades.

Table I-2: Top 25 Contracts of Fiscal 2009

#	Agency	Vendor	Purpose	Value
1	DSNY	Sims Municipal Recycling of NY	Acceptance, processing and marketing of recyclables	\$1,592,538,638
2	DSBS	NYC Economic Development Corp.	Master contract: citywide economic development	\$871,678,851
3	DEP	Skansa Picone II JV	Newtown Creek plant upgrade	\$594,753,525
4	DSBS	NYC Economic Development Corp.	Master contract: maritime, aviation & freight	\$302,317,000
5	DEP	New York Power Authority	Energy service program agreement	\$300,000,000
6	DEP	Picone / Schiavone / Frontier-Kemper / Dragados JV	Manhattan leg – Third Water Tunnel construction	\$176,444,869
7	DSNY	Waste Management of NY LLC	Export municipal solid waste (Brooklyn)	\$170,396,100
8	DOHMH	Public Heath Solutions	Fiscal agent for Ryan White HIV prevention services	\$157,000,000
9	DSNY	Waste Management of NY LLC	Export municipal solid waste (Brooklyn)	\$127,797,075
10	DCAS	Herman Miller Inc.	Open space furniture and related products	\$105,000,000
11	Law	Sher Leff LLP	Legal services (environmental litigation)	\$100,000,000
12	DEP	Picone-Schiavone, JV	Croton Water Treatment Plant off-site facilities	\$96,842,500
13	DEP	Frontier-Kemper / Schiavone / Picone JV	New Croton Aqueduct rehabilitation	\$91,696,805
14	DEP	Welsbach Electric Corp.	Newtown Creek plant electrical work	\$83,909,623
15	DSNY	IESI NY Corp.	Export municipal solid waste (Brooklyn)	\$81,044,250
16	DOHMH	First Health Services Corp.	Payment agent for mental health services	\$80,933,350
17	NYPD	Intergraph Corp.	Computer aided dispatch system	\$72,541,534
18	DHS	CAMBA Inc.	Shelter services for homeless families	\$72,276,707
19	DOT	Colonnas Shipyard Inc.	Staten Island Ferry vessel dry-docking/maintenance	\$71,582,669
20	DOITT	Hexagram Inc. (Aclara RF Systems Inc.)	Citywide advance metering infrastructure program	\$68,327,500
21	DOT	Judlau Contracting Inc.	Bruckner Expressway bridge design & build services	\$63,560,600
22	DDC	Hill International, Inc.	City Hall repair/renovation project	\$57,609,380
23	DOF	CGI Technologies and Solutions Inc.	Parking Violations Bureau data consulting services	\$49,816,000
24	FDNY	ZHL Group, Inc.	General contracting services	\$49,658,000
25	FDNY	Express Scripts, Inc.	Pharmacy benefit management services	\$47,052,800
Total Value				\$5,484,777,776

- **Newtown Creek Water Pollution Control Plant**, located in Brooklyn – two contracts totaling \$679 million for general construction work on a new South Control Building and reconstruction of the South Battery and associated electrical work, awarded to a Skanska / Picone joint venture and Welsbach Electric Corp., respectively. These contracts support upgrades to this plant, which has the capacity to treat 310 million gallons of sewage per day.
- **Croton Water Treatment Plant Offsite Facilities**, located at the Jerome Park Reservoir in the Bronx – a \$97 million contract for a new shaft and meter chamber and modifications to several existing gate houses, awarded to a Picone / Schiavone joint venture. The Croton system, a series of reservoirs and lakes in Westchester and Putnam Counties, is the oldest and smallest of the City’s three systems. Croton water enters the water distribution system via the Jerome Park Reservoir, providing about 10% (more during droughts) of the average daily demand, primarily for the Bronx and Manhattan. The New York State Department of Health (NYSDOH) and the United States Environmental Protection Agency (EPA) have required that the City construct a filtration plant for Croton to ensure continued compliance with drinking water standards.
- **New Croton Aqueduct**, running 33 miles from the Croton Lake House to Manhattan – a \$92 million contract awarded to a Frontier-Kemper / Schiavone / Picone joint venture, to perform the second phase of rehabilitation of the more than 100 year old aqueduct. This work includes areas

downstream of the Jerome Park Reservoir and shafts along the route. After completion of the Croton Water Treatment Plant, its tunnels and offsite facilities, the aqueduct will deliver raw water from the New Croton Reservoir and Croton System to the plant. Treated water will be sent through the Bronx-Manhattan distribution system as well as the downstream portion of the New Croton Aqueduct to Manhattan.

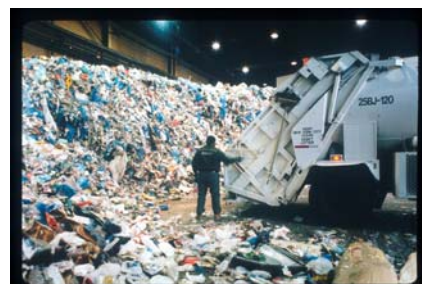
- **City Water Tunnel No. 3**, one of the largest capital projects in New York City's history – a \$176 million contract, awarded to a Picone / Schiavone / Frontier-Kemper / Dragados joint venture for the installation of mechanical equipment and trunk mains at the ten shaft sites in the Manhattan leg of the tunnel. The Third Water Tunnel will enhance and improve the City's water system and allow for the inspection and repair of Tunnels No. 1 and No. 2 for the first time since they were put into service in 1917 and 1936, respectively. Construction of this tunnel is now in its final stages.

Additionally, in support of DEP's mission, DOITT entered into a \$68 million contract with Aclara RF Systems, Inc. (previously known as Hexagram Inc.) to implement an Advanced Metering Infrastructure system to reduce meter reading costs, improve collections and obtain enhanced water consumption information.

DOT also awarded two significant infrastructure contracts, a \$72 million contract with Colonnas Shipyard Inc. for dry-docking, maintenance and repairs of Staten Island Ferry vessels and a \$64 million contract with Judlau Contracting Inc. for the rehabilitation of the northbound and southbound Bruckner Expressway bridges over the AMTRAK/CSX railroads.

Another significant infrastructure contract is a \$58 million contract between Hill International Inc. and the Department of Design and Construction (DDC), for the infrastructure rehabilitation, stabilization and repair of historic City Hall – a designated landmark dating from 1812, making it one of the oldest continuously used city halls in the nation.

The Top 25 contracts also reflect major progress toward the Administration's goal of an effective, reliable and environmentally sound solid waste management infrastructure. The largest contract in Fiscal 2009 was DSNY's \$1.6 billion award to Sims Municipal Recycling of New York LLC. This 40-year service contract provides for Sims to accept recyclables for processing and marketing at its facilities in Jersey City, the Bronx and Queens. Three of the Top 25 contracts, totaling \$379 million, reflect a portion of DSNY's program to manage, transport and dispose of solid waste from various waste management facilities in Brooklyn. Two of these contracts were awarded to Waste Management of NY LLC and the other to IESI NY Corporation.



In support of the goals of 2007 PlaNYC, DEP entered into a five year \$300 million agreement with the New York Power Authority, to allow for development and implementation of projects aimed at **reducing energy consumption** and costs at DEP facilities. See PlaNYC, page 52. Among the specific initiatives supported are efforts to reduce consumption by City agencies, manage peak loads utilizing distributed generation and renewable energy, and end sewage treatment plant methane emissions.

Infrastructure for **public safety** was also a major focus in Fiscal 2009. The Fire Department (FDNY) awarded a \$50 million contract to ZHL Group Inc. to provide on-call general contracting services, assisting FDNY's Building Maintenance Division with the maintenance and repair of approximately 350 buildings, many of which are 50 years or older. In addition, the Police Department

(NYPD) awarded a \$73 million contract to Intergraph Corp. to provide a multi-functional, fully integrated, on-line automated computer-aided dispatch system (hardware and software) to service NYPD's Enhanced 911 operations citywide. The system will provide real time emergency call information to meet NYPD's operational requirements.

By fostering economic growth and developing programs to strengthen the City's economic infrastructure throughout the five boroughs, the Administration is working to meet the challenges of the economic downturn that faced the City during Fiscal 2009. This commitment to *economic development* is highlighted in two contracts awarded by DSBS. Two contracts, totaling \$1.2 billion, were awarded to EDC to support citywide economic development services, as well as services targeted to maritime, aviation, rail, freight, market and intermodal transportation development.

In the *human services* arena, the Department of Health and Mental Hygiene (DOHMH) awarded two contracts to ensure timely payments to health providers. A \$157 million amendment extension was awarded to Public Health Solutions to act as a fiscal agent for Ryan White HIV prevention services. DOHMH also processed an amendment to add \$81 million to its contract with First Health Services Corp., the payment agent for approximately 300 providers of early intervention services for children. The Department of Homeless Services (DHS), as part of its Neighborhood-Based Cluster Transitional Program, awarded a \$72 million contract to the Church Avenue Merchants Block Association, Inc. ("CAMBA") to provide up to 400 transitional housing units and supportive social services to assist homeless families, preparing them for and placing them in permanent housing. FDNY also awarded a \$47 million contract to Express Scripts to provide pharmacy benefit manager services to eligible Department members who seek treatment for World Trade Center related medical conditions and/or line of duty related injuries.

The final three of the Top 25 contracts include a \$105 million, ten-year requirement contract between the Department of Citywide Administrative Services (DCAS), the City's chief provider of goods, and Herman Miller Inc. for open space (modular) furniture systems for use in City offices; a \$50 million amendment to the Department of Finance (DOF) contract with CGI Technologies and Solutions Inc. to support the ongoing work of NYCServ, the multi-agency consolidation project that consolidates payment, licensing, collection and adjudication functions throughout the City's parking violations, collections and audit systems; and a Law Department contract with Sher Leff LLP, to represent the City's interests in a complex environmental litigation.²

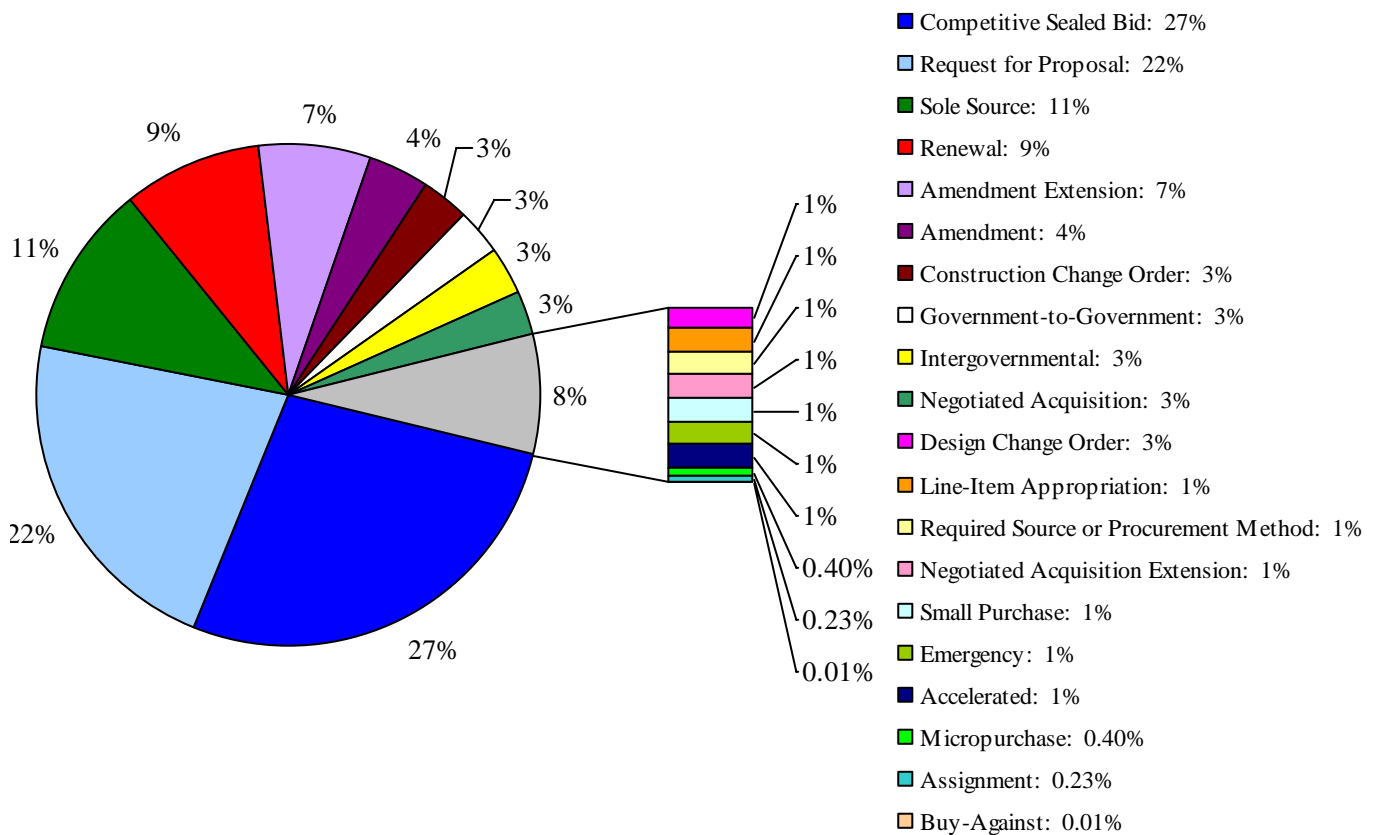
² The City, the New York City Municipal Water Finance Authority and the New York City Water Board are plaintiffs in litigation relating to contamination from the gasoline additive methyl tertiary butyl ether (MTBE). The vendor is providing outside legal representation on a contingency fee basis. The contract is registered for up to \$100 million to reflect the potential maximum legal fee the vendor would be entitled to receive if the plaintiffs received the maximum recovery possible for all of their claims in the case, however, the vendor would be compensated only in the event of recovery and proportional to the amount of such recovery.

C. Agency Procurements

This section presents an overview of how City procurement works, illustrated by specific Fiscal 2009 contracts from the 20 City agencies responsible for the largest amount of procurement. Appendix C contains complete details on the 36 City agencies included in the Fiscal 2009 total procurement volume, together with comparative data from prior years, showing each agency’s volume, organized by methods used (e.g., competitive sealed bid) to obtain its contracts.³

The chart below reflects the total Fiscal 2009 procurement volume by dollar value for each of the 20 procurement method categories tracked in this report. City agencies use different methods to select their vendors; methods vary according to such factors as competitiveness, speed of the procurement process and length of the resulting contracts that can be awarded. Agencies choose among the various methods based on their business needs and the City’s procurement rules.⁴

**Chart I-1:
Dollar Value of Contracts Citywide by Method of Procurement
Total Dollar Value = \$13.4 Billion**



Half of all City procurement results 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 and/or rapid price fluctuations; ***competitive sealed proposals (also called requests for proposals or RFPs)***, with vendors chosen based on

³ The City conducts public hearings on most awards over \$100,000 other than competitive sealed bid and emergency contracts. In Fiscal 2009, public hearings were held for more than 1,200 contracts, valued at \$6.5 billion.

⁴ The Procurement Policy Board (PPB) is responsible for promulgating City procurement rules. See Glossary.

price and quality-based factors;⁵ and *small purchases*, a less formal competitive process for purchases valued between \$5,000 and \$100,000. The share of Fiscal 2009 procurements resulting from these four methods is significantly lower than the Fiscal 2008 level, however, that year DEP registered several very large competitive bid contracts, worth about \$2.4 billion, which drove that year's figure higher overall. Year-to-year comparisons of procurement volumes by various methods of procurement are shown in Appendix C.

The next largest group of procurements, amounting to 27% in Fiscal 2009, consists of six methods used to continue or expand existing contracts for limited periods. 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 a 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;⁶ and change orders, tracked here separately for *construction change orders* and *design change orders*, amending the contracts that support capital construction projects so that ongoing work can be completed.

City 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" on vendor 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 funding agency) determines either how the City must solicit the contract or its actual choice of vendor; and *discretionary awards* (also called *line-item awards*), where elected officials such as the City Council or Borough President are authorized to designate the vendors to be used. See Part II.F, below. Combined, these three types of procurements only amount to 5% of the Fiscal 2009 procurement volume.

Lastly, 17% of the City's Fiscal 2009 procurements relies on a variety of other methods subject to more limited competition. These include: *sole source awards*, where only one vendor is available for the needed goods or services;⁷ *emergency contracts*, where public health or safety considerations dictate rapid response; *negotiated acquisitions*, where City agencies may limit competition based on such considerations as time-sensitivity, confidentiality or the existence of very few competitors in the market;

⁵ When any new or substantially changed human client services program is initiated, City procurement rules require agencies to release for public review and comment a "concept report" prior to release of an RFP solicitation. Publication of concept papers provides a 45 day period for comments from vendors and other members of the public before RFPs are issued. In Fiscal 2009, 18 concept papers were approved that resulted in the release of ten Fiscal 2009 RFPs. Those ten RFPs resulted in 58 Fiscal 2009 contracts valued at \$26.8 million; an additional six RFPs were released in Fiscal 2009 as a result of concept papers approved in prior years.

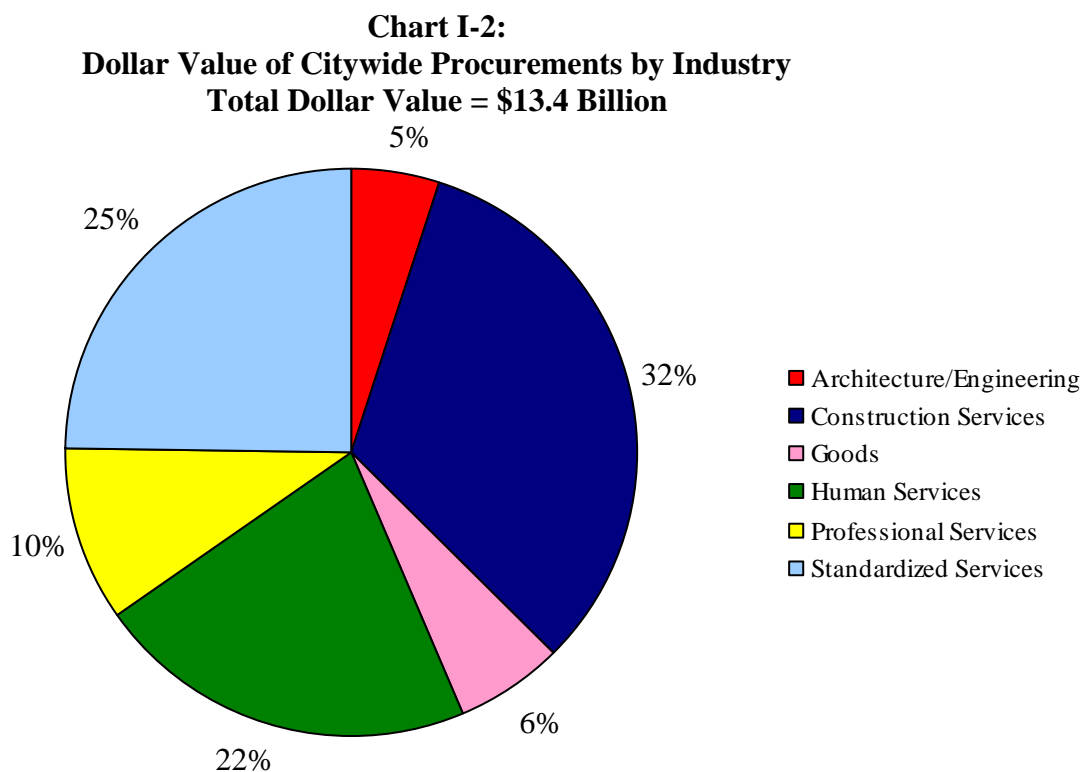
⁶ The category of "amendments" is new to this report for Fiscal 2009. In prior years, we reported amendments used to extend the term of contracts, as well as "change orders" to add work to design and construction contracts. Improvements in data tracking and collection have now made it possible to add data concerning amendments that are processed for the purpose of adding funds to existing contracts. Because of the addition of this data, the Fiscal 2009 total for this category of methods (continuations) is substantially larger than in Fiscal 2008. Amendments can be positive or negative. In Fiscal 2009, \$595 million worth of amendments were registered. \$87 million were for negative amounts, for a net amendment value of \$508M.

⁷ In FY 2008, DSBS' three major sole source economic development contracts, two with EDC and one with BNYDC, were omitted from the that year's Indicators report due to data coding errors. These contracts, all awarded by sole source, total \$1.52 billion. This omission understated the share of procurement in the limited competition grouping. Rather than the reported 3%, the correct value for Fiscal 2008 was 11%. While Fiscal 2009 reflects 18% in this category, because of the decline in total procurement volume, the dollar value of Fiscal 2009's limited competition procurements is, in fact, \$254 million *less than* the amount of such procurements citywide in Fiscal 2008. The correct Fiscal 2008 value for DSBS is shown in table I-1; the correct value for Fiscal 2008 sole source procurements is shown in Appendix C.

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 otherwise becomes unable to continue providing services or supplying goods.⁸ Detailed definitions of all these methods are included in the Glossary to this report.

Fiscal 2009 procurement spending reflects a higher proportion of procurements to continue prior contracts, and a higher proportion of awards based on limited competition, relative to Fiscal 2008. These variations reflect the cyclical nature of contracts and normal year-to-year fluctuation.

Two other key indicators by which we classify City procurements are by industry and by the size of the resulting contract. We track six major industries: architecture/engineering, construction, goods, human services, professional services and standardized services (definitions are included in the Glossary). The chart below reflects the total Fiscal 2009 procurement volume by industry category.



In Fiscal 2009 the proportion of human services procurements increased significantly. This reflects both the inclusion of amendments for the first time this year, as more than half of all amendments, or \$265 million, are made to human services contracts, and normal year-to-year fluctuation. See Appendix D for comparative data from prior years.

The table below presents overall procurement volume data at various dollar values. See Appendix E for comparative data from prior years. In Fiscal 2009, contracts for \$3 million or more totaled 79% of the overall dollar volume of citywide procurements. These larger contracts represented just 1% of the total

⁸ The Fiscal 2009 report also includes separate data on the government-to-government and buy-against methods, which were reported collectively as the “other” method category in prior years. Assignments were not reported prior to Fiscal 2009.

number of procurements made. By contrast, purchases for \$100,000 or less accounted for 3% of the total dollar value purchased, but fully 91% of the number of procurements processed.⁹

Table I-3: Dollar Value of Contracts by Contract Size								
Group	Fiscal 2009		Fiscal 2008		Fiscal 2007		Fiscal 2006	
	Value	% of Total	Value	% of Total	Value	% of Total	Value	% of Total
<\$0	(\$87,152,896)	-1%	N/A	N/A	N/A	N/A	N/A	N/A
\$1-\$100K	\$395,136,349	3%	\$319,110,623	2%	\$324,277,115	2%	\$322,247,521	3%
\$100K-\$1M	\$1,172,540,171	9%	\$822,050,462	5%	\$775,106,859	5%	\$914,924,981	8%
\$1M-3M	\$1,367,579,730	10%	\$1,281,546,336	8%	\$1,246,628,934	8%	\$1,149,800,443	10%
\$3M-25M	\$3,904,333,698	29%	\$3,453,083,063	21%	\$4,092,482,484	26%	\$3,274,962,187	29%
>\$25M	\$6,666,004,423	50%	\$10,592,236,784	64%	\$9,284,831,621	59%	\$5,505,604,919	49%
Total	\$13,418,441,475	100%	\$16,468,027,268	100%	\$15,723,327,014	100%	\$11,167,540,051	100%

Note: Amendments with negative values are not included in these percentages.

The agency procurement profiles below present two examples from each of the 20 agencies with the highest level of procurement. The examples are selected to provide at least one illustration of 19 of City’s procurement methods.¹⁰ Agencies are grouped by “key public service areas” in the same manner as the *Mayor’s Management Report* and the *Mayor’s Citywide Performance Report*. See nyc.gov/html/ops/html/mmr/mmr.shtml. These include:

- Health and Human Service Agencies:** These large agencies provide direct social services to those in need, including vital programs and initiatives to promote healthy families, adults and children throughout the City. Within the top 20 procurement agencies, this category includes DOHMH, the Human Resources Administration (HRA), DHS, ACS, DFTA and DYCD.
- Infrastructure/Administrative/Community Service Agencies:** Agencies in this category are responsible for maintaining City government’s functions. Administrative agencies such as DOITT support other agencies and provide citizens with access to government. Infrastructure agencies such as DEP work to make the City’s roads, buildings and water supply safe, clean and affordable. Community service agencies such as DPR provide services and resources that help create and maintain the unique neighborhoods of New York. The top 20 procurement agencies in this category also include DOT, the Department of Housing Preservation and Development (HPD), DDC, DCAS and DSNY.
- Public Safety/Legal Affairs Agencies:** These agencies maintain the safety of all City residents. Public safety agencies respond to crimes, disasters and emergencies, and maintain safe, secure environments for people in custody. Legal affairs agencies exercise oversight responsibilities, so that City agencies operate legally and fairly in accordance with applicable laws and regulations. Within the top 20 agencies, this category includes NYPD, FDNY, the Law Department (Law) and the Office of the Criminal Justice Coordinator (CJC).

⁹ Amendments with negative values are not included in these percentages.

¹⁰ No examples are provided for the buy-against, demonstration or innovative methods. Only DCAS used the buy-against method during Fiscal 2009, for just under \$200,000 worth of goods. No agencies used the demonstration or innovative methods during Fiscal 2009. See Glossary.

- **Business Affairs Agencies:** City agencies in this category help local business grow, promote economic opportunity and work towards increasing the City’s economic strength. Within the top 20 procurement agencies, this includes the Department of Finance (DOF) and DSBS. Additional information is included concerning EDC, which operates under a contract with DSBS.

1. Health and Human Service Agencies

Administration for Children’s Services (ACS) – 5th in Procurement Volume

ACS serves New York City’s children and their families, investigating child abuse and neglect reports involving approximately 90,000 children annually and providing preventive services to an average of 32,000 children. Along with its community partners, ACS provides neighborhood-based services to help ensure children grow up in safe, permanent homes with strong families. It also provides foster care for approximately 17,000 children through 36 foster care agencies citywide, and helps arrange for the adoption of approximately 1,200 children a year. ACS funds and supports 257 Head Start centers and enrolls approximately 104,000 children in child care programs. Examples of services procured by ACS during Fiscal 2009 are:

- **Child Care Services:** ACS awarded two-year negotiated acquisition extensions for many of its child care vendors, to provide for service continuity while a competitive RFP was developed. Highbridge Advisory Council Family Services, Inc. was awarded such an extension, valued at \$7,811,031.
- **Preventive Services for At-Risk Families:** ACS amended a contract with St. Barnabas Hospital, to adjust caseloads and to add State- and City-funded cost of living adjustments. The amendment totaled \$152,704 and also included “enhancement dollars” to strengthen the provision of preventive services to high-risk families throughout the Bronx, predominantly to those families referred by Child Protective Services. These Bronx-based services provide at-risk families with community-based services so children can remain safely in their homes and avoid the need for placement into foster care.



Department of Health and Mental Hygiene (DOHMH) – 7th in Procurement Volume

DOHMH protects and promotes the health and mental well-being of all New Yorkers. Among the programs supported by its procurements are mental health services, mental retardation and developmental disability services, chemical dependency prevention and treatment, Early Intervention services to developmentally-delayed infants and toddlers, and programs to prevent and control chronic diseases such as heart disease, diabetes, asthma and cancer. DOHMH provides direct community-based services, including tuberculosis/chest centers, sexually transmitted disease clinics and HIV prevention and control services at more than 1,275 schools. It generates community health profiles, issues birth and death certificates, conducts health and safety inspections and protects public safety through immediate response to emergency public health threats. Fiscal 2009 procurements by DOHMH include:

- **Physical Activity Program for Obesity Prevention:** Sportime, LLC (known as “The Spark Programs”) won an RFP award of \$8,525,000 to administer obesity prevention services for young people. The contractor will provide age-specific physical activity training, hand-outs, manuals and equipment for pre-school, elementary and middle school-aged children.

- **Portal and Security Infrastructure:** IBM was awarded a \$2,900,000 intergovernmental contract to provide hardware installation services and infrastructure design for DOHMH's provider network (NYC-MED), as well as the World Trade Center Health Registry and the online portal for integration of DOHMH's systems infrastructure.

Department of Homeless Services (DHS) – 9th in Procurement Volume

DHS is dedicated to overcoming homelessness in the City. It focuses on providing safe shelter and outreach services, as well as helping individuals and families transition to permanent housing. DHS maintains linkages with public agencies and the non-profit and business sectors and emphasizes interventions aimed at solving the problem of homelessness, rather than just managing it. DHS maintains 11 City-run and 205 privately-run shelter facilities and provides outreach services available 24 hours a day, seven days a week, as well as community-based homeless prevention services. Services procured by DHS toward those goals during Fiscal 2009 include:

- **Drop-In Services for Homeless Individuals:** The drop-in center operated by the Project Hospitality Inc. in Staten Island provides street homeless clients with case management, substance abuse counseling, independent living skills, housing placement, food, medical care and referrals to other support services. DHS renewed this contract for \$1,297,114.
- **Tier II Family Shelter:** New York State mandates that DHS provide shelter services to any adult or family requesting such help. To meet this capacity, DHS utilizes transitional facilities known as "Tier II" shelters, selected using the required source method (using designations from the State). One such award, for \$8,299,062, supports the St. John's Place Family Center Housing Development, Inc. facility in Crown Heights, Brooklyn. Services include case management, permanent housing placements, and referrals to off-site support services and childcare services, with the goal of stabilizing families and promoting their eventual move to independent living.

Department of Youth & Community Development (DYCD) – 12th in Procurement Volume



DYCD aims to improve the quality of life for youth and their families and to strengthen communities. It partners with community-based organizations to support the development of healthy, educated and civic-minded youth who take an active role in their communities. DYCD administers diverse programs providing after-school activities, work-related skills training, help for runaway and homeless youth, literacy skills preparation (for all age levels) and community development in low-income communities. Fiscal 2009 contracts supporting this work include:

- **Web-based Adult Student Record System:** DYCD used a \$135,000 sole source procurement with the Literacy Assistance Center to acquire rights to the Adult Student Information System and Technical Support (ASISTS) database to track student enrollment, attendance and test data and more effectively monitor the efficacy and performance of DYCD's Adult Literacy vendors.
- **Summer Youth Employment Program (SYEP):** The SYEP program serves youth ages 14-21 throughout New York City, providing an opportunity to become familiar with the world of work, gain employment experience and identify educational pathways that support career and life goals. DYCD made and registered 57 awards by RFP, totaling more than \$25 million, including an \$814,125 award to the Council of Jewish Organizations of Flatbush, Inc.

Human Resources Administration (HRA) – 13th in Procurement Volume

HRA provides lower-income New Yorkers with the tools they need to lead productive and independent lives, administering a wide array of programs to connect eligible New Yorkers with food, shelter, financial assistance, medical care and other social services. HRA provides a safety net for these New Yorkers while facilitating their ability to rejoin the workforce and move towards self-sufficiency. Two examples of programs supported by Fiscal 2009 procurements are:

- ***Homemaker Services to Persons Living with AIDS:*** HRA renewed its \$3,414,000 contract with Children’s Aid Society to continue homemaker services for persons living with AIDS and HIV-related illnesses. These services include personal care, supervision of children and general household activities such as food shopping, meal preparation, cleaning and laundry.
- ***Non-Residential Services for Victims of Domestic Violence:*** HRA originally solicited providers of non-residential services for victims of domestic violence through the RFP process. These services range from counseling, advocacy, legal services and information and referral. One such contract was originally entered into with the nonprofit New York Association for New Americans (NYANA) for a three-year period that included Fiscal 2009. This year NYANA’s fiscal situation worsened and the organization was dissolved. See Nonprofit Assistance Initiatives, page 35. To continue client services, HRA assigned the remaining year of the contract and its \$194,522 balance to Federation and Employment Guidance Services (FEGS).

Department for the Aging (DFTA) – 14th in Procurement Volume

DFTA works to empower, foster independence and promote dignity and a higher overall quality of life for New York City’s uniquely diverse elderly population. Its mission is to inform, educate, serve and support both the elderly and their families. DFTA provides services both directly and through more than 900 contracts. DFTA supports a broad range of services with community-based organizations, including 304 contracted senior centers, and provides over 12.1 million meals annually to seniors. Vital services procured by DFTA in Fiscal 2009 include:



- ***Home Delivered Meal Program:*** On each weekday, approximately 16,000 homebound seniors throughout the City receive a home-delivered meal because they are unable to prepare their own food and have no one to assist them. DFTA has re-fashioned the meal program to provide consumer choice and flexibility in meal type and frequency of delivery, ensuring compliance with federal and City dietary guidelines, as well as medical, dietary and cultural restrictions. DFTA made twenty RFP awards for this program, including a \$6,055,816 award to Meals on Wheels of Staten Island, Inc.
- ***Senior Centers:*** DFTA contracts with community-based organizations to provide services to assist seniors to remain independent and involved in their communities. Senior center programs provide a venue where seniors may receive referrals for services and engage in such health-promoting activities as sharing a meal, attending lectures and participating in dancing or exercise classes. In some cases, DFTA used a negotiated acquisition extension to continue these services, including a \$713,947 contract with Queens Community House, Inc.

2. Infrastructure/Administrative/Community Service Agencies:

Department of Environmental Protection (DEP) – 1st in Procurement Volume

DEP protects the environmental health, welfare and natural resources of the City and its residents. DEP is charged with managing the water supply, providing more than one billion gallons of high quality drinking water daily, overseeing 14 City wastewater treatment plants and eight plants upstate, billing approximately 828,000 water and sewer accounts and managing water conservation programs. DEP also carries out federal Clean Water Act rules and regulations, handles hazardous materials emergencies and toxic site remediation, oversees asbestos monitoring and removal and enforces air and noise codes. In addition to the large DEP procurements discussed in Part I.B above, other Fiscal 2009 contracts include:

- ***Catskill-Delaware Water Supply System Wetland Project:*** Construction of the Catskill-Delaware Ultraviolet (UV) Disinfection Facility has resulted in the disturbance of existing wetlands at the project site. To mitigate this impact, DEP awarded Halmar International LLC a \$12,651,370 competitive sealed bid contract to create new wetlands at three upstate locations. The wetland creation will involve earthwork and related projects.
- ***Extended Studies and Design Enhancements for Water Treatment Facilities:*** DEP agreed to a \$415,000 design change order to its contract with a joint venture between two engineering firms, Hazen and Sawyer and Camp Dresser McKee. The original contract was for the preliminary design for the Catskill-Delaware Filtration Plant. As part its Filtration Avoidance Determination, the federal Environmental Protection Agency requires that DEP update the Catskill-Delaware filtration plant design every two years, in order that the design does not become outdated.

Department of Sanitation (DSNY) – 2nd in Procurement Volume

DSNY promotes a healthy environment through efficient management and sound long-range planning for solid waste and refuse. “New York’s Strongest” operate 59 district garages, manage a fleet of 2,033 rear-loading collection trucks and 450 mechanical brooms and collect approximately 11,800 tons of household and institutional waste each day. DSNY also clears litter, snow and ice from approximately 6,000 City street miles and removes debris from vacant lots and abandoned vehicles from City streets. Among the Fiscal 2009 procurements DSNY used to support its mission are:



- ***Export of Municipal Solid Waste from Manhattan and Staten Island:*** Under this one-year renewal contract for \$32,914,350, Transriver Marketing Co, LLP continues to process, transport and dispose of municipal solid waste collected from Manhattan and Staten Island.
- ***Plumbing Construction of New Garage:*** DSNY negotiated a \$500,000 construction change order for Almar Plumbing and Heating Corp.’s \$8 million contract for work at the 56th Street (Manhattan) garage. The change order funded compliance with additional FDNY requirements, now specifying a double wall steel encased piping system with leak detection, in lieu of the fiberglass originally specified.

Department of Design and Construction (DDC) – 4th in Procurement Volume

DDC manages a design and construction portfolio of more than \$6 billion of the City's capital projects, ranging from roadways, sewers and water mains to public safety, health and human service facilities to cultural institutions and libraries. The City is committed to achieving excellence in the design and construction of its capital program, and DDC has placed renewed emphasis on promoting design and construction excellence through innovative procurement methods and a comprehensive review process. Some of DDC's Fiscal 2009 procurements include:

- ***Reconstruction of Fulton Street:*** Working with DOT and DEP, DDC is spearheading a large-scale project to reconstruct Fulton Street in Lower Manhattan. Because of state “joint bidding” legislation that allows the City to bid and manage all of the necessary work, including work that public utilities must undertake as part of such reconstruction projects in Lower Manhattan, this contract also includes \$11.1 million in funding contributed by utility companies with services in the area. See Construction Reform, page 48. Trocom Construction Corporation, Inc. won the \$28,157,807 competitive sealed bid contract to rebuild and upgrade roadways, sidewalks, curbs, street lights, traffic signals, water mains, sewers and utilities.
- ***Isamu Noguchi Foundation and Garden Museum Reconstruction:*** DDC awarded a sole source contract of \$8,279,000 to the Isamu Noguchi Foundation and Garden Museum for work at this Queens museum, to remedy water erosion in the structure and renovate the interior of the galleries, so the public may continue to enjoy educational programs, as well as exhibits of the artwork by the Japanese American artist Isamu Noguchi.

Department of Transportation (DOT) – 6th in Procurement Volume

DOT maintains approximately 5,800 miles of streets and highways and 789 bridge structures, including six tunnels. DOT encourages the use of mass transit by operating the Staten Island Ferry and promoting private ferry routes, promotes the use of alternative modes of transportation and administers a citywide program advancing the use of alternative fuels. It contributes to the City's growth and sustainability, implementing critical transportation components of PlaNYC, including new transit initiatives, traffic congestion mitigation and improvements to public spaces. DOT served its mission through a number of significant Fiscal 2009 procurements, including:

- ***Rehabilitation of Area Surrounding Grand Central Station:*** DOT entered into a government-to-government agreement with Metro-North Commuter Railroad, in the amount of \$16,152,327, to support various rehabilitation projects including the Park Avenue Viaduct, work on the streets, sidewalks and pedestrian ramps in the Grand Central area, as well as work on the traffic signals between 46th and 56th Streets on Park Avenue.



- ***Emergency Reconstruction of Borden Avenue Bridge:*** DOT awarded a \$37,371,880 contract to Maracap Construction Industries to address a potentially dangerous condition of the west abutment wall of the Borden Avenue Bridge in Queens, crossed by more than 16,000 vehicles daily. This emergency procurement allowed critical repair work to be performed expeditiously as possible.



Stimulating Our Economy: The American Reinvestment and Recovery Act

On February 17th 2009, President Barack Obama signed into law the American Reinvestment and Recovery Act (ARRA) of 2009, as a response to the nation's economic crisis. ARRA will fund investments in the New York City economy, including federal tax cuts, expansion of unemployment benefits and other social welfare programs, and domestic spending in education, health care, energy efficiency and infrastructure. The stimulus money for New York City will be used to ensure continued vital City services, provide assistance to New Yorkers in need, and stimulate the City's economy.

As a major recipient of ARRA funding, New York City has developed a [NYCStat Stimulus Tracker](#) website which provides transparency to the funding that the City receives. Using the website, viewers are able to see information such as the number of jobs created or retained through stimulus funding, contract status and payments to vendors. Other features of the Stimulus Tracker include a list of competitive grants the City has applied for, an interactive map showing the locations of all stimulus-funded projects and programs and an email subscription to receive Stimulus Tracker news.

Most stimulus-funded procurement will occur during Fiscal 2010 and 2011, but the City began registering stimulus contracts during Fiscal 2009. DOT amended an existing contract for dry-docking and maintenance of passenger ferries to add \$37.7 million in stimulus funding. DHS, amended one of its adult services contracts to add \$5.7 million in stimulus funding. DSBS registered a new \$550,000 contract for job preparation and placement services. In addition, DOT registered three contracts that, while not themselves stimulus-funded, provide pre-construction services for two major stimulus-funded projects: rehabilitation of the Brooklyn Bridge and the St. George Ferry Terminal ramps.

To learn more about these and other stimulus-funded contracts, please visit the Stimulus Tracker website at nyc.gov/stimulustracker.

Department of Citywide Administrative Services (DCAS) – 8th in Procurement Volume



DCAS provides resources and support to City agencies to help them meet their obligations to the public. It recruits, hires and trains City employees; provides facilities management services for 54 public buildings; purchases, sells and leases non-residential real property; and purchases, inspects and distributes supplies and equipment. As the City's chief goods purchaser, DCAS' Division of Municipal Supply Services establishes citywide requirement contracts for many frequently purchased commodities. See Part I.D.1 below. DCAS also procures construction and services. Examples of Fiscal 2009 DCAS purchases are:

- **Frozen Food Items for HRA's Emergency Food Assistance Program:** DCAS awarded a \$729,626 accelerated contract to Tony's Fish and Seafood Corporation, for non-perishable frozen food to be distributed by HRA's Emergency Food Assistance Program to soup kitchens and food pantries throughout the City that participate in its Food Bank for NYC program. The frozen food items included snap green beans, collard greens, carrots, peas, chopped spinach, mixed vegetables, broccoli and whiting fillet.
- **GRP American Road Snow Plows:** DCAS entered into a five-year \$5,950,000 competitive sealed bid contract with American Road Machinery, Inc. for replacement parts for the American Road snow plows currently in the City's fleet. American Road snow plows represent about 75% of the plows used by City agencies.

Department of Information Technology & Telecommunications (DOITT) – 10th in Procurement Volume

DOITT transforms City government's interaction with residents, businesses, visitors and employees leveraging technology to improve services and increase transparency, accountability and accessibility. It runs the 311 Customer Service Center, providing public information and services for more than 300 agencies, maintains the [NYC.gov](http://www.nyc.gov) website and manages the City's television and radio stations. DOITT coordinates IT policy and planning, and operates the City's data center, telephone systems, fiber optic network, 800 MHz radio network, internal data network and Enterprise Service Desk, as well as telecommunications franchises for high capacity fiber, cable television infrastructure, public pay telephones and mobile telecommunications equipment. DOITT served these various missions through several Fiscal 2009 contracts including:

- ***Oracle Support Maintenance and Support Renewals:*** DOITT obtained the services of Mythics, Inc. through an intergovernmental award of \$33,577,992, to provide heavily-discounted software maintenance and upgrades for various Oracle, Siebel and PeopleSoft software currently used in various City agencies. Using one vendor to provide support for all of these Oracle software products resulted significant cost savings.
- ***Relocation of Fiber Optic Network:*** New York State Technology Enterprises Corporation (NYSTEC) received an intergovernmental award of \$985,648 to oversee the relocation of one of eight core nodes supporting the City's fiber-optic telecommunication network. NYSTEC will develop project plans and surveys, coordinate engineering activities and provide quality assurance for the transfer and implementation of the node in its new location at 60 Hudson Street in Manhattan.

Department of Parks and Recreation (DPR) – 11th in Procurement Volume

DPR maintains a municipal park system of more than 29,000 acres including nearly 1,700 parks, almost 3,000 Greenstreet sites, more than 990 playgrounds, over 800 athletic fields and 550 tennis courts, 53 outdoor and 12 indoor swimming pools, 30 indoor recreational centers, 13 field houses, seven community centers, nearly 600 comfort stations, 14 miles of beaches, 13 golf courses, six ice rinks, five major stadia, 17 nature centers, 13 marinas and four zoos. DPR is also responsible for approximately 600,000 street trees and two million park trees, 22 historic house museums and more than 1,000 monuments, sculptures and historical markers. Examples of DPR Fiscal 2009 contracts include:



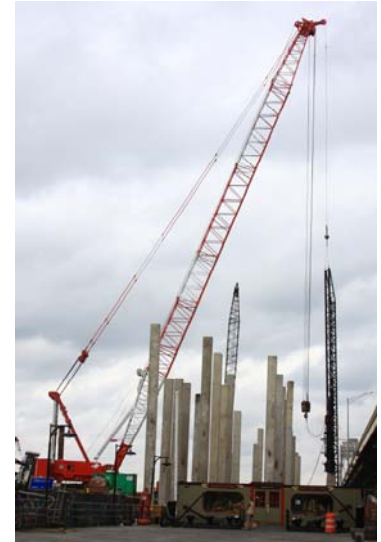
- ***Reconstruction of Boardwalks, Stairs and Ramps:*** DPR has begun work on its ten-year plan to rehabilitate two million square feet of boardwalks at City beaches. D'Onofrio General Contracting Corporation won a \$8,922,892 competitive sealed bid contract to replace 104,000 square feet of boardwalk in Queens and Brooklyn, including Steeplechase Pier in Coney Island.
- ***Summer Camp T-Shirts:*** DPR operates summer camp programs in recreation centers across the City for children aged 6–13, offering arts and crafts, sports, computer training, field trips and other programs. Through a micropurchase, Concept Printing Inc., a certified woman-owned business, provided over 500 tee shirts for children at one of DPR's Manhattan camps, at a cost of \$3,332.

Construction Safety Is Job One

New York is a city always under construction and 2008 was no exception. To ensure that construction is conducted safely, the City has a myriad of rules and regulations, which are purposely designed to include redundancies to protect life and property. Constant reexamination is required to maintain construction safety, and even redundant requirements are sometimes overcome by circumstances.

In Fiscal 2009, following a number of serious construction accidents, including a March 2008 crane collapse that claimed seven lives, the Department of Buildings (DOB) used emergency procurements to obtain consulting services from firms with expertise to investigate and examine safety issues at City construction sites. Those contracts included:

- ***High Risk Construction Oversight Study*** – This \$3,969,175 contract with CTL Engineers & Construction Technology Consultants provided engineering services to determine the necessary steps to avoid accidents and improve safety on construction sites. The process involved a systematic review of procedures at construction sites; a study of DOB’s regulatory framework, permitting procedures, field inspections and staffing; industry practices; and benchmarking reviews of practices in other jurisdictions. The study examined high rise concrete, cranes, excavations, personnel and materials hoists, as well as DOB’s regulatory framework. The study yielded numerous recommendations including additional monitoring and better enforcement of existing rules and regulations, examining the age of tower cranes and the certification requirements for hoists. DOB is moving to continue these consultant services, as it implements the recommendations. The full report can be found at: http://www.nyc.gov/html/dob/downloads/pdf/hrco_report.pdf.
- ***Forensic Engineering Services*** -- Ove Arup & Partners received a \$750,000 contract to investigate the crane collapse. Arup gathered information and documents from all of the relevant agencies, visited the collapse site and inspected the damaged crane parts. It conducted structural analysis of the crane, support collars and sling systems, witnessing OSHA-specified tests and reviewing the raw data. Arup also conducted materials and metallurgical tests, reviewed codes, standards and regulations relevant to the collapse and performed an independent peer review of the crane’s support designs. Arup concluded that improper usage of the polyester web slings resulted in their failure. Under the same contract, Arup also investigated a later crane collapse (in May 2008). The full report on the March crane collapse can be found at: http://www.nyc.gov/html/dob/downloads/pdf/51streetcraneinvestigation_all.pdf.
- ***Mobile Crane Inspections*** – DOB also awarded a \$300,000 contract to Arxcis to inspect all mobile cranes in the city. For every existing on-site crane permit, Arxcis ensured the construction company was in compliance with appropriate placement, foundation and use restrictions. Inspections were conducted from April 2008 through February 2009; no violations were found.



Housing Preservation and Development (HPD) – 19th in Procurement Volume

Using a variety of preservation, development and enforcement strategies, HPD improves the availability, affordability and quality of the City’s housing. As the nation’s largest municipal housing agency, HPD works with private, public and community partners to strengthen neighborhoods and enable more New Yorkers to become homeowners or to rent well-maintained, affordable housing. HPD used a number of Fiscal 2009 procurements to implement its mission, including:

- ***Mailing Services***: HPD’s Division of Code Enforcement mails violation notices and similar documents to owners and managing agents responsible for building maintenance. HPD followed the preferred (required) source method to award a \$3,101,483 contract to New York State Industries for the Disabled, Inc. (NYSID), a statewide network of 155 community rehabilitation agencies and private sector businesses, which employs skilled people with disabilities in facility-based settings and community-based jobs.

- **Demolition of Ten Buildings:** HPD performs emergency and non-emergency demolition, shed installation, land clearing, construction and construction-related services at various City and privately-owned residential and commercial buildings, when they become unsafe. In one such instance, upon notification that an emergency had been declared for demolition of ten bungalows in Far Rockaway, Queens, and HPD awarded a \$214,444 emergency contract to A. Russo Wrecking, Inc., a certified woman-owned business, to perform this work.

3. Public Safety/Law Agencies

Police Department (NYPD) – 15th in Procurement Volume

NYPD is committed to providing, with integrity and respect, a safe and secure environment for the public. “New York’s Finest” are assigned to 76 precincts, 12 Transit Districts, nine Housing Police Service Areas and other investigative and specialized units to protect life and deter crime while responding to emergency calls and enforcing the law. NYPD also seeks to protect the City from terrorists, utilizing sophisticated intelligence gathering and analysis, citywide counterterrorism deployments such as Operation Atlas, and department-wide counterterrorism training to enhance response capabilities. NYPD Fiscal 2009 procurements include:

- **Purchase of Small Boats:** NYPD used a \$94,899 small purchase award to obtain four boats from Zodiac of North America, Inc., for the Harbor and Emergency Service Unit to take scuba divers out to specific locations, access shallow waters and conduct rescue operations. The Zodiac inflatable boats can carry up to ten people and can navigate all waters surrounding the City.
- **Purchase of Two Air-Sea Rescue Helicopters:** NYPD’s Aviation Unit (AU) manages the airborne law enforcement program. The AU is a service-oriented division that uses rescue helicopters to perform critical assignments including Med Evac flights, high rise fire rescues, tactical rappelling, counter terrorism, executive transport and air/sea rescue operations. NYPD used a \$24,945,854 RFP award to purchase two air-sea rescue helicopters from Edwards and Associates, Inc.



Fire Department (FDNY) – 16th in Procurement Volume

FDNY protects lives and property by responding to fires and other emergencies such as medical calls, disasters and terrorist acts. FDNY also seeks to prevent such problems from occurring through educational programs on fire safety and fire prevention. “New York’s Bravest” respond to more than 260,000 fire and non-fire related calls and more than one million medical calls per year. FDNY maintains approximately 250 firehouses, as well as ambulances serving the five boroughs. Below are two Fiscal 2009 procurements illustrating the diverse work undertaken by FDNY:

- **Maintenance of Self Contained Breathing Apparatus:** The Mask Service Unit (MSU) awarded a \$1,475,800 competitive sealed bid contract to Coastal Fire Systems, Inc. for the maintenance and repair of self-contained breathing apparatus air compressors. Keeping the compressors in optimal condition is vital to ensure the reliability of supply of breathing air. MSU refills 20,000 cylinders per month using air compressors located at the FDNY’s training facility on Randall’s Island.

- **Rehabilitation of Marine Facilities at the Brooklyn Navy Yard:** FDNY maintains facilities at the Brooklyn Navy Yard for its Marine Division to house firefighting vessels and provide a rapid response to waterborne and shore-side emergencies. FDNY awarded a sole source procurement valued at \$4,510,000, to BNYDC to obtain the needed construction services to maintain FDNY's facilities at optimal capacity and working order.



Law Department – 17th in Procurement Volume

The Law Department is responsible for handling all the City's legal affairs. Its mission is to provide legal representation through excellence, dedication, integrity and respect. It is comprised of 17 legal divisions and 3 support divisions. The Law Department handles more than 90,000 matters and provides legal advice to all City agencies. Fiscal 2009 procurements include:

- **Retrieval of Medical Records:** Through the negotiated acquisition procurement method the Law Department awarded a \$99,000 contract to The MCS Group, Inc., to assist the City's attorneys in retrieving medical records needed for the defense of litigation against the City.
- **Scanning, Coding and Organizing Electronic Data:** The Law Department renewed a contract for \$4,492,000 with Kopy Kween, Inc. for the scanning and coding of litigation-related documents, particularly confidential case records, and organizing the resulting data to support litigation.

Criminal Justice Coordinator (CJC) – 18th in Procurement Volume

CJC serves as the Mayor's advisor on criminal justice policy and legislation. CJC coordinates the activities of the City's criminal justice agencies and is the City's primary liaison with the court system, District Attorneys and the state criminal justice system. Other responsibilities include oversight of the arrest-to-arraignment system, legal services to indigent defendants, alternative to incarceration programs, the City's Court Facilities, Master Plan and PINS Services. Among the initiatives supported by CJC through Fiscal 2009 procurements are:

- **Indigent Criminal Defense Services:** The City has a legal obligation to provide representation for indigent criminal defendants at the trial level. CJC used a \$4,948,498 amendment to extend its existing contract with Queens Law Associates, which provides representation to indigents in 15,000 criminal cases per year in Queens County, for an additional year.
- **NYC Family Justice Center Early Victim Engagement Project:** The United States Department of Justice approved a \$1.4 million grant for the New York City Family Justice Center Early Victim Engagement (EVE) program. Using a required source procurement, CJC awarded two contracts, including one for \$290,760 to Safe Horizon, to provide telephone outreach, safety assessment and crisis counseling, as well as follow-up services to domestic violence victims, as part of this innovative program.

4. Business Agencies

Department of Small Business Services (DSBS) – 3rd in Procurement Volume

DSBS helps City businesses develop and grow. It assists business owners, helping them start new ventures, find solutions to common business problems and hire and train employees. DSBS facilitates the establishment of Business Improvement Districts (BIDs) and provides technical assistance and funding to local economic development areas. In addition to direct business services, DSBS strengthens the City's workforce by providing jobseekers with employment preparation and career training programs. Among DSBS' Fiscal 2009 procurements are:

- ***Voucher Payments for Individual Training Grants:*** YMS Management won a \$20 million competitive sealed bid contract to manage voucher payments for DSBS' Individual Training Grant (ITG) providers. ITGs are individual vouchers given to jobseekers through the City's Workforce1 Career Centers for occupational training in growth occupations. Jobseekers have "customer choice" when researching training providers offering courses that match their occupational goals.

Qualified training providers are listed in the NYC Training Guide at nyc.gov/trainingguide.



Source: Nontraditional Employment for Women (NEW)

- ***Nontraditional Employment for Women:*** Through a \$190,000 line-item appropriation by the City Council, Nontraditional Employment for Women (NEW) operates an employment and occupational skills training program, placing women in entry level positions and apprenticeships in the construction, utilities, transportation, facilities maintenance and repair trades.

Department of Finance (DOF) – 20th in Procurement Volume

DOF is responsible for ensuring compliance with the City's tax and revenue laws, valuing all property in the City, and providing a forum for the public to contest tax and parking violation liabilities. DOF also includes the Office of the Sheriff, which is the chief civil law enforcement office for the City.

- ***Bail Automated Receipt System (BARS):*** DOF used a \$368,000 sole source procurement to purchase from SoftCode, Inc. the license and maintenance for proprietary software used to record bail payments, digitize the surety's signature and generate receipts. BARS integrates the operations of DOF, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ) and the courts onto one system operating on approximately 20 satellite workstations.
- ***Shredding Services:*** DOF obtained shredding services through a \$16,500 small purchase from Brink's Inc. DOF requires secure services, as its documents include tax and other confidential information.

New York City Economic Development Corporation (EDC)

EDC is a nonprofit corporation operating under contract with the City (through DSBS) and the primary vehicle through which the City's provides economic development services.¹¹ 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. EDC's work stimulates investment throughout the five boroughs and across industry sectors, broadening the City's tax and employment base. EDC oversees transportation and infrastructure projects and manages the redevelopment of rail freight lines, food markets and maritime and aviation facilities. It helps to promote the City's central business districts, makes City-owned properties available for sale or lease and encourages projects that strategically use underutilized property for economic development.

EDC's procurements for Fiscal 2009 total approximately \$488 million, a 12% increase from Fiscal 2008.¹² Significant projects such as the reconstruction of the new High Line Park and the Queens Plaza Pedestrian/Urban Design Study, each of which exceeded \$36 million, contributed to this increase. For Fiscal 2009, approximately 79% of this amount represents procurements that EDC conducted using funds allocated to it under its DSBS master contracts. The remaining procurements were funded from EDC's other revenue sources, such as real estate sales and lease payments.

EDC procurement methods are similar to those of City agencies. These include public bidding (36%), RFP awards (17%), sole source awards (1%) and methods such as intergovernmental purchasing, direct government-to-government purchases and small purchases (collectively 5%). The use of public bidding more than doubled compared to last year, as some major projects planned for several years were bid out in Fiscal 2009. EDC's other procurements (43%) were done by means of "funding agreements," transactions similar to negotiated acquisitions or required source procurements, in that EDC's selection of the business partner for the agreement is generally dictated by commitments the City has made to support particular economic initiatives, specific institutions and/or redevelopment projects, and through the use of interagency agreements in which EDC allocates money out of its master contract to support the completion of a specific project.

Most of EDC's Fiscal 2009 procurement went to support construction and development (83%), ranging from the large projects described below, to smaller scale streetscape improvements throughout the City, such as the South Bronx Greenway.¹³ Another 8% of EDC's procurement supported professional services such as planning and economic studies, and 3% was specifically for architecture and engineering services. Finally, 1% entailed the purchase of standardized services such as printing and mailing, and less than 1% went to goods purchases and human services. EDC's Fiscal 2009 procurements include:

¹¹ In Fiscal 2009, DSBS registered two contracts with EDC: a master contract for \$872 million and a maritime master contract for \$302 million.

¹² DSBS procures its sole source contracts with EDC in accordance with City procurement rules. The terms of those contracts (not the procurement rules) govern EDC's own procurements, both those it undertakes with proceeds from the DSBS contracts and those from other funding sources. Thus, EDC's procurements are not reflected in the other totals in this report, except as specifically noted.

¹³ Some of EDC's agreements support activities such as land acquisition that are not typical of other agencies' contracts. These agreements are grouped in the general category with construction.

- Restoring the High Line:** In June 2009 the City opened the first section of High Line Park. Built on a 1930's era 1.5-mile elevated railway on Manhattan's West Side, the High Line is the first public park of its kind in the nation. Since 2004, EDC has overseen design and construction of the \$145 million project, with completion anticipated in 2010. In Fiscal 2009, EDC procured \$36,714,323 worth of construction services from C.A.C. Industries, Inc., for the project. The High Line restoration, which retains the original tracks from the industrial structure and the natural landscape that grew when trains stopped running, has helped create more than 300 new construction jobs, revitalize the neighborhood and generate hundreds of millions of dollars in private investment.



- Queens Plaza Bicycle and Pedestrian Project:** EDC has collaborated closely with the Department of City Planning to develop the Queens Plaza Bicycle and Pedestrian Project in Long Island City, a project aimed at transforming this area into a dynamic gateway into Queens and a centerpiece for commercial, retail and residential development. It will feature a 1.5-acre open space that will function as a public plaza with artist-designed benches and pavers, and a continuous protected bikeway and pedestrian walkway to rationalize the traffic network, enhance the pedestrians and bicycle environment and improve the streetscape. In Fiscal 2009, EDC procured \$1,836,856 worth of engineering services from LiRo Engineers, Inc. for urban design work on this project.

D. Providing for Agencies' Ongoing Needs

As shown above, agencies rely on a mix of large-scale contracts and smaller purchases to meet day-to-day operating needs. In this section, we provide information on three of the procurement tools typically used for such purposes: requirement contracts that are used for goods and services purchased at a large scale; small purchases and micropurchases, the methods agencies use to obtain goods and services valued at up to \$100,000; and purchasing cards, a new tool available to agencies for micropurchases.

1. Requirement Contracts

A requirement contract is entered into between one of the City's two major goods purchasing agencies – DCAS for most types of products and DOITT for information technology (IT) goods. Through this vehicle, a vendor agrees to supply the City's entire "requirement" for the particular goods or services under contract. Each DCAS or DOITT requirement contract is made available to multiple agencies, often including both Mayoral and non-Mayoral agencies. When a Mayoral agency needs an item available through a requirement contract, it must use that contract, and may not procure that item separately.

On behalf of other agencies, DCAS purchases most goods valued at more than \$100,000. Mayoral and non-Mayoral agencies used 574 requirement contracts in Fiscal 2009, placing orders valued at about \$523 million.¹⁴ DCAS holds all but nine of the contracts. DOITT holds the others, which amount to \$23

¹⁴ This total is adjusted to exclude single agency requirement contracts, e.g., for fire trucks. DCAS holds 603 such requirement contracts and DOITT holds one, under which agencies encumbered \$293 million during Fiscal 2009. For both

million (4%) of the City’s total requirement contract usage. Nearly all such contracts have multi-year terms, and 94% were competitively bid. A total of 108 (19%) were registered during Fiscal 2009.

Table I-4: Fiscal 2009 Agency Encumbrances Under Top 10 DCAS Requirement Contracts		
Vendor	Purpose	Orders
Mack Trucks Inc	Vehicles: waste collection trucks	\$82,660,875
Sprague Energy Corporation	Biodiesel fuel	\$30,645,931
Allied Barton Security Services LLC	Security guards	\$26,453,226
Metro Terminals Corp	Gasoline	\$22,629,446
Sprague Energy Corporation	Diesel fuel	\$21,965,503
Vanguard Direct Inc	Commercial printing and direct mail	\$16,986,140
Johnson Sweeper Company	Vehicles: street sweepers	\$14,975,218
Major Chevrolet Inc	Vehicles: marked and unmarked	\$12,451,579
Sprague Energy Corporation	Gasoline	\$12,143,085
Metro Fuel Oil Corporation	Low and ultra low sulfur diesel fuel	\$10,000,000

The City benefits from requirement contracts in several ways. Rather than each agency performing market research, developing product specifications or bidding out and evaluating solicitations, these functions are done centrally, yielding multi-year contracts that meet all agencies’ needs. In addition, 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. For example, using requirement contracts for office supplies allows City agencies to take advantage of lower prices and avoid the need for multiple agency solicitations.

DCAS and DOITT maintain a complete list of all requirement contracts online for agencies to access. 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 2009, agencies created 9,960 orders against multiple agency requirement contracts.

The top 10 most heavily-used requirement contracts (by amount spent) account for \$251 million, or 48% of all such contract usage. The most frequently-used requirement contract (by number of orders) remains the City’s office supply contract with Staples, with 599 orders totaling \$6.1 million. One contract was among both the top 10 by number of orders and the top 10 by dollar value, a contract for commercial printing and direct mail services.

Of the approximately \$523 million in multiple agency requirements contracts, 81% was for the purchase of goods. The largest category was for the purchase of vehicles/supplies, followed by fuel and construction goods. Of the purchases of services, 88% reflected the purchase of maintenance/repair work and other standardized services.

categories, the data reflects “encumbrances” rather than payments. An encumbrance is an action to earmark budgeted funds for a stated purpose. It is a reasonable approximation of spending, but not exact. There were also approximately 284 DCAS requirement contracts and one DOITT requirement contract not used by agencies during Fiscal 2009.

2. Small Purchases and Micropurchases

These procurement methods allow City agencies to secure needed goods and services on an expedited basis. Purchases of these types allow agencies to fulfill their immediate or high-priority operational needs, to the extent that requirement contracts are not available for particular items.

Table I-5: Fiscal 2009 Top Five Agencies Awarding Micropurchases									
	Agency	Fiscal 2009		Fiscal 2008		Fiscal 2007		Fiscal 2006	
		Value	#	Value	#	Value	#	Value	#
1	DEP	\$10,248,762	3,519	\$10,554,999	3,760	\$10,453,357	4,069	\$9,994,779	4,191
2	HPD	\$9,149,251	15,405	\$7,431,484	13,699	\$4,963,552	8,464	\$5,588	2
3	NYPD	\$6,381,312	3,123	\$6,425,822	3,249	\$6,556,351	3,322	\$6,621,659	3,419
4	DPR	\$4,455,065	2,136	\$4,518,642	2,389	\$4,422,520	2,528	\$8,084,577	4,328
5	DOHMH	\$3,600,281	1,408	\$5,848,324	2,555	\$5,924,190	2,866	\$6,250,985	2,967
	Top 5 Subtotal	\$33,834,671	25,591	\$34,779,271	25,652	\$32,319,970	21,249	\$30,957,588	14,907
	Other Agencies Total	\$19,990,386	9,687	\$23,626,712	12,362	\$25,403,803	14,268	\$28,874,930	16,487
	Total	\$53,825,057	35,278	\$58,405,983	38,014	\$57,723,773	35,517	\$59,832,518	31,394
Note: Prior to Fiscal 2007, HPD micropurchases were classified differently in the City's database.									

Micropurchases (those up to and including \$5,000) permit agencies to choose vendors based on such factors as convenience, efficiency and price without formal competition. These purchases are non-recurring; agencies must use other methods when they have a continuing need for a particular type of goods or services. Micropurchases accounted for \$54 million during Fiscal 2009, with a total of 35,278 actions. This is 65% of all City procurement actions during Fiscal 2009, but only 0.4 % of total spending. The agencies responsible for the largest dollar value of micropurchases were DEP and HPD;¹⁵ the latter also had the most micropurchase actions, followed by DEP and NYPD.

Table I-6: Fiscal 2009 Top Five Agencies Awarding Small Purchases									
	Agency	Fiscal 2009		Fiscal 2008		Fiscal 2007		Fiscal 2006	
		Value	#	Value	#	Value	#	Value	#
1	NYPD	\$13,615,035	658	\$13,883,645	647	\$13,948,293	680	\$13,293,918	596
2	DOHMH	\$11,763,275	486	\$14,169,284	599	\$11,865,765	556	\$13,905,048	642
3	DEP	\$10,970,447	344	\$12,522,552	379	\$11,724,611	361	\$10,859,277	338
4	DOT	\$10,355,230	323	\$11,296,288	366	\$9,543,630	351	\$9,929,145	361
5	HPD	\$10,319,351	570	\$10,687,148	576	\$7,283,610	335	\$5,154,768	201
	Top 5 Subtotal	\$57,023,338	2,381	\$62,558,917	2,567	\$54,365,909	2,283	\$53,142,156	2,138
	Other Agencies Total	\$63,745,228	2,516	\$63,611,472	2,039	\$69,292,893	2,491	\$64,158,225	2,484
	Total	\$120,768,566	4,897	\$126,170,389	4,606	\$123,658,802	4,774	\$117,300,381	4,622

Small purchases, defined as those greater than \$5,000, up to and including \$100,000, totaled more than \$120 million, with 4,897 separate purchases. Small purchases account for less than 1% of the City's procurement dollar volume but 9% of the total number of procurements. NYPD conducted the largest

¹⁵ HPD has implemented a highly competitive process for its micropurchases. It oversees many units of occupied affordable housing and has a large number of urgent repair and maintenance service needs. HPD maintains large prequalified lists of companies able to provide services on an expedited basis. Each time such a need arises, HPD generates a micropurchase bid opportunity and solicits at least five vendors from the relevant prequalified list, with the micropurchase award going to the low bidder.

number (658) and dollar value (\$14 million) worth of small purchases. Other large purchasers by this method were DOHMH with 486 actions and \$11.7 million, and DEP with 344 actions and \$10.9 million. Small and micropurchases encompass a wide array of goods and services. Five categories account for 61% of both the number and value of small purchases: construction goods (16%), maintenance/repair services (14%), construction services (11%), other professional services (11%) and IT goods (10%).

3. Purchasing Card Program

In Fiscal 2009, the City expanded its purchasing card initiative. A purchasing card or “P-card” is an agency-issued credit card that allows micropurchases for needed goods and services to be made quickly and with a streamlined procurement process, at a much-reduced administrative cost. The City’s purchasing card program provides for strict financial controls, oversight and transparency. MOCS administers the program and provides technical assistance to agencies.

During Fiscal 2009, Mayoral agencies made \$6.6 million in purchases under the program, an increase of 84% from the prior year. The top three agencies under the program were DOHMH, DOT and DPR, with 34%, 30% and 15% of citywide spending, respectively. The average transaction was valued at \$538. The overwhelming majority (83%) of these purchases were for goods. Overall, spending under the card program amounted to 11% of total agency spending under \$5,000, up from 6% last fiscal year.



Under the program, agencies made a total of 12,365 purchases from 3,973 vendors, representing a 60% and 39% increase, respectively, from Fiscal 2008. Fully 95% of the vendors paid with purchasing cards were used no more than ten times; those purchases represent 66% of all purchasing card spending. Another 2% of the vendors were used more than 25 times, which reflects 20% of the program’s spending.

The program grew during Fiscal 2009, as a result of planned roll-out and as agencies put in place their respective internal oversight controls, to support card usage for a broader range of purchases. MOCS provided hands-on training and support to help agencies implement suitable purchasing processes, and conducted spot-checks of ongoing purchases to monitor program compliance. Because of the efficiencies and cost savings that purchasing cards foster, the City is targeting a goal of 33% as the proportion of micropurchases eventually to be made through purchasing cards. Three agencies have reached this target: DOB with 52%, DOT with 44% and DOHMH with 38%.

The streamlined purchasing card process has already yielded significant benefits to agencies. Most notably during Fiscal 2009, DOHMH relied heavily on its purchasing cards as it dealt with the swine flu outbreak. With increasing numbers of students reporting flu-like symptoms, the School Health Central Office contacted a vendor to have supplies shipped to affected schools the same day. In addition, the Bureau of Operations was able to order much-needed testing supplies over a weekend. Posters and other literature were also provided by a vendor during off hours when the agency reproduction department was closed. This quick turn-around facilitated DOHMH’s quick response to this public health priority, and averted what could have been significant additional overtime cost.

The purchasing card program serves as an entry point for vendors new to City business, particularly for M/WBEs and other small businesses, as vendors can more easily obtain payment than under traditional purchasing. Fiscal 2009 purchasing card use with certified M/WBE vendors totaled 8% of all program spending. Three of the top ten vendors (by total dollars) were certified M/WBEs. DHS and DOHMH used M/WBE vendors for 19% and 17% of their purchasing card purchases, respectively.

E. Franchises, Concessions and Revocable Consents

This indicator tracks awards of franchises, concessions and revocable consents. The City awards franchises and concessions in a manner similar to the procurement process (mainly using RFP's or bids). Many franchises and concessions require the holding of a public hearing; others require approval by the Franchise and Concession Review Committee (FCRC). Revocable consents are awarded through a permitting process initiated by the awardees, with the sponsoring agency conducting public hearings. MOCS oversees compliance with applicable laws and regulations for all of these awards.¹⁶

Table I-7: Fiscal 2009 Franchises, Concessions & Revocable Consents Approved

Agency	Franchise Awards	Concession Awards (at FCRC)	Concessions Awards (Other)	Revocable Consents
DCA	0	0	0	450
DCAS	0	3	0	0
DHS	0	1	0	0
DOITT	1	0	0	0
DOT	2	0	0	116
DPR	0	15	182	0
EDC	0	3	4	0
HPD	0	0	0	0
NYC & Co	0	2	0	0
NYPD	0	0	0	0
Total	3	24	186	566

Table I-8: Methods of Soliciting Concessions

Method	Fiscal 2009		Fiscal 2008		Fiscal 2007		Fiscal 2006	
	#	%	#	%	#	%	#	%
Bid	176	84%	43	63%	135	87%	181	87%
RFP	19	9%	14	21%	10	6%	19	9%
Negotiated Concession	3	1%	0	0%	n/a	n/a	n/a	n/a
Sole Source & Other	12	6%	11	16%	11	7%	9	4%
Total	210	100%	68	100%	156	100%	209	100%

In Fiscal 2009, five agencies (DCAS, DHS, DPR, EDC and NYC & Company)¹⁷ awarded 210 concessions. Over 92% were solicited by competitive sealed bid or RFP, the rest by sole source or other methods. Bid awards require neither FCRC approval nor a hearing. Negotiated concession and sole source awards require FCRC approval. Public hearings were held for 13 of the RFPs and five of the sole source awards.¹⁸

As the table below shows, Fiscal 2009 concessions consisted of food-related operations, such as restaurants, snack bars and pushcarts; merchandise and marketing operations such as Christmas tree, souvenir and t-shirt sales and use of City trademarks; sports and recreation facilities such as indoor tennis and ice skating facilities, golf facilities, marinas, carousels and amusement parks, and related events; and occupancy permits, parking lots and other concessions. Most of these concessions were awarded by DPR.

¹⁶ See Glossary for definitions of franchises, concessions and revocable consents, as well as information on FCRC membership and public hearings.

¹⁷ EDC and NYC & Company, City-affiliated local development corporations, process concessions on behalf of DSBS.

¹⁸ The sole source/other category also includes four short-term (under 30 days) permits, which require neither approval nor hearings, awarded by EDC. In addition, 17 other requests to negotiate sole source concessions were approved by FCRC during Fiscal 2009 (eight DPR requests, seven by DOT and two by DCAS), but had not reached the award stage as of the end of the fiscal year.

Table I-9: Concessions by Type								
Type	Fiscal 2009		Fiscal 2008		Fiscal 2007		Fiscal 2006	
	#	%	#	%	#	%	#	%
Food-Related	151	72%	25	37%	115	74%	152	73%
Merchandise & Marketing	21	10 %	14	21%	18	12%	24	11%
Sports, Recreation & Events	26	12 %	20	29%	12	8%	26	12%
Occupancy/Parking Lot/Other	12	6 %	9	13%	11	7%	7	3%
Total	210	100%	68	100%	156	100%	209	100%

Two examples of Fiscal 2009 concession awards requiring an FCRC hearing were the Bayside Marina in Queens (DPR) and the Park Slope Armory Indoor Athletic Facility and Community Center in Brooklyn (DHS). For Bayside Marina, DPR awarded a 15-year concession to MDM Marina Corp. to renovate and operate the marina, with revenue to the City anticipated to total \$560,000. The concession includes approximately 140 marina moorings, 45 boat slips for seasonal rental, a boat launch, kayak storage, and complimentary access to a sanitary boat pump-out station for recreational vessels, as well as a snack bar, bait and tackle shop, outside showers, outdoor benches and a fish-cleaning station.



For the Park Slope Armory Indoor Athletic Facility and Community Center, DHS awarded a ten-year concession to the YMCA of Greater New York to operate a community recreation facility. Built in 1895 for military use, the armory is a designated landmark. It contains a 72,000 square foot drill floor space and 28,000 square foot two-story head house. The City has installed a state-of-the-art indoor track, creating an attractive venue for such athletic activities as track and field, volleyball, basketball and soccer. Once construction is completed, the YMCA will partner with the Department of Education (DOE) to provide school-day and after-school sports programs. The

YMCA will also provide programs for youth, senior citizens, persons with disabilities and other adults, as well as meeting space for community groups. The City's compensation includes in-kind services by the YMCA, along with an estimated \$200,000 in revenue over the course of the concession term.

Table I-10: Fiscal 2009 Concession Revenue by Agency & Type									
Type	NYPD	DCAS	DOT	EDC	HPD	NYC & Co.	DPR	Revenue	% Revenue
Food-Related	\$34,828	\$0	\$201,077	\$0	\$45,000	\$0	\$15,244,565	\$15,525,470	34%
Merchandise & Marketing	\$0	\$0	\$0	\$0	\$0	\$3,559,857	\$1,702,009	\$5,261,866	12%
Occupancy, Parking & Other	\$0	\$489,992	\$0	\$1,607,363	\$0	\$0	\$3,396,107	\$5,502,462	12%
Sports, Recreation & Events	\$0	\$0	\$0	\$9,000	\$0	\$0	\$19,299,757	\$19,308,757	42%
Revenue by Agency	\$34,828	\$489,992	\$201,077	\$1,616,363	\$45,000	\$3,559,857	\$39,642,438	\$45,589,555	100%
Agency % of Total	<1%	1%	<1%	4%	<1%	8%	87%	100%	

The City collected more than \$45 million in concession fee revenues from 600 concessions operating during Fiscal 2009. DPR collected nearly \$40 million, deriving its most substantial revenue from restaurants (23%), golf courses (18%) and pushcarts (11%). EDC collected over \$1.6 million, mostly from non-maritime occupancy permits such as parking lots. NYC & Co. collected nearly \$3.6 million in merchandise licensing fees. In addition, DCAS collected nearly \$500,000, mostly from non-maritime occupancy permits, and several other agencies, such as DOT, HPD and NYPD, collected smaller amounts of revenue from snack bars, vending machines and similar operations.

In Fiscal 2009, FCRC approved three franchise transactions, including one change of control and two renewals. Agencies held 81 franchises, yielding over \$180 million in revenue, including nearly \$109 million from cable television (DOITT) and \$33 million from street furniture (DOT). Comparative data is shown in Appendix F.

Table I-11: Fiscal 2009 Franchise Revenue by Type				
Type	DOITT	DOT	Revenue by Type	% of Total Revenue
Cable Television	\$108,699,937	n/a	\$108,699,937	60%
Street Furniture	n/a	\$33,477,225	\$33,477,225	19%
Other Telecom.	\$35,329,752	n/a	\$35,329,752	20%
Misc. Utilities	n/a	\$2,491,553	\$2,491,553	1%
Transportation	n/a	\$399,883	\$399,883	<1%
\$ by Agency	\$144,029,689	\$36,368,661	\$180,398,350	100%
% of Total \$	80 %	20%		

DOT also approved 116 revocable consents for bridges, conduits and other obstructions in or below streets and sidewalks and the Department of Consumer Affairs (DCA) approved 450 applications for sidewalk café agreements, The number of applications approved by DCA represents a 29% increase from Fiscal 2008 resulting from the growing demand by restaurants for new outdoor cafes as well as renewal applications for existing café. 147 of the 566 revocable consents and sidewalk café agreements approved in Fiscal 2009 were also registered in the same fiscal year and had a collective contract value exceeding \$7 million. Fourteen of DOT's 116 revocable consents approved and registered in Fiscal 2009 were assignments of existing agreements and had a total registration value of nearly \$340,000.

During Fiscal 2009, agencies registered 214 new concession awards, for a collective revenue projection exceeding \$100 million. Over 98% of that amount reflected DPR awards. In addition, 69 DOT revocable consents were registered in Fiscal 2009, with a total value of \$5.9 million, as were 78 of the DCA sidewalk café agreements, with a total value of \$1.1 million.

Table I-12: Fiscal 2009 Concession, Franchise and Revocable Consent Registrations								
Agency	Concessions		Franchises		Revocable Consents		Total	
	#	\$	#	\$	#	\$	#	\$
DCA	0	\$0	0	\$0	78	\$1,154,661	78	\$1,154,661
DCAS	3	\$91,805	0	\$0	0	\$0	3	\$91,805
DHS	1	\$200,000	0	\$0	0	\$0	1	\$200,000
DOT	0	\$0	0	\$0	69	\$5,938,748	69	\$5,938,748
DOITT	0	\$0	2	\$0	0	\$0	2	\$0
DPR	203	\$98,418,339	0	\$0	0	\$0	203	\$98,418,339
EDC	6	\$2,066,872	0	\$0	0	\$0	6	\$2,066,872
NYC & Co.	1	\$35,000	0	\$0	0	\$0	1	\$35,000
Total	214	\$100,830,965	2	\$0	147	\$7,093,409	363	\$107,924,374

II. VENDOR RESPONSIBILITY: CHOOSING RESPONSIBLE BUSINESS PARTNERS

For each of the procurements, franchises and concessions described in Part I, and indeed for every one of the more than 54,400 such actions included in this report, the awarding agency must first determine that the prospective vendor is “responsible.” A responsible vendor must have the capability to fully perform the contract requirements and the business integrity to justify the award of public tax dollars, or, in the case of franchises or concessions, the use of public property.

Awarding a bid to the vendor with the lowest price, or an RFP award to the vendor that with the most impressive proposal, represents a false economy if a subsequent default, improper or exaggerated claims, late deliveries or other unsatisfactory performance results in additional costs to the City. To ensure that vendors are responsible, City agencies, with the assistance of MOCS, vet their prospective vendors thoroughly before awards are finalized.¹⁹ Among the factors agencies must consider in determining vendor responsibility are:

- Whether the vendor has the requisite financial resources, as well as the organization, facilities and expertise (or the ability to obtain them) necessary to carry out the work and comply with required delivery or performance schedules;
- Whether the vendor demonstrates the necessary technical qualifications and appropriate experience;
- Whether, through past transactions with the City or other public contracting entities, the vendor has established a satisfactory track record for performance;
- Whether at the time of the proposed award the vendor documents a satisfactory record of business integrity;
- Whether, to the extent necessary for a particular contract, the vendor has in place adequate internal controls to manage funds or other assets on behalf of the City, and to accurately identify costs; and
- Whether the vendor has operated in compliance with any applicable requirements for the payment of prevailing wages and for the utilization of M/WBEs as subcontractors.

It is the duty of the vendor to demonstrate its responsibility, and that of any proposed subcontractors, affirmatively. For large awards, agencies conduct extensive research on each prospective vendor, focusing on the issues of most relevance, such as safety records for construction vendors, licensing histories for professional services and client abuse histories for human service vendors. But even for the smallest micropurchase awards, agencies review at least basic data to determine that the selected vendor is a suitable business partner for the City. In addition to the materials vendors supply in connection with their bids or proposal, other types and sources of information that agencies review, as needed, in making responsibility determinations include:

¹⁹ In addition to one-on-one assistance with individual procurements, MOCS offers a full curriculum on best practices and compliance with City procurement laws and regulations, through the Procurement Training Institute (PTI) of the DCAS Citywide Training Center. During Fiscal 2009, 792 individuals attended one or more of the 17 different courses offered. Although many classes were geared towards assisting City procurement staff with their professional responsibilities, attendees included other staff members (of both Mayoral and non-Mayoral agencies), and some courses were made available to representatives of the City’s nonprofit vendor community. See Part II.E below. During Fiscal 2009, 13 individuals achieved the professional certification requirements applicable to Agency Chief Contracting Officers (ACCOs) and other senior procurement staff; in total, 79 individuals have achieved this certification.

- The City’s Vendor Exchange Information System (VENDEX) database, which contains both information supplied by the prospective vendor via responses to require questionnaires, and other “caution” information supplied by agencies familiar with particular vendors’ performance and/or problems (see Part II.A below);
- Evaluations of vendor performance, including those maintained in the VENDEX database (see Part II.B below), as well as verifiable knowledge of City contracting and audit personnel;
- Determinations of violations of employment-related federal, state or local law or executive order, including but not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits and employee wages and hours;
- Records reflecting vendors’ delinquencies or deficiencies in payment of any required taxes (federal, state or local) and similar fees and charges;
- Sources such as the vendors’ own publications, suppliers, subcontractors and customers, as well as financial institutions, government agencies, and business and trade associations; and
- Other information supplied by the prospective vendors upon agency request (failure to provide requested information may itself be considered indicative of non-responsibility).

In the sections that follow, we present data and information concerning specific elements of the responsibility review process, and specific Fiscal 2009 initiatives relating to vendor responsibility. We also present data on compliance with City disclosure requirements aimed at avoiding the appearance or actuality of improper influence in the procurement process through contributions to municipal campaigns.

A. The VENDEX System – Tracking Vendor Information

One of the primary tools used in vendor responsibility determinations, VENDEX is a comprehensive database of information concerning vendors, including subcontractors. The database contains information from detailed questionnaires completed by vendors and their principals, as well as information about related entities, performance evaluation history and City tax payment status. VENDEX also includes 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.²⁰ Vendors must refile new questionnaires every three years, and must update and certify the continued accuracy of their information with each new award.

When an agency is preparing to make an award, the VENDEX system generates a referral to the Department of Investigation (DOI) for a “Vendor Name Check” (VNC). DOI reviews the names listed on the vendor’s questionnaires (including the vendor’s affiliates, subsidiaries, parent firms and other related entities), the vendor’s principal officers and

Table II-1: VENDEX Processing Totals				
Questionnaire Type	Fiscal 2009	Fiscal 2008	Fiscal 2007	Fiscal 2006
New Questionnaires	21,083	23,810	17,746	15,826
<i>Principal Questionnaires</i>	<i>12,896</i>	<i>14,912</i>	<i>11,056</i>	<i>9,958</i>
<i>Vendor Questionnaires</i>	<i>8,187</i>	<i>8,898</i>	<i>6,690</i>	<i>5,868</i>
Certificates of No Change	8,599	8,344	6,412	5,786
Total Number of Filings	29,682	32,154	24,158	21,612

²⁰ VENDEX questionnaires must also be filed for any sole source award valued at \$10,000 or more.

owners, and other key information, to determine whether the prospective vendor or those affiliated with it have been the subject of a DOI investigation. DOI provides a response letter, including other relevant information, to the agency for its responsibility determination.

In Fiscal 2009 MOCS' processing volume for VENDEX declined by 8% relative to Fiscal 2008, although volume remained 37% higher than those in Fiscal 2006. The small decline stemmed from the 25% drop in overall procurement volume, and was also impacted by an upgrade to the database. As described below, this changeover occurred in late April, resulting in fewer filings being processed during what is typically the highest volume part of the year.

New VENDEX System

VENDEX, which is the most extensive vendor integrity database in use for state or local procurement in the nation, was created on a mainframe computer system in 1990. In late April 2009, MOCS and the City's Financial Information Services Agency (FISA) implemented a new web-based version of VENDEX which is more user-friendly and automates several paper-based functions from the prior process, including agency completion of vendor performance evaluations and actions to report other "cautionary information" on individual vendors. Rather than send paper documents to MOCS for data entry, agencies now process these actions online. VENDEX is also directly linked to the City's Financial Management System (FMS), which tracks contract registration information.

Both VENDEX and FMS are supported by FISA. In order to roll out the new system, MOCS and FISA conducted approximately ten weeks of user acceptance testing, and trained more than 1,800 staff members from City and City-affiliated agencies on the new functions.

New VENDEX simplifies the process for agencies to research City vendors, their principals and related entities. Agencies can track and monitor requests for information and processing that they send to MOCS, DOI and DOF. The VENDEX system sends automatic email notifications to agencies and vendors when questionnaires have been processed, and informs them when questionnaires are incomplete and require additional information. The new system also improves significantly the ease of use for members of the public who come to MOCS to use the VENDEX public access terminals.

Planned enhancements to the new VENDEX system include interactive VENDEX questionnaires that will enable vendors to save and complete the forms on their own computers.

B. Responsibility Determinations – Protecting the City's Interests

Negative information, whether disclosed by the vendor itself on a VENDEX questionnaire, or presented by DOI in its VNC letter, or uncovered by an agency's own research, does not *per se* result in an agency finding that the vendor is not a responsible business partner. The agency must 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 interests in vendor integrity by negotiating detailed responsibility agreements with vendors to permit them to receive contract awards, while providing for monitoring and other specific protection for the City.

Responsibility agreements may take the form of Independent Private Sector Inspector General (IPSIG) agreements or certifications, both of which are overseen by DOI. These agreements ensure that if a vendor or its principals have been involved in past criminal activity or other serious wrongdoing, the responsible parties are no longer involved in the company, and that appropriate policies, internal controls and outside reviews are in effect to prevent any recurrences of such conduct. Typically, an outside

monitor is selected by DOI and is granted full access to the vendor's records and premises to guarantee compliance. The costs of enhanced monitoring and oversight are borne by the vendors themselves, although the monitors report directly to the City. During Fiscal 2009, DOI and City agencies had in place a total of seven IPSIG agreements and three certifications for vendors with ongoing City contracts.

For other, less serious problems, such as the performance and audit deficiencies reflected in the City's vendor evaluation system, individual agencies may negotiate more informal agreements, termed "Corrective Action Plans," with vendors. See Part II.C below. These often provide for enhanced reporting by the vendor to the agency, documenting progress in remedying deficiencies.

However, agencies retain the discretion – and indeed the obligation – to find bidders or proposers for City contracts to be non-responsible when the facts relevant to the particular procurement warrant such a finding. In some situations, the vendor's continuing pattern of conduct or participation in very recent or egregious wrongdoing means that a responsibility agreement would not provide the City suitable protection. During Fiscal 2009, City agencies issued 20 determinations of vendor non-responsibility, almost all on business integrity grounds. Detailed information concerning those determinations and related vendor disputes is presented in Appendix G.

C. 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 some other mechanism to address any problems. 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 implementation of the new VENDEX system, as described above, in Fiscal 2009 allowed MOCS to introduce automated vendor performance evaluation forms and a streamlined, paperless process for performance evaluation completion by the agencies, referral to the affected vendors for their review and comment, and posting of the resulting information on the VENDEX system. The eleven different paper forms formerly used by the agencies have been replaced with five consolidated forms for construction, professional services, human services, standard services and goods,²¹ that reflect the three major evaluation criteria required by the City's procurement rules: timeliness of performance; fiscal administration and accountability; and overall quality of performance.

The transition to the new VENDEX system, with its new performance evaluation process, occurred very near the end of Fiscal 2009 and included a period of several weeks when the system was not accessible to agencies. However, agencies were still able to maintain an overall 92% rate of completion of their required evaluations, the same rate as in Fiscal 2008.

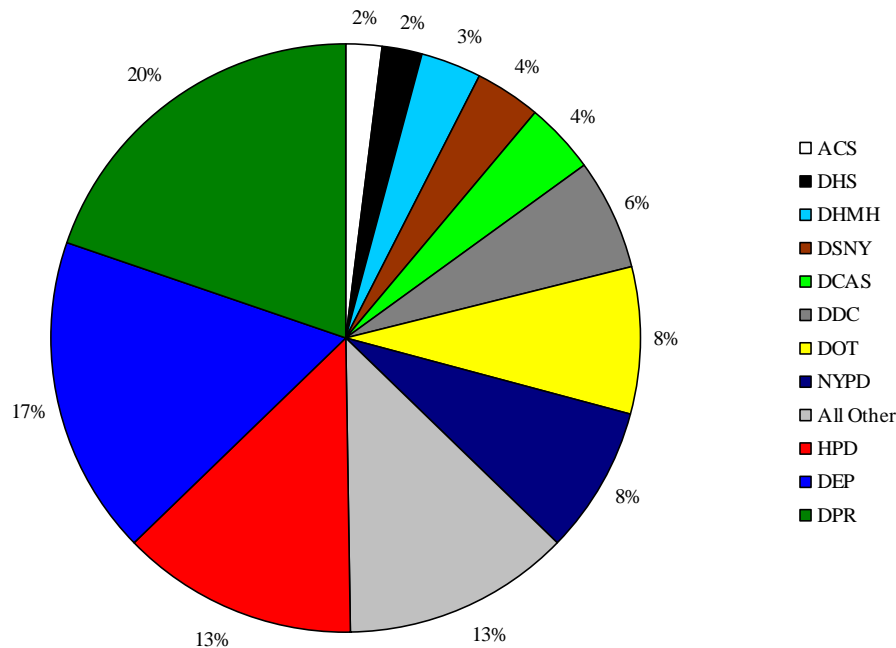
Overall vendor performance maintained last year's very good level, with 96% receiving a rating of satisfactory or better. More than 85% received such a rating with no underlying problems reported. For those vendors rated satisfactory or better that had at least one sub-criterion rating of less than satisfactory, most had difficulty with financial administration, followed by performance issues and timeliness.

²¹ Evaluations need not be prepared for small purchases or for goods purchased via competitive bids, except in the latter case when the vendor performs poorly.

D. Protecting Workers’ Rights – Prevailing and Living Wage Compliance

One critical element of agency responsibility determinations for most construction contracts, as well as many standardized services and human services contracts, is the evaluation of the prospective vendor’s compliance with 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. Projects for construction, reconstruction or maintenance on behalf of a public entity are generally public work. Building services are defined as work associated with care and upkeep of an existing building (e.g., cleaners, gardeners and security guards) executed under a contract with a public entity, and which exceeds \$1,500. City law establishes living wage requirements 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. In Fiscal 2009, the City awarded 1,262 contracts, valued at \$3.1 billion, subject to prevailing wage requirements and 176 contracts, valued at \$134 million, subject to the living wage law.²² In addition, EDC awarded 25 contracts valued at \$370 million that were subject to prevailing wage requirements.

**Chart II-1:
Prevailing Wage Contracts by Agency
Total Number of Contracts =1,239**



Under Mayor Bloomberg’s Executive Order 102 (EO 102), MOCS oversees City agencies’ enforcement efforts concerning prevailing and living wages. In evaluating bids in these areas pursuant to EO 102, if a significant discrepancy in price occurs between the apparent low bid and the next lowest bid, the agency must obtain detailed information from the low bidder and conduct research to ascertain that workers on the prime contract and any affected subcontracts will be paid according to the appropriate wage schedules mandated by law. For contract awards subject to this EO 102 “due diligence” requirement, MOCS must review and approve the awarding agency’s determination that the low bidder will comply with the applicable wage requirements before the contract can be registered. MOCS imposes detailed tracking requirements and conducts frequent agency training sessions so that agencies can correctly identify all situations where the EO 102 due diligence mandates apply.

²² These totals include 23 contracts valued at a total of \$580,000 that were subject to prevailing wage requirements but incorrectly administered by the agencies. MOCS has instituted corrective measures to prevent recurrences in the future.

MOCS conducted 67 such prevailing wage reviews during Fiscal 2009. MOCS reviewed certified payroll records, bid tabulations, VENDEX data, engineers' estimates and other analyses to validate agency determinations that vendors had both the intention and ability to comply with the wage mandates. MOCS approved 58 awards, of which 38 resulted in registered contracts during Fiscal 2009; the others remained pending as of the end of the year. In addition, 24 awards that were approved by MOCS during Fiscal 2008 resulted in Fiscal 2009 registered awards.

Agencies were directed to rebid in the nine instances where contracts failed to secure EO 102 approvals. Rebidding is costly and time-consuming, which is never optimal for construction projects. In most cases, EO 102 review enables MOCS to work with the vendor and the agency to ensure compliance. For example, MOCS evaluated an EO 102 certified payroll sample for two asbestos abatement requirements contracts and found significant discrepancies related to the payment of supplemental benefits and tax withholding. The vendor was discovered to be using payroll software with programming glitches. To resolve the problem, the vendor chose to discontinue using the software and hire a payroll company so that its certified payroll reports would be correct going forward. MOCS required the contracting agency not only to make certain that these issues were resolved for the pending awards, but also to require that vendors rectified any past underpayments to workers.

E. Nonprofit Human Services Vendor Compliance – Capacity Building and Oversight

One of the largest categories of City procurement each year is human services, a sector primarily served by nonprofit service providers. While these vendors generally work tirelessly and effectively on behalf of New Yorkers in need, there are infrequent – but serious – cases of abuse that shake the public's confidence in the integrity of the nonprofit sector. Besides such serious abuses, City agencies also find that some of their nonprofit vendors experience significant fiscal management challenges for which they sometimes lack the tools they need. Such organizations may also lack well-developed internal control policies and/or adequate financial oversight from their boards of directors.

MOCS' Capacity Building and Oversight (CBO) initiative assists the City's human services agencies in addressing these needs. MOCS conducts mandatory CBO reviews of the internal controls, governance structures and financial oversight practices of nonprofit human services providers, using a report that is required to be completed by the vendor and submitted to MOCS along with copies of relevant governance documents. Reviews are conducted on a cyclical basis and are not linked to particular contract awards, but rather are done comprehensively with each vendor that holds City human services contracts valued at one million dollars or more in aggregate, as well as for certain smaller vendors that are referred by City agencies or elect to self-refer.

In Fiscal 2009, the City partnered with 1,463 nonprofit human services providers holding a total of 5,681 open contracts worth \$10.8 billion cumulatively.²³ Of these, 673 nonprofits, holding 4,390 open contracts, meet the \$1 million dollar threshold for mandatory CBO review. As their turn occurs in the cyclical process, CBO reviews will eventually assess each of these vendors, as well as others that reach the threshold in future years. Based on Fiscal 2009 data, CBO reviews are anticipated to apply to nonprofits holding about 98% of the total dollar volume of the City's human services procurements.

The CBO process is a relatively new addition to MOCS' role in vendor responsibility reviews. As it ramped up this new review process, CBO also spearheaded MOCS' expanded review of thousands of

²³ Open contracts with nonprofit human services providers include 2,811 contracts worth \$7.5 billion that were registered in previous fiscal years.

discretionary awards. See Part II.F below. During Fiscal 2009 CBO commenced new reviews of 75 of the City’s larger partners; most of these reviews were ongoing at the end of the fiscal year.

Table II-2: Fiscal 2009 CBO Recommendations	
Recommendation Type	#
Whistleblower policy	17
By-Law revision	13
Conflict of interest policy	11
Financial / Internal controls policy and/or written procedures	10
Distribution of information one week before board meetings	10
Board development and/or recruitment	9
Overall budget/ financial reports	7
Review of chief executive’s compensation and/or performance	6
Document retention policy	6
Treasurer involvement in financial oversight and reporting	5
Nepotism policy	5
Board approval of annual budget	4

CBO issued one or more recommendations in 23 of the completed and/or active reviews. The most common recommendation was to establish a whistleblower policy. For 13 organizations, CBO found non-compliance with existing by-laws, some of which included provisions that are no longer legal under state law, such as proxy voting. CBO recommended that ten organizations improve the timeliness of distribution of board minutes and that nine enhance board development or recruitment. CBO also made recommendations specific to each organization. All 23 nonprofits have already implemented or agreed to implement at least one CBO recommendation.

Implementation of many of these recommendations takes a significant amount of time, as they require changes that must be approved at board meetings that may be held monthly or quarterly. CBO reviews ranged in length from approximately two months to a full year.

Another source of assistance offered through the CBO initiative is a full training curriculum for nonprofit vendors on best practices and legal compliance, taught by a number of expert volunteer faculty. Any nonprofit that has a funding relationship with a City agency may send participants to attend these training sessions free of charge and need not wait until a CBO review identifies a problem. In Fiscal 2009 CBO conducted 11 training sessions on six subjects, attended by 380 nonprofit leaders and City agency staff from all five boroughs.. The training schedule is advertised through CBO’s email distribution list, which includes over 3,000 nonprofit leaders located throughout the City, and on the websites of MOCS and the Nonprofit Assistance Calendar on nyc.gov/nonprofits. Training topics include nonprofit accounting, internal controls, board development, charities bureau compliance, discretionary award processing and the new IRS form 990.

F. Discretionary Awards – Vetting Contracts Designated by Elected Officials

The City Charter and procurement rules permit local elected officials, such as City Council members and Borough Presidents, as part of the budget adoption process, to designate particular nonprofit organizations in their communities to receive discretionary contracts, often termed line-item awards or member items. Such awards represent a small fraction of total spending – in Fiscal 2009, less than 2% of total procurement volume, and about 6% of human services contracting. Some examples of Fiscal 2009 discretionary awards include:

- **Staten Island Chamber of Commerce (DSBS):** Since 1895 the Staten Island Chamber of Commerce has helped strengthen the businesses and communities of Staten Island by providing business referrals, networking opportunities, useful information, and effective advocacy. In Fiscal 2009, the Chamber received two awards totaling \$77,000 to help fund graffiti removal, and to provide financial literacy training to small business owners.

Nonprofit Assistance Initiatives Respond to the Economic Downturn

Nonprofit organizations in New York City employ more than 490,000 New Yorkers, fully 15% of the City's non-government workforce. Although the amount fluctuates from year to year, the City provides significant support to the nonprofit sector. In Fiscal 2009, City support – through a mix of funding sources including payments under human services contracts, grants and other subsidies for cultural organizations, capital funding for construction projects and equipment, donated space in City schools and in New York City Housing Authority (NYCHA) facilities, and tax incentives for affordable housing – totaled more than \$5.3 billion. Nonetheless, many nonprofits are now facing cash flow challenges as demand for services escalates and both public and private sources of funds for operating expenses decline, due to the current economic downturn.

This economic environment during Fiscal 2009 has had a particularly devastating impact on nonprofit human service providers, many of which receive more than 80% of their funding from government sources and serve the neediest New Yorkers. For these nonprofits, personnel costs comprise the majority of the total cost of providing human services; salaries of such personnel are often, for all practical purposes, set by City agencies through the contract budget process. As compensation affects nonprofits' ability to hire and retain these essential personnel, such costs can affect the quality of care provided under City contracts. In May 2008 Mayor Bloomberg announced that the City would provide a 3% salary increase in Fiscal Year 2009 for approximately 36,000 employees at 1,000 social service agencies throughout the five boroughs. City human service agencies implemented these salary increases through Fiscal 2009 contract amendments. Additional increases of 2% and 4% are planned for FY2011 and 2012, to be provided through productivity initiatives previously identified by a public-private task force representing nonprofit vendors and City human service agencies.

In April 2009, Mayor Bloomberg outlined a broad-based plan for additional assistance to help nonprofits, including hard-hit cultural and other community-based nonprofits as well as human service providers, survive the current economic downturn. The Mayor announced initiatives to help nonprofits reduce fixed costs, improve the City's contracting procedures for nonprofits and provide support to strengthen nonprofit management. A MOCS senior staffer was named as the City's Nonprofit Contract Facilitator to provide technical assistance to nonprofit leaders, and fielded over 100 such requests from nonprofits during the last quarter of Fiscal 2009. In Fiscal 2009, as part of the Mayor's Nonprofit Assistance Initiative, MOCS implemented several measures to streamline the contracting process for nonprofit vendors:

Longer Contract Terms

In determining the appropriate length of contract terms, City agencies must balance the importance of periodic competition with the needs of clients for continuity of services and the amount of time and resources both agencies and service providers must dedicate to the procurement process. In addition, shorter terms can limit vendors' ability to negotiate for reduced prices on leased space and equipment. In June 2009, the PPB amended the City's rules to provide more flexibility for longer human services contract terms. See Appendix B.

Transparent Contract Information

MOCS now posts up-to-date contract status information online at www.nyc.gov/nonprofits to enable vendors to track the status of their contracts, thereby increasing the accountability of City agencies for completing the contract registration process in a timely manner so that payments to vendors are not interrupted.

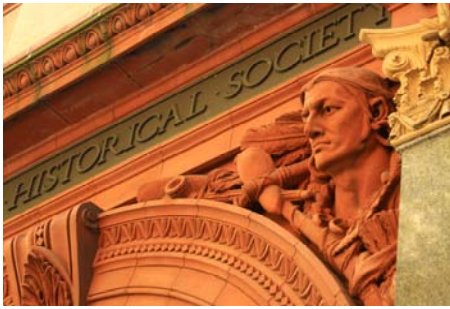
Centralized Charities Bureau Compliance Review

Many of the delays in contract registrations in Fiscal 2008 and 2009 resulted from a strengthened focus by City agencies, as part of the vendor responsibility process, on nonprofits' compliance with New York State Charities Bureau filing requirements. In Fiscal 2009, MOCS centralized this review process on behalf of all agencies, thereby streamlining this aspect of the responsibility determination process.

Expanded Cash Flow Loan Fund

Through the Fund for the City of New York, MOCS offers a cash flow loan program for vendors affected by late contract registrations. As part of Mayor Bloomberg's April 2009 initiative, the loan capacity of this program was increased by 150%, from \$8 million to \$20 million, and the eligibility criteria were enhanced, to allow loans to flow to cultural organizations and other types of nonprofits and to cover a wider range of cash flow difficulties.

Work is ongoing on several additional components of the Mayor's Nonprofit Assistance Initiative – including partnerships with the Human Services Council, United Way and a new strategic partnership organization (under the auspices of the Mayor's Fund to Advance New York City) called "Greater New York," as well as group purchasing efforts, a Citywide board recruitment initiative, nonprofit leadership development efforts, a high impact volunteer capacity program called NYC Civic Corps and the development of a standard human service contract.



- **Brooklyn Historical Society (DYCD):** The Brooklyn Historical Society (BHS) is a cultural hub for civic dialogue and community outreach, dedicated to preserving the study of Brooklyn's history. It has been a part of the borough since 1863. In Fiscal 2009, DYCD registered \$147,714 in discretionary funds to support BHS' diverse programming, and The Department of Cultural Affairs (CULT) purchased \$40,843 worth of equipment for BGS.

- **Parkchester Little League (DYCD):** The Parkchester Little League received a \$5,000 Fiscal 2009 award through DYCD, to support little league baseball for the children of this Bronx community.

Table II-3 below details agency-by-agency discretionary (or line-item) awards processed during Fiscal 2009 and prior years. The table includes both the expense budget awards for community-based nonprofits' operating costs, and the capital awards processed by such agencies as DDC, DFTA and DOHMH, which fund the purchase of vehicles and equipment, as well as construction projects.²⁴

Table II-3: Fiscal 2009 Top Ten Agencies Administering Line-Item Awards

	Agency	Fiscal 2009		Fiscal 2008		Fiscal 2007		Fiscal 2006	
		Value	Count	Value	Count	Value	Count	Value	Count
1	DYCD	\$51,722,418	1,385	\$47,712,678	1,127	\$57,236,830	1,707	\$49,778,033	1,464
2	DOHMH	\$46,330,543	291	\$34,920,293	212	\$35,927,854	224	\$42,070,713	207
3	CJC	\$36,280,647	27	\$11,954,522	43	\$2,056,960	9	\$0	0
4	DFTA	\$9,008,982	81	\$17,536,400	22	n/a	n/a	n/a	n/a
5	DDC	\$8,370,757	304	\$11,261,233	357	\$11,240,928	370	\$12,400,898	317
6	HPD	\$7,577,870	81	\$6,187,835	89	\$5,756,179	93	\$4,763,274	81
7	DSBS	\$7,261,839	92	\$7,078,700	38	\$1,297,333	15	\$0	0
8	CULT	\$3,593,247	333	n/a	n/a	n/a	n/a	n/a	n/a
9	HRA	\$2,085,200	17	\$2,386,358	63	\$3,587,661	37	\$3,720,627	76
10	DOC	\$1,082,300	6	\$484,241	2	\$1,688,000	3	\$4,308,000	6
	Top 10 Subtotal	\$173,313,803	2,617	\$139,522,260	1,953	\$118,791,745	2,458	\$117,041,545	2,151
	Other Agencies	\$3,638,066	120	\$4,403,800	68	\$2,993,262	80	\$2,382,296	65
	Total	\$176,951,869	2,737	\$143,926,060	2,021	\$121,785,007	2,538	\$119,423,841	2,216

Note: Individual agency procurement volumes for CJC and CULT were not separately included in prior reports, as shown.

Because City procurement rules allow elected officials to bypass competition and select potential recipients of discretionary awards, the process of vetting these awards is critical. Toward the end of 2008, concerns emerged that recipients of a small fraction of these awards were not responsible business partners for the City and should not receive this funding.

In response to these concerns, the Speaker of the City Council requested – and the Mayor, through MOCS, implemented – a prequalification process to ensure that nonprofits receiving larger amounts of

²⁴ The table includes certain non-procurement awards: some discretionary awards through CULT are processed as grants or subsidies, rather than as procurements. Also, some agencies, such as DOHMH, are able to match discretionary funding for certain types of programs with available State funding, and so there are also some non-City funds included in the totals below. Some agencies, particularly DFTA, often amend already existing contracts to reflect increased funding allocated to an organization by a discretionary award. These amendments are *not* included in the data reported here, but are part of the agency's volume, as shown in the "By Method" tables in Appendix C.

Council-designated discretionary funds from the expense budget were fully qualified to provide services to their communities. In addition, Mayor Bloomberg, in consultation with the Speaker, the City Comptroller and DOI, instituted a number of reforms to facilitate the processing of awards for organizations that provide high quality services to their communities, while protecting against potential abuse. Beyond the standard reviews agencies must conduct using the VENDEX database and similar tools. See Part II.A above. New mandates were added – with extensive training for agency procurement staffs – so that agencies could better enforce compliance with the State’s requirements for charities registration and annual filing. Additional disclosures were also required from nonprofits receiving discretionary funds, to guard against potential conflicts of interest.

For nonprofits seeking to receive more than \$10,000 cumulatively, DYCD hosts and MOCS administers a citywide prequalification list. Because the prequalification process is centralized, potential awardees can apply once for prequalification status that will apply to awards from multiple City agencies. While the prequalification process is open for applications at all times, nonprofits are encouraged to complete this process in the spring, prior to budget adoption – and indeed, all awards listed in the adopted budget are made conditional (upon completion of the prequalification process) for those nonprofits meeting the \$10,000 threshold.

When a nonprofit applies to provide a service – e.g., senior services, mental health services, cultural programs – the relevant agency determines whether the nonprofit is substantively qualified to provide that particular service. Working with MOCS, the agencies also conduct a preliminary review of the nonprofit’s responsibility, looking particularly at prior performance evaluations, VENDEX filings, Charities Bureau registration and annual reporting, outstanding tax liens and conflict of interest disclosures. Although prequalification serves an initial “gate-keeping” role, it also provides City agencies with the information they will eventually need to draft contract scopes and make responsibility determinations when the resulting discretionary awards are registered or processed.

For Fiscal 2009, 2,107 prequalification applications were received.²⁵ More than 75% applied during June of 2008, just prior to adoption of the Fiscal 2009 budget, as the prequalification process initially got underway. Despite this significant volume of applications, almost half of those applications were approved by July 1st at the start of Fiscal 2009. Of the 2,107 applications, 1,385 ultimately were from groups that met the \$10,000 threshold (in terms of awards actually allocated in the budget). Of these, 1,359 were cleared, four were denied and 23 remained incomplete at the conclusion of the year.²⁶

All told, the Fiscal 2009 budget included more than 5,700 individual expense-funded discretionary awards, including line-item awards made by the Borough Presidents. Agencies registered or processed each of these awards once the responsibility review and vetting process were completed for that award.

²⁵ These numbers do not include governmental entities, as they are exempt from the prequalification requirement.

²⁶ Of the four denials, one reflected a denial for poor past performance in one service area, with a clearance for the same nonprofit in another area where performance was satisfactory. Another denial was based on business integrity and two on the fact that the applicants were for-profit entities ineligible to receive discretionary awards. The organizations whose applications remained incomplete did not receive their awards for Fiscal 2009, because they did not clear the prequalification hurdle. The City also received 722 applications from nonprofits that did not ultimately receive more than \$10,000 in discretionary awards; of these, 337 were cleared and two were denied, also because of ineligibility (for-profits). Ultimately, the remaining applications were administratively closed, as those applicants did not reach the \$10,000 prequalification threshold.

TableII-4: Fiscal 2009 City Council Expense Allocations			
	Agency	Value	Count
1	DYCD	\$46,102,290	2,531
2	DFTA	\$26,945,076	1,785
3	CJC	\$26,617,500	106
4	DOHMH	\$24,465,864	474
5	DSBS	\$8,799,339	146
	Top 5 Subtotal	\$132,930,069	5,042
	Other Agencies	\$20,996,897	691
	Total	\$153,926,966	5,733

During Fiscal 2009, this final step in the award process was delayed by three factors: the difficulties that some awardees had in completing the requirements of the prequalification process, the non-compliant status that many organizations had with respect to Charities Bureau registration and annual filing rules,²⁷ and delays in the legislative process in making final award allocation decisions for many of the Council’s citywide initiatives.²⁸ By the end of Fiscal 2009 agencies had processed 66% of the awards, representing 76% of the total dollar value. MOCS continues to work with the agencies to ensure that as many of the remaining awards are processed retroactively, to reimburse nonprofits for services they provided, once the vetting process is completed.

G. Guarding Against Undue Influence – Doing Business Accountability

New York City’s Campaign Finance Program was adopted in 1988 to reduce corruption and diminish the influence that special interests wield in city government. In 1998, City voters passed a referendum in support of “pay-to-play” reform, allowing the Campaign Finance Board (CFB) to require disclosure and limit contributions from entities and individuals that do business with the City. However, the absence of a comprehensive list of the entities and individuals “doing business” impeded implementation of this mandate.

Meaningful pay-to-play reform became a reality with the passage of Local Law 34 of 2007 (LL 34), strongly supported by both the Mayor and the City Council Speaker.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.

The cornerstone of this legislation was its creation of the Doing Business Database, which improves the transparency of government by allowing the public to see which vendors, organizations and individuals do business with the City. This database, unique in the nation, is administered by MOCS through its Doing Business Accountability (DBA) Project. LL 34 is comprehensive in the types of activity that constitute “doing business” with the City, and the Database reflects this in a number of ways:

- In addition to the procurement contracts, franchises and concessions that are the subject of this Indicators report, the Database captures grants, economic development agreements, pension investment contracts, debt contracts, real property transactions, land use actions and the allocation

²⁷ In addition to serious compliance issues that arose with a few awardees, the vetting process for charities registration status was delayed throughout Fiscal 2009 as a result of difficulties the Attorney General’s Office had with its searchable database. The Charities Bureau worked closed with MOCS to facilitate the process – both for discretionary awards and all other procurement awards to nonprofits – but this aspect of vendor responsibility entailed manual look-up of each awardee.

²⁸ During Fiscal 2009, MOCS also introduced a more streamlined Fiscal 2010 Recertification Process for nonprofits previously successful in prequalifying for Fiscal 2009. As a result of this improvement, as well as an increased familiarity with the prequalification process on the part of nonprofits, some 76% of Fiscal 2010 funds slated to go to nonprofits receiving more than \$10,000 had already been cleared for prequalification by the end of Fiscal 2009. MOCS anticipates completing the prequalification and registration process for Fiscal 2010 awards much earlier in the fiscal year.

²⁹ LL 34 was amended by Local Law 67 of 2007. “LL 34” refers to the law as amended.

of discretionary funding by the City Council and Borough Presidents. The Database also includes entities and individuals that engage in lobbying.

- The Database includes data on the entities (and their affiliated individuals) that submit proposals to engage in the transactions listed above, recognizing that time between proposal and award is a crucial time in which to monitor the potential for actual or perceived influence.
- The Database covers a wide range of governmental entities and city-affiliated public authorities including the NYC Housing Authority (NYCHA), School Construction Authority (SCA) and Health and Hospitals Corporation, along with the 36 agencies governed by City procurement rules.

All vendors and organizations that engage in transactions covered by LL 34 must complete and submit Doing Business Data Forms. The number of forms processed by the DBA project has more than doubled since Fiscal 2008, as more types of business dealings are now covered.³⁰

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 number of entities and individuals listed in the Doing Business Database increased significantly, with the number of individuals nearly doubling in Fiscal 2009.

Table II-5: Doing Business Data Forms Processed		
Type of Business Dealings	Fiscal 2009	Fiscal 2008
Contracts, Franchises & Concessions	11,165	2,735
Discretionary Allocations	1,513	1,694
Grants	763	n/a
Economic Development Agreements	487	n/a
Pension Investment Contracts	423	n/a
Real Property & Land Use	758	n/a
Not Transaction Specific	3,474	3,921
Total	18,583	8,350
Note: Lobbyist information is collected by the City Clerk, not via Data Forms.		

Table II-6: Number of Entities and People Listed in the Doing Business Database				
Doing Business Type	Fiscal 2009		Fiscal 2008	
	Entities	People	Entities	People
Contracts, Franchises, Concessions & Discretionary Allocations	6,433	18,995	4,581	11,981
Grants	77	293	n/a	n/a
Economic Development Agreements	392	943	n/a	n/a
Pension Investment Contracts	311	1,336	n/a	n/a
Real Property & Land Use	528	1,003	n/a	n/a
Lobbying	343	1,377	n/a	n/a
Total	8,084	23,947	4,581	11,981
Unique Entities and People	7,707	22,772	4,581	11,981

MOCS receives and processes the data covered by LL 34 and oversees agency compliance with the law. Each month, MOCS transmits doing business data to DOITT, which in turn furnishes the database to CFB in order to administer and enforce LL 34's contribution limits. Non-confidential data are

³⁰ LL 34 was implemented in three phases beginning in Fiscal 2008; full implementation was completed in Fiscal 2009. Lobbying and awards of procurement contracts, franchises, concessions and debt contracts were covered as of February 2, 2008 (in Fiscal 2008). Coverage of proposals on these transactions and the allocation of discretionary funding, as well as proposals and awards for grants, economic development agreements and pension investment contracts, began in Fiscal 2009 on July 31, 2008. Real property transactions and land use actions became covered on December 3, 2008.

published in a public database available 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.

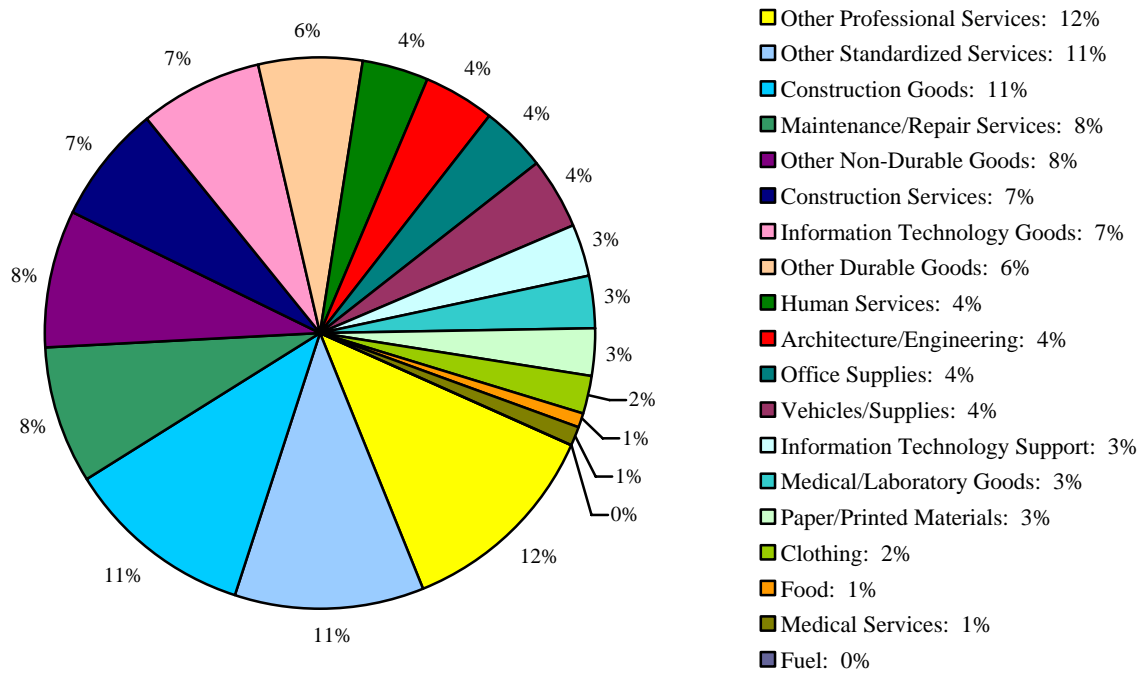
Reducing the influence of money in campaigns is a central goal of the City’s Campaign Finance program, as reliance upon smaller contributions reduces the perception or actuality of improper influence. LL 34’s establishment of lower contribution limits for those who do business with the City has been recognized as one of the factors contributing to a reduction in the average contribution size in the 2009 election cycle.³¹

III. CONTRACT PROCESS: PROMOTING COMPETITION AND EFFICIENCY

A. Vendors Enrolled to Do Business with the City

Through the Vendor Enrollment Center (VEC), any business wishing to sell goods or services to the City may enroll on the citywide bidders lists used by all Mayoral agencies to notify vendors about City procurement opportunities. As of the end of Fiscal 2009, 56,745 individual vendors had enrolled to do business with the City, up 7% from Fiscal 2008 (when the City had 52,961 enrolled vendors). Vendors enroll for the bidders lists that correspond to their respective areas of business.³²

**Chart III-1:
Vendors Enrolled by Detailed Industry
Total Number of Vendors Enrolled= 56,745**



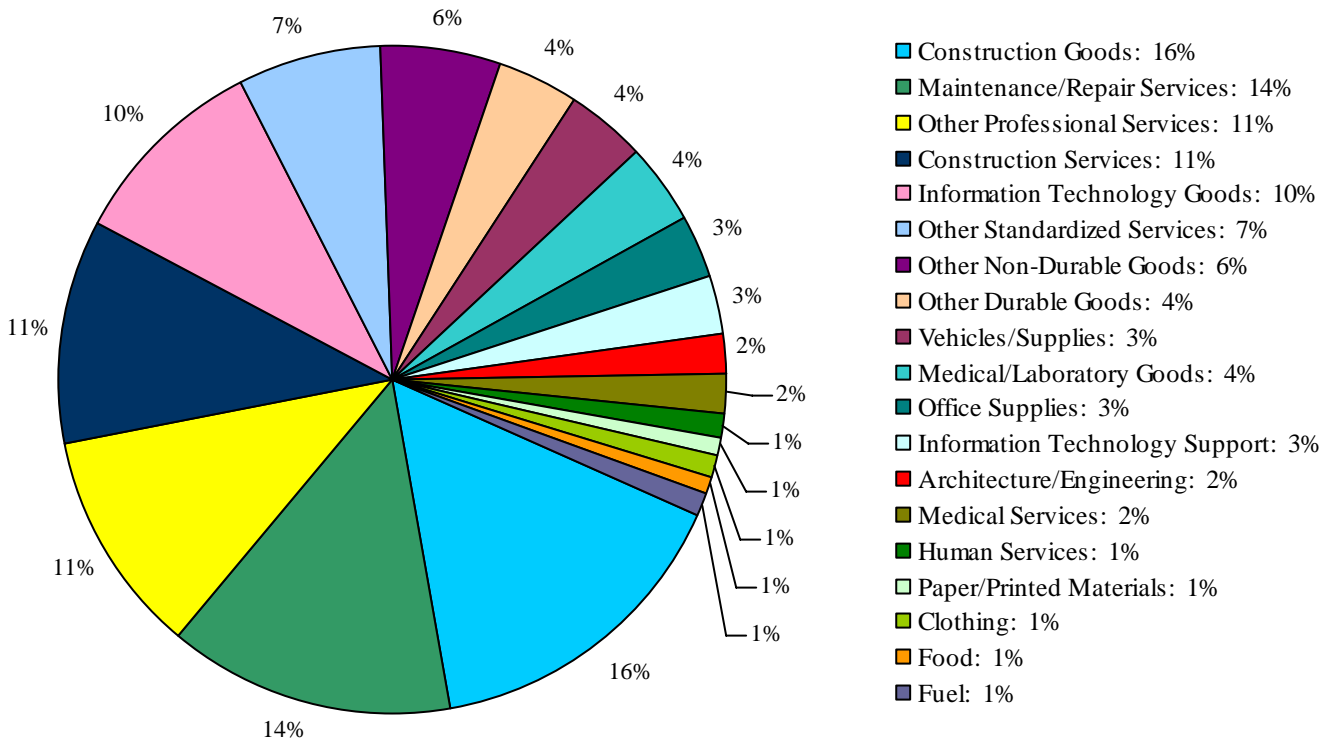
As the chart above reveals, 64% of vendors enroll in seven main areas: other professional services (12%), other standardized services (11%), construction goods (11%), maintenance/repair services (8%), other non-durable goods (8%), information technology goods (7%) and construction services (7%). These

³¹ www.nyccfb.info/press/news/press_releases/2009-01-29.pdf

³² Bidders may enroll at nyc.gov/html/mocs/html/business/bidderform.shtml or by calling 212-857-1683.

enrollments match many of the top areas reflected in agencies' small purchase and micropurchase volumes shown in the chart below, suggesting a positive correlation between the types of products and services enrollees are seeking to sell to the City and patterns of actual agency buying.

**Chart III-2:
Small Purchases and Micropurchases by Detailed Industry
Total Dollar Value = \$174.6 Million**



Businesses seeking to work with the City should take care to enroll under the commodity codes that best describe their respective products and services. Once enrolled, they should contact agencies directly to make them aware of their interest and capacity to supply the City. Information on agency contract offices is available through 311 and is posted at nyc.gov/html/selltonyc/html/acco.html.

B. Competitiveness: Success in Attracting Bidders and Proposers

Competition is a primary indicator to predict 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. For these purposes, we define a "highly competitive" procurement as one that results in at least three responses. Tracking and analyzing competitiveness data helps to make that the procurement process fair for all of the City's potential business partners.

Competitiveness for City contracts fluctuates each year, in part because of differences in the procurement cycles for certain types of contracts, particularly highly-specialized ones. Overall, the citywide level of highly competitive procurements rose from 64% in Fiscal 2008 to 80% in Fiscal 2009. Agency-by-agency totals, including comparative year-to-year data, are presented in Appendix H.

During Fiscal 2009, competitiveness in the human services sector (by dollar value) fell to 69% from the Fiscal 2008 benchmark of 93%.³³ However, measured by the number of contracts, rather than dollar value, 91% of human services awards were highly competitive. This matches performance in the past and is more representative of the competition found in human services contracts in Fiscal 2009.

Competitiveness levels fell in professional services, mostly as a result of large technology procurements with few two competitors. For goods and standardized services, the highly competitive levels increased marginally, to 95% and 97%, respectively, both of which reflect normal fluctuation.

Table III-1: Citywide Competition Level by Industry (Dollar Value)				
Industry Sector	% of Highly Competitive Procurements			
	Fiscal 2009	Fiscal 2008	Fiscal 2007	Fiscal 2006
Architecture/Engineering	87%	87%	100%	100%
Construction	62%	27%	77%	92%
Goods	95%	89%	94%	95%
Human Services	69%	93%	78%	90%
Professional Services	74%	99%	99%	76%
Standardized Services	97%	93%	95%	79%
Total	80%	64%	90%	87%

Construction services increased its level of high competitiveness to 61%, returning closer to its historic level after Fiscal 2008’s unusually low performance. Some of this shift probably relates to the economic downturn, which slowed private sector construction and drove more bidders to seek public procurement opportunities. In addition, during Fiscal 2009, City agencies aggressively pursued the goals of Mayor Bloomberg’s Construction Reform agenda. See Construction Reform, page 48.

For small purchases, agencies use an informal competitive process, drawing a random sample of at least five bidders from the citywide bidders list 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 to the marketplace. As the chart below shows, small purchase competition levels remained strong in Fiscal 2009, with the level of awards that reflected ten or more competitors matching last year’s strong performance.

Table III-2: Level of Competition in Small Purchases								
Number of Solicitations	Fiscal 2009		Fiscal 2008		Fiscal 2007		Fiscal 2006	
	Value	% of Total	Value	% of Total	Value	% of Total	Value	% of Total
1 to 4	\$3,676,379	3.3%	\$2,103,651	1.8%	\$3,563,860	3%	\$5,908,132	5%
5 to 9	\$8,525,909	7.9%	\$11,396,286	9.5%	\$13,547,630	12%	\$10,928,073	10%
10 or More	\$95,836,632	88.8%	\$106,339,798	88.7%	\$99,925,610	85%	\$96,958,032	85%
Total	\$108,038,920	100.0%	\$119,839,734	100.0%	\$117,047,825	100%	\$113,794,237	100%

³³ This reflects the shift of HRA’s portfolio of Home Attendant and Housekeeping services contracts from being city-funded to state-funded. Those contracts, which are highly competitive and are part of a billion dollar program, are now being registered by the City as zero-dollar contracts and therefore not counting towards the “highly competitive” category.

C. Procurement Timeliness: Balancing Efficiency and Thoroughness

1. How Long City Agencies Take to Process Bid Contracts

In this section, we present data on “cycle time” – how long (in calendar days) agencies take to process competitive sealed bids, which are typically used for goods, standardized services and construction, as well as similar procurements done by DCAS via the accelerated procurement method, which is generally used to buy fuel and other commodities.³⁴

Table III-3: Competitive Bids: Processing Time				
Agency	Average Number of Days			
	Fiscal 2009	Fiscal 2008	Fiscal 2007	Fiscal 2006
ACS	218	225	181	226
DCAS	116	120	113	107
DDC	151	144	145	108
DEP	154	140	161	196
DOHMH	N/A	130	137	144
DHS	120	185	209	240
DOC	144	125	137	142
DOT	127	114	70	148
DPR	140	98	102	79
DSNY	192	118	151	58
FDNY	188	143	161	157
HPD	157	N/A	N/A	N/A
HRA	168	251	147	339
NYPD	183	145	168	178
Citywide	136	127	125	125

In Fiscal 2009, cycle time for competitive bids increased to 136 days from Fiscal 2008’s 127 days. While this increase may reflect normal year-to-year fluctuation, some Fiscal 2009 procurements presented unusually complicated vendor integrity issues, as well as budget challenges, insurance and labor law compliance issues, all of which increased cycle time in some agencies. Agencies must balance the overall goal of timely and efficient procurement processing with the need to resolve these vendor-responsibility issues with care and thoroughness. MOCS is working with agencies on an ongoing basis to better analyze the factors influencing the competitive bid award process, so that cycle times can be reduced.

DCAS’ average cycle time for its accelerated procurements, which are similar to competitive bids, was 23 days for Fiscal 2009, a 22% decrease from Fiscal 2008.

2. 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 come to expect the delays and increase prices to compensate.³⁵

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

³⁵ We monitor retroactivity in other types of procurement, and report agency-by-agency and year-to-year comparative data in Appendix I. 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.

City procurement rules establish standards and 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 such costs as staff salaries, rent and insurance as they continue to serve clients' needs, even though their City payments are interrupted.³⁶

Table III-4: Major Human Service Agencies Overall Retroactivity for Contract Continuations, Fiscal 2009									
Agency	Fiscal 2009					Percent Retroactive by Dollar Value			
	All Continuations		Retroactive Continuations			Fiscal 2009	Fiscal 2008	Fiscal 2007	Fiscal 2006
	Count	\$ Value	Count	\$ Value	Average Days Retro				
ACS	203	\$546,725,959	156	\$487,465,360	41	89%	50%	16%	38%
DFTA	291	\$139,107,342	27	\$13,866,422	11	10%	27%	19%	2%
DOHMH	95	\$302,433,908	63	\$110,172,483	28	36%	22%	97%	97%
DHS	42	\$175,185,872	14	\$91,949,363	18	52%	74%	86%	50%
DYCD	837	\$231,308,935	339	\$125,302,493	25	54%	90%	43%	73%
HRA	43	\$99,282,139	35	\$82,961,599	17	84%	100%	71%	60%
All Other Agencies	57	\$142,485,991	53	\$138,427,591	90	97%	37%	88%	42%
Total	1,568	\$1,636,530,146	687	\$1,050,145,312	33	64%	44%	39%	52%

As the chart above reflects, agency performance on this indicator remains a cause for concern. Overall retroactivity at the agencies with the largest volumes of human services contract continuations – ACS, DFTA, DHS, DOHMH, DYCD and HRA – varied significantly, from a low of 10% (DFTA) to a high of 89% (ACS).³⁷ Several agencies posted performance gains, reducing their retroactivity substantially – particularly DFTA, DHS and DYCD, although rates above 50% continue to be of concern.

A more significant indicator than retroactivity *per se* 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), payment lapses do not typically occur. Thus, to review agencies’ performance and determine if any sanctions are warranted, MOCS focuses on the rates of long-term retroactivity, which is defined as longer than 30 days.

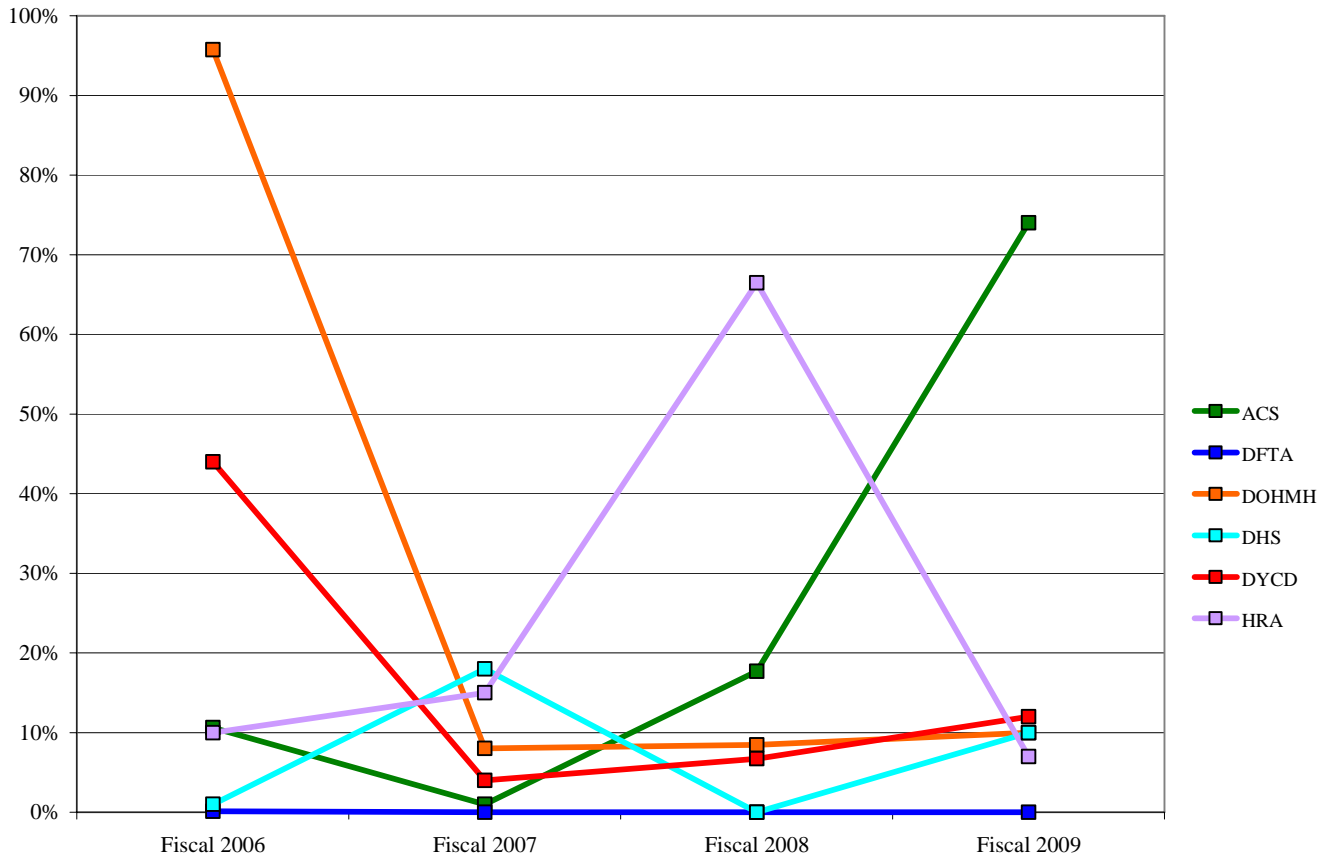
Here, the results are somewhat more encouraging. Of the six agencies responsible for the bulk of the City’s major human services programs, five posted long-term retroactivity rates that reflect solid

³⁶ In addition to late contract registration, we track agency performance on the payment of invoices for registered contracts. We measure agency success by reviewing the amount of interest each agency is obligated to pay under the procurement rules, to compensate for late-paid invoices. In Fiscal 2009 the net interest paid by agencies citywide totaled \$8,634, a negligible figure relative to overall procurement volumes.

³⁷ In calculating agency performance, we exclude contracts where retroactivity caused no harm or potential harm to the vendors or clients. This applies chiefly to contracts in the home care arena, where New York State generates all payments to providers, and continues such payments even when City contract registration is delayed. We also exclude contracts where delays in registration stem from vendor responsibility problems and other factors primarily within the vendors’ own control – such as delays relating to investigations, other compliance problems and those the vendor itself requests or causes. These contracts are excluded so that the indicator more closely tracks those factors in contract processing that reflect agency performance and, in instances of weaker performance, may warrant the imposition of sanctions (i.e., requirements to pay interest on late contracts) under applicable procurement rules.

progress toward the goal of full timeliness. Long-term retroactivity rates at those five agencies ranged from zero to 12%, and they averaged between 11 and 28 days late in registering their contracts. HRA made the most improvement by achieving 9% long-term retroactivity compared to 66% last year. DYCD’s long-term retroactivity increased slightly from 7% to 12% but its contract portfolio volume was much higher in Fiscal 2009, with 834 human service continuation actions, up from 332 in Fiscal 2008 .

**Chart III-3:
Major Human Service Agencies: Long Term (>30 Days) Contract Retroactivity**



Given the performance levels shown during Fiscal 2009, short-term financial hardships for human service providers resulting from City agencies’ lateness in completing their procurements are infrequent. MOCS anticipates that any shortfalls that do occur can be entirely 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 (FCNY). See Nonprofit Assistance Initiative, page 35. This fund provides a safety valve by offering interest-free loans to vendors whose contracts are processed late, as well as to vendors whose short-term cash flow gaps stem from a range of other problems.

In Fiscal 2009, only ACS posted a high rate of long-term retroactivity, affecting 76% of the dollar volume of its human services portfolio. Unforeseen delays during Fiscal 2008 and 2009 in rolling out new initiatives for child care and child welfare programs resulted in a considerable increase in contract extension actions that proved difficult for ACS to process in a timely fashion. In the end, ACS determined that it needed to extend its existing portfolio of providers, but had difficulty registering all of the resulting extensions and renewals on time. While its performance on this indicator was weak, the resulting potential damage to providers was mitigated because ACS registered those late contracts, on

average, within 41 days of their start dates, relatively close to the 30 day benchmark, so it is unlikely that significant payment gaps resulted. To prevent such gaps, ACS worked closely with MOCS to process 40 loans for its vendors during Fiscal 2009.

In Fiscal 2009, the total number of cash flow loans issued by this fund increased by 5% and the total value of those loans rose by 47% to \$21.3 million. The average amount of funds in circulation increased during Fiscal 2009 by a factor of 39%, to \$3.5 million, as the economic downturn made it difficult for vendors to adjust to even short-term cash flow gaps without more extensive City assistance.³⁸

After Fiscal 2008, MOCS determined that sanctions were not warranted against any agencies for late contracting because of the significant, system-wide delays that year, which affected the process of verifying vendors' charities registration status and other vendor responsibility issues, and were largely outside the control of individual agencies. Instead, MOCS looked at long-term retroactivity measures at the conclusion of Fiscal 2009, including the efforts by agencies during the last quarter of Fiscal 2009 to achieve timely registration for their human services contracts with July 1st (Fiscal 2010) start dates.

By this measure, MOCS determined that sanctions were not warranted for ACS, as its record for moving Fiscal 2010 contracts through the process during the last quarter of Fiscal 2009 very significantly improved, and as noted above, its average number of retroactive days remained modest. Only two agencies, each with relatively small contract volumes (CJC and HPD) fell significantly short of the benchmarks and were deemed substantially late, meaning that under the City's procurement rules they may be required to pay interest to vendors affected by late registration of contracts during Fiscal 2010.³⁹

3. Change Orders

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). As described in Construction Reform on page 48, improvements to change order timeliness (processing time) represents a key goal for the City.

³⁸ Discretionary awardees are also eligible for cash flow loans, once the vendor responsibility determinations have been made. City agencies strive to register these contracts as soon as possible, but retroactivity is not tracked for this category of procurements because they are, by definition, always retroactive. Each award is for a single year, even if the same vendor has received the same discretionary award in the past. Each award covers only the activities the vendor provides during the fiscal year covered by the adopted budget. However, budget adoption precedes the start of the fiscal year by only a matter of days, so City agencies must conduct their reviews and comply with processing mandates after the discretionary contracts' start date.

³⁹ In the case of CJC, all 13 of the contracts considered in this indicator were late, at an average of 153 days. For HPD, 13 of the 16 contracts considered in the indicator were late, at an average of 120 days. While it is important to ensure that agencies are held accountable for delays that they can and should control, it is important also 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 human services contracts with unacceptable levels of lateness, MOCS expects to fully address the impacts on providers through the provision of no-interest loans, rather than through the payment of interest.

Table III-5: Design Change Order (DCO) Processing							
Agency	# of DCOs	Original Contract Value	DCO Value	DCOs as % of Contracts		Processing Time (Days)	
				Fiscal 2009	Fiscal 2008	Fiscal 2009	Fiscal 2008
DDC	54	\$168,296,217	\$26,437,985	16%	17%	98	51
DEP	225	\$3,363,960,602	\$145,099,735	4%	15%	160	176
DOT	26	\$77,190,179	\$20,770,675	27%	39%	138	141
DPR	18	\$21,870,000	\$1,295,421	6%	50%	91	261
DSNY	17	\$17,477,688	\$3,294,064	19%	19%	128	196
All Others	7	\$1,297,150	\$1,551,991	122%	11%	69	97
Citywide	347	\$3,650,091,836	\$198,449,871	5%	17%	128	141

In Fiscal 2009, design change orders averaged 5% of the original contract value. This is significantly less than last year's average of 17%. DEP, which instituted a sophisticated tracking database, DPR and DOT all had noteworthy decreases in this indicator, which reflects of the efforts such agencies have made to control their change orders.⁴⁰

City agencies, notably DPR and DSNY, made headway in reducing design change processing time. DDC increased its processing time, reflecting the year's many complex and challenging projects. However, DDC's Fiscal 2009 processing time remains well below the citywide average of 128 days.

Table III-6: Construction Change Order Processing											
Agency	# of CCOs	Original Contract Value	CCO Value	CCOs as % of Contracts				Processing Time (Days)			
				Fiscal 2009	Fiscal 2008	Fiscal 2007	Fiscal 2006	Fiscal 2009	Fiscal 2008	Fiscal 2007	Fiscal 2006
DCAS	45	\$50,619,327	\$7,829,462	15%	17%	19%	5%	98	94	131	162
DDC	413	\$1,238,688,853	\$121,579,661	10%	14%	9%	10%	80	98	111	73
DEP	712	\$7,399,111,660	\$201,765,344	3%	2%	12%	5%	167	193	227	131
DOT	70	\$1,344,007,239	\$71,132,054	5%	7%	4%	5%	130	111	197	142
DPR	98	\$150,802,594	\$18,501,522	12%	22%	23%	11%	210	216	229	122
DSNY	238	\$480,716,152	\$26,189,516	5%	1%	2%	4%	212	244	213	123
All Others	68	\$243,601,168	\$18,055,555	7%	29%	5%	19%	84	100	88	92
Total	1,644	\$10,907,546,993	\$465,053,114	4%	4%	11%	6%	147	147	156	107

For construction change orders, most agencies performed comparably to last year when comparing change orders to the original contract value. Some made significant progress, particularly DPR and DDC. Several agencies posted substantial decreases in construction change order processing times, reflecting their efforts to streamline approvals and increase efficiency, with DSNY leading all agencies with a 32 day savings from its Fiscal 2008 average. DEP and DDC also made significant headway, saving 26 and 22 days, respectively. DOT was the only agency that showed a significant increase in processing time, but this increase still left DOT with a processing time within range of its historical averages, and well below the citywide average processing time. Because change order delays result in payment delays for vendors, and may thus contribute to higher bid prices, MOCS continues to work with all agencies to further shorten processing times across-the-board.

⁴⁰ The increase in the "All Others" category results from a single large DOC design change order.

Construction Reform and Cost Control – A Continuing Challenge

Seeking to control the City's rapidly escalating construction costs, in July 2008 Mayor Bloomberg announced five construction reform priorities. While costs have declined as a result of the economic downturn during Fiscal 2009, these goals remain central to the City's ability to attract more vendors to bid on the City's projects.

Better Tracking of the Bidding Process:

In January 2009, City agencies began to use a new Bid Tracker Database to allow online data sharing of bid information. With this database, we can better analyze the amount of difference (plus or minus) between project estimates and the eventual awards, the relationship between the number of bids received and pricing, and the impacts that various types of bid language have on competitiveness or pricing. Since the Bid Tracker database came into use, agencies have become less likely to underestimate project costs, leading to more realistic budgeting.

Damages for Delay Pilot Program:

Traditionally, the City's standard contract has not compensated vendors for the costs of project delays, even when the City causes those delays. The risk of these uncompensated delays has led some vendors to submit higher bids and others to avoid City work altogether. With the Mayor's reform initiative, the City launched a "Damages for Delay" pilot program, substituting new contract provisions that allow vendors to claim some delay-based damages in 25% of all construction projects valued at more than one million dollars that agencies bid out. We will measure the effectiveness of the pilot program on both competition and pricing. Although no pilot projects were registered in Fiscal 2009, by the end of the fiscal year, some 63 "damages for delay" projects were on tap in the procurement pipeline.

Change Order Reform:

To cut down processing time, an inter-agency task force has developed detailed metrics to document every step of the workflow. For several years, MOCS has collected data on two milestones – submission of a change order by an agency field-level approver to the agency's central office, and submission for registration. But long delays often occur in the field, before that first milestone, and time frames for agencies' internal approvals remain unacceptably high. By closely tracking every step and pushing agencies to eliminate redundancies and implement best practices that have proven effective in lowering processing times, the City is committed to genuine and substantial change order reform.

Project Planning and Scoping:

One of the reasons change orders occur is that projects have sometimes not been properly scoped at their outset, often because it is difficult to fund studies before projects are adopted in the capital budget. Beginning in Fiscal 2010, the City has set aside \$20 million in expense funds for architectural and engineering studies and cost estimates on projects with unclear scopes, unusual technical challenges or complex regulatory issues.

Implementing Changes to Wicks Law and the Pre-Qualification Process:

The Wicks Law, a notorious contributor to construction costs, hampers the City's ability to manage construction work in City buildings efficiently; it requires agencies to bid four separate, uncoordinated contracts for each project – one for a general contractor, and one each for electrical, plumbing and mechanical work. State legislation enacted last year raised the City's Wicks Law threshold from \$50,000 to \$3,000,000. While the higher limit has eased the Wicks Law burden for smaller projects, the vast majority of City construction work exceeds \$3 million. In Fiscal 2009, City agencies registered 70 Wicks Law contracts, valued at over \$954 million. The two largest areas of work that remain subject to Wicks Law were DEP's contracts for work at sewage plants and water treatment facilities. State reforms also eliminated Wicks Law restraints for any work covered by project labor agreements, so at the conclusion of Fiscal 2009, the City was actively considering entering into such agreements. Finally, agencies are expanding use of prequalified lists, based on another state law reform that has made that tool broadly available for construction work.

While continuing to press ahead with these five priorities, MOCS and City agencies are also advocating other, much-needed legislative reforms. One critical area has to do with State laws that bar the City from using "joint bidding" when the City and public utilities have simultaneous work in and under the streets. Because this work cannot now be efficiently coordinated, street construction projects are plagued with long, costly delays. The State Legislature authorized a joint bidding approach for the City's street reconstruction work in Lower Manhattan, as demonstrated by progress on several of DDC's Fiscal 2009 contracts. The City is seeking such authority more broadly, particularly for critical water tunnel shaft related work slated to begin throughout Manhattan in Fiscal 2010.

IV. CONTRACT POLICY: LEVERAGING OUR BUYING POWER

Enrolling qualified vendors, soliciting initial contracts, researching vendor responsibility and processing timely contracts constitute the “front-end” of the procurement process. But contract oversight and monitoring is an ongoing process, occurring throughout the term of the business relationship. In addition to monitoring vendor compliance on an ongoing basis, agencies impose a number of contract mandates, each of which is designed to leverage the City’s buying power to promote key policy goals and best practices. In this section, we present data concerning a number of such initiatives.

A. Labor Standards – Apprenticeship Training

Using authority granted the City under State Labor Law, MOCS imposed a Mayoral directive several years ago to require City construction projects to provide enhanced apprenticeship opportunities.



Source: Edward Malloy Initiative for Construction Skills

Apprenticeships in the construction trades provide opportunities for New Yorkers to advance toward good-paying jobs in the industry. Under the Mayoral directive, vendors awarded construction contracts valued at over three million dollars, as well as those awarded contracts over one million dollars for projects with a combined value of over five million dollars, must show participation in apprenticeship programs approved by the State Department of Labor, with at least three years of successful experience providing career opportunities for apprentices. The same mandate extends to subcontractors on such projects where the subcontracts exceed one million dollars.

In Fiscal 2009, City agencies registered 106 contracts worth just over \$2 billion that were within the dollar thresholds of the apprenticeship directive, compared to just over \$5 billion last year (two Fiscal 2008 water treatment plant contracts account for more than \$2.4 billion of the difference).⁴¹ In all but one case, the vendor complied fully with the apprenticeship mandate, the vast majority through affiliations with union-sponsored apprenticeship programs. In one instance, the contracting agency incorrectly failed to include the apprenticeship language in its bid documents.

While the dollar value dropped, because Fiscal 2008 had included two very large DEP water contracts, the apprenticeship mandate continued to serve its intended policy goal well. Above the \$10 million level, City vendors invariably participate in apprenticeship programs, as all such vendors (in construction) are union firms. The primary focus of the apprenticeship mandate is its impact in increasing apprenticeship opportunities with vendors competing for lower value contracts, for which agencies might otherwise select a vendor that does not offer apprenticeships. The number of registered contracts below \$10 million that were subject to the apprenticeship mandate was unchanged from Fiscal 2008 to Fiscal 2009 – 66 contracts in each year. As a result of the Mayoral directive, all of these construction projects provided the apprenticeship opportunities that are so critical to providing opportunities for more New Yorkers to enter the construction industry with excellent training and solid career prospects.

⁴¹ In addition, EDC awarded 15 contracts valued at \$307 million to vendors affiliated with apprenticeship programs.

B. Greening the Environment – Environmentally-Preferable Purchasing

Pursuant to Local Law 118 of 2005 (LL 118), this section includes data reflecting City compliance with environmentally-preferable purchasing (EPP) standards,⁴² which require agencies to specify environmentally-friendly products when procuring products that use energy or water, contain potentially hazardous substances and/or can be made from recycled or recovered materials.

1. Goods Purchases

All goods items covered by the EPP standards fall within the purchasing purview of DCAS. Small purchases and micropurchases are exempt from the EPP laws. Goods covered by the EPP standards can be obtained by City agencies through citywide requirement contracts awarded by DCAS. During Fiscal 2009, DCAS awarded a five-year requirement contract for dual purpose paper valued at \$36,598,036. Goods on contracts covered by the EPP standards are detailed in Appendix J-1.

Product Categories	Dollar Value
Paper products	\$54,098,719
Electronics	\$4,966,844
Misc. Non-Construction Products	\$4,847,986
Lighting Products	\$793,499
Plumbing	\$693,947
Architectural Coatings	\$160,350
Total	\$65,561,345

2. Construction Procurement

In addition to the goods that City agencies purchase directly, many of the products incorporated into construction projects are also covered by certain EPP standards. City agencies are required to follow the EPP standards for most energy- and water-using products, and to limit the hazardous content of carpets (and related products such as carpet cushions or adhesives), paints and other architectural coatings. See Appendix J-2.

During Fiscal 2009 City agencies entered into contracts valued at more than \$966 million where the contracts included at least one of 14 applicable EPP specifications. This total includes more than \$608 million in contracts that included EPP specifications limiting the hazardous content of architectural coatings,⁴³ nearly \$211 million in contracts that included EPP specifications for lighting and more than \$127 million that included EPP specifications for Energy Star ratings.

Most of the City's largest capital projects are governed for purposes of "green construction" standards not by the EPP laws, but by the more comprehensive Green Buildings Law, Local Law 86 of 2005 (LL 86).⁴⁴ 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

⁴² 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 certain procurement-specific exemptions and waivers; however, no such exemptions or waivers were approved during Fiscal 2009.

⁴³ Some contracts use specifications for more than one category; thus, individual product totals cannot be cumulated.

⁴⁴ 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). Projects costing \$12 million or more must also meet energy cost reduction targets. Installation and replacement of boilers and HVAC comfort controls costing \$2 million or more, and the installation or replacement of 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. Plumbing system projects costing \$500,000 or more must meet water use reduction targets.

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 2009, nearly \$1.1 billion worth of LL 86 projects resulted in registered contracts.⁴⁵ Each of these projects resulted in contracts for which one or more types of EPP products were incorporated into the construction.

3. Green Cleaning Products

In Fiscal 2009, MOCS completed the pilot program to study the feasibility of using “green cleaning” products in City facilities, as required by Local Law 123 of 2003 (LL 123). LL 123 noted that the use of environmentally preferable cleaning products may result in improved indoor air quality and enhanced environmental health. The pilot, conducted over two six-week phases, to include testing under differing weather conditions, allowed ten agencies to test green cleaning substitutes for their standard products at 19 facility locations.⁴⁶ Cleaning and supervisory staff at each facility evaluated the green cleaning products based on effectiveness, ease of use and individual reactions. See Appendix J-3. The pilot program also gathered data from seven “control” sites.



Overall, participants responded positively to the performance and ease of use of green cleaning products and expressed a preference toward their continued use.⁴⁷ In the initial testing phase, general purpose, glass and bathroom green cleaning products outperformed the other types of green cleaning products tested. Except for carpet cleaners, evaluations from the second testing phase showed satisfaction with the effectiveness of all green cleaning products, with general purpose, glass and bathroom cleaners performing very well. Data on floor finishes and strippers was mixed, and some dissatisfaction was noted with those types of green cleaning products. In both phases, disinfectants were the only product type for which any participants reported an adverse physical reaction.

Following the completion of the pilot program, MOCS has moved forward with recommendations for expanded procurement and use of environmentally preferable cleaning products, as follows:

- The City will expand the list of approved green cleaning products and product categories from those used in the pilot, and will encourage agencies to test new products and product categories.
- Agencies will rely primarily on the *Approved Green Cleaning Products Listings* from the New York State Office of General Services (OGS), to identify new products for use.⁴⁸
- MOCS will work with DCAS and other City agencies to effectuate a smooth transition to the wider use of green cleaning products, with appropriate training for staff, avoiding the waste of existing inventories, as we gradually phase-out products inconsistent with EPP standards.

⁴⁵ Some LL86 projects require registration of multiple contracts for various project phases. Therefore, the total value presented reflects both construction work and contracts for architectural/engineering and other professional services.

⁴⁶ Participating agencies include DCAS, DEP, DHS, DJJ, DOC, DOHMH, DPR, DSNY, FDNY and NYPD.

⁴⁷ For certain product types, performance varied among available brands, with participants more satisfied with the performance and effectiveness of one bathroom cleaner and glass cleaner than with of the same product type.

⁴⁸ OGS-approved green cleaning product listings are available at <https://greencleaning.ny.gov/Products.asp>.

Progress in 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 initiatives. Highlighted below are a few Fiscal 2009 contracts undertaken by City agencies that contribute to the PlaNYC effort:

- ***DPR Schoolyards to Playgrounds*** – *The City has identified school playgrounds as opportunities to increase access to open space for all New Yorkers, prioritizing areas that lack open space and have a high ratio of children to playgrounds. As part of PlaNYC, DPR is partnering with the Department of Education (DOE) and the Trust for Public Land to open over 250 schoolyards in underserved neighborhoods through a participatory design process with the school community that involves children, parents and teachers. By opening schoolyards after school, on weekends and during school breaks, these playgrounds will be available to approximately 360,000 New York children by 2010 and help ensure that all New Yorkers live within a ten minute walk of a playground or park. In support of this project, in Fiscal 2009 DPR registered eleven contracts for construction and construction supervision services, worth \$15.7 million.*
- ***DOT Energy Efficient Lighting*** – *To help achieve PlaNYC's goal of reducing energy consumption, DOT began a citywide program to convert magnetic ballast cobra head street lights to use energy-efficient electronic ballasts. This will ultimately reduce the amount of greenhouse gases by 55,000 tons per year and save the City \$13 million annually. In 2009, DOT registered a \$23 million contract to replace 83,000 lamps in Manhattan, the Bronx and Staten Island, for a projected annual savings of \$4.8 million.*
- ***DOT Citywide Bike Network*** – *As part of the Mayor's goal of making the City more bike-friendly, DOT has launched a citywide Bike Network Initiative. DOT is contracting for a variety of services, including the micro-surfacing of roads, traffic studies and the purchase of bike racks. With increased bicycling, cars are being taken off the road and a healthy activity and mode of transportation is being encouraged. In Fiscal 2009, DOT registered six contracts for the Bike Network Initiative, valued at just over \$10 million.*
- ***DEP Automatic Meter Reading*** – *To provide better service and reduce waste, DEP has launched an "automatic meter reading" program. Prior to this program, water meters were read quarterly and only 85% of meters were actually read (the rest were billed based on estimated usage), leading to fluctuations in billing and leaving water leaks undiscovered for months. In 2008 DEP began installing meters that broadcast data electronically and rooftop receivers to relay that data for billing purposes. Each receiver gathers data at least four times a day from 20,000 to 25,000 meters, resulting in 97% of meters being read and much improved leak detection. In the future, DEP customers will be able to view their water usage online, and DEP will receive alert notifications when leaks occur. In Fiscal 2009, DEP registered six contracts valued at \$59.2 million for the installation relay receivers in Brooklyn and Queens.*

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

C. Increasing Opportunity – Minority and Women-Owned Business Enterprises

The City’s M/WBE goals program operates pursuant to Local Law 129 of 2005 (LL 129). Fiscal 2009 represents the final year within what LL 129 established as a three-year “ramping up” period, designed to allow City agencies to make progress toward attainment of the new program’s ambitious goals. In this section we present relevant data on the LL 129 M/WBE program, as well as data concerning M/WBE awards of contracts and subcontracts that fall outside of the LL 129 program. During the “ramping up” period, M/WBE prime contract and subcontract awards have steadily risen. As shown in the accompanying table, with the inclusion of the most recent Fiscal 2009 data, combined M/WBE awards have now topped *one billion dollars* for that three-year period.

Table IV-2: Awards to M/WBEs Since LL 129				
	Fiscal 2009	Fiscal 2008	Fiscal 2007	All Years
Prime Contracts	\$306,969,169	\$340,184,159	\$194,840,881	\$841,994,209
Subcontracts	\$180,378,560	\$127,505,932	\$59,182,856	\$367,067,348
All Contracts	\$487,347,729	\$467,690,091	\$254,023,737	\$1,209,061,557

The LL 129 program does not cover all of the City’s procurements. In keeping with Federal constitutional case law, the program is “narrowly tailored” to address the gender- and race/ethnic-based disparities identified in an economic study commissioned by the City Council and released in 2005.⁴⁹ Based on that study, LL 129 is limited in several significant ways. The most significant limitation is the *exclusion* from the goals program of any prime contract valued at one million dollars or more. Only about 11% of the City’s procurement dollars are awarded in prime contracts valued at that relatively low level. For prime contracts valued at more than one million dollars, the LL 129 subcontractor participation goals apply, but the goals do not cover subcontracts which themselves equal or exceed one million dollars.



LL 129 excludes some contracts from its coverage based upon the industry of the vendor and type of services. Nonprofits have no individual owners, so they cannot be classified as M/WBEs. Thus, nearly all human services contracts – approximately \$2.9 billion in Fiscal 2009 – are excluded from LL 129, as they are held by nonprofit vendors. For other industries, LL 129 sets goals for prime contracts – ranging from 22% in construction to 36% in goods – but for three industries, LL 129 sets goals only for *some* gender and racial/ethnic subgroups, not for all. LL 129 sets subcontractor participation goals (at about 31%), but applies those goals only to the construction and professional services industries.⁵⁰

State competitive bidding laws also affect the achievement of LL 129 goals. Most of the City’s prime contracts over \$100,000 must be awarded by competitive sealed bid. Thus, although LL 129 sets goals for prime contracts, agencies may only pursue them by using outreach and training to enable M/WBEs to bid successfully. If an M/WBE does not submit the lowest responsible bid, the agency may not award it a contract, even if the gap between the M/WBE bid and the next lowest one is very small.

⁴⁹ The City – through DSBS – is currently undertaking another disparity study, in order to determine whether and to what extent any of LL 129’s provisions should be revised to take account of current procurement conditions.

⁵⁰ In construction, LL 129 establishes prime contract goals only for African American and Hispanic American firms. For professional services and standard services, prime contract goals are set for those groups, and also for women-owned firms. Only for goods does LL 129 set prime contract goals for those three groups and also Asian American firms. Similarly, for subcontracting, construction participation goals are set for three groups, but not for women-owned firms, and professional services participation goals are set for three groups, but not for Asian American firms. Each of these exclusions stems from the City’s 2005 disparity study, which failed to identify any statistically significant procurement disparities in those areas.

As noted earlier, procurement volume declined by 25% in Fiscal 2009. Within that amount, the percentages increased for both human services, which is not covered by LL 129, and standardized services, which is not covered by the law's subcontract goals, as did the proportion of contracts procured via methods that do not trigger LL 129 goals. Nevertheless, as shown in Table IV-3 below, the LL 129 goals reached about \$477 million worth of prime contracts in Fiscal 2009, up 9% over the Fiscal 2008 level of \$435 million. As shown in Table IV-5 below, the subcontractor participation goals apply to another \$989 million worth of the Fiscal 2009 prime contracts, only slightly less than the amount covered in Fiscal 2008. Together, the LL 129 covered contracts amount to about 11% of the total Fiscal 2009 portfolio. In Fiscal 2008, LL 129 covered approximately 8% of the City's total procurement volume.⁵¹

1. Prime Contracting Opportunities

Table IV-3: Fiscal 2009 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	\$361,709,262	\$4,000	0.0%	\$43,453,223	12.0%	\$0	0.0%	\$3,494,595	1.0%	\$46,951,819	13.0%
<=\$5K	\$186,424	\$4,000	2.1%	\$20,760	11.1%	\$0	0.0%	\$7,499	4.0%	\$32,259	17.3%
>\$5K - \$100K	\$1,630,305	\$0	0.0%	\$87,750	5.4%	\$0	0.0%	\$117,096	7.2%	\$204,846	12.6%
>\$100K - \$1M	\$10,845,043	\$0	0.0%	\$117,404	1.1%	\$0	0.0%	\$0	0.0%	\$117,404	1.1%
>=\$1M	\$349,047,490	\$0	0.0%	\$43,227,309	12.4%	\$0	0.0%	\$3,370,000	1.0%	\$46,597,309	13.3%
Construction Services	\$2,502,205,913	\$6,651,296	0.3%	\$24,556,299	1.0%	\$31,230,157	1.2%	\$34,388,431	1.4%	\$96,826,183	3.9%
<=\$5K	\$94,655	\$0	0.0%	\$18,649	19.7%	\$0	0.0%	\$0	0.0%	\$18,649	19.7%
>\$5K - \$100K	\$19,763,979	\$270,719	1.4%	\$1,803,765	9.1%	\$150,515	0.8%	\$883,305	4.5%	\$3,108,304	15.7%
>\$100K - \$1M	\$112,300,328	\$380,577	0.3%	\$4,572,553	4.1%	\$2,131,752	1.9%	\$10,746,704	9.6%	\$17,831,586	15.9%
>=\$1M	\$2,370,046,951	\$6,000,000	0.3%	\$18,161,331	0.8%	\$28,947,891	1.2%	\$22,758,422	1.0%	\$75,867,644	3.2%
Goods	\$723,824,878	\$2,029,592	0.3%	\$1,879,649	0.3%	\$2,785,778	0.4%	\$10,040,076	1.4%	\$16,735,095	2.3%
<=\$5K	\$29,916,854	\$1,096,874	3.7%	\$967,010	3.2%	\$1,231,569	4.1%	\$2,904,631	9.7%	\$6,200,083	20.7%
>\$5K - \$100K	\$59,902,176	\$932,718	1.6%	\$912,639	1.5%	\$1,396,710	2.3%	\$3,148,904	5.3%	\$6,390,970	10.7%
>\$100K - \$1M	\$66,735,297	\$0	0.0%	\$0	0.0%	\$157,500	0.2%	\$349,041	0.5%	\$506,541	0.8%
>=\$1M	\$567,270,551	\$0	0.0%	\$0	0.0%	\$0	0.0%	\$3,637,500	0.6%	\$3,637,500	0.6%
Professional Services	\$444,229,271	\$3,790,625	0.9%	\$1,217,936	0.3%	\$1,186,400	0.3%	\$1,204,160	0.3%	\$7,399,121	1.7%
<=\$5K	\$3,545,804	\$20,525	0.6%	\$6,036	0.2%	\$26,100	0.7%	\$25,970	0.7%	\$78,631	2.2%
>\$5K - \$100K	\$17,692,282	\$108,000	0.6%	\$462,728	2.6%	\$110,300	0.6%	\$428,193	2.4%	\$1,109,220	6.3%
>\$100K - \$1M	\$25,491,546	\$712,100	2.8%	\$749,172	2.9%	\$0	0.0%	\$749,998	2.9%	\$2,211,270	8.7%
>=\$1M	\$397,499,639	\$2,950,000	0.7%	\$0	0.0%	\$1,050,000	0.3%	\$0	0.0%	\$4,000,000	1.0%
Standardized Services	\$1,135,049,977	\$28,790,672	2.5%	\$29,919,584	2.6%	\$6,891,721	0.6%	\$3,790,783	0.3%	\$69,392,761	6.1%
<=\$5K	\$19,967,514	\$268,764	1.3%	\$872,711	4.4%	\$137,262	0.7%	\$354,548	1.8%	\$1,633,285	8.2%
>\$5K - \$100K	\$40,461,822	\$776,279	1.9%	\$814,490	2.0%	\$456,044	1.1%	\$1,292,535	3.2%	\$3,339,348	8.3%
>\$100K - \$1M	\$68,804,319	\$494,700	0.7%	\$2,493,814	3.6%	\$1,711,000	2.5%	\$1,090,700	1.6%	\$5,790,214	8.4%
>=\$1M	\$1,005,816,322	\$27,250,929	2.7%	\$25,738,570	2.6%	\$4,587,415	0.5%	\$1,053,000	0.1%	\$58,629,914	5.8%
All Industries	\$5,167,019,301	\$41,266,185	0.8%	\$101,026,691	2.0%	\$42,094,057	0.8%	\$52,918,045	1.0%	\$237,304,979	4.6%
<=\$5K	\$53,711,252	\$1,390,163	2.6%	\$1,885,167	3.5%	\$1,394,931	2.6%	\$3,292,647	6.1%	\$7,962,907	14.8%
>\$5K - \$100K	\$139,450,564	\$2,087,716	1.5%	\$4,081,371	2.9%	\$2,113,569	1.5%	\$5,870,033	4.2%	\$14,152,689	10.1%
>\$100K - \$1M	\$284,176,534	\$1,587,377	0.6%	\$7,932,943	2.8%	\$4,000,252	1.4%	\$12,936,443	4.6%	\$26,457,015	9.3%
>=\$1M	\$4,689,680,952	\$36,200,929	0.8%	\$87,127,210	1.9%	\$34,585,305	0.7%	\$30,818,922	0.7%	\$188,732,367	4.0%

⁵¹ The net amount covered by LL 129 is about \$1.4 billion. For \$33M worth of the LL 129 prime contracts, the law's subcontractor participation goals also apply, so the \$1.4 billion total nets those out, rather than double-count them.

As reflected in the table above, during Fiscal 2009 M/WBE vendors obtained almost 15% of the City’s micropurchases, up by about two percentage points over Fiscal 2008. As in Fiscal 2008, M/WBEs also obtained 9.7% of small purchases, with a high of about 15% in the construction services arena. More dramatic gains occurred at higher dollar levels, as a result of the City’s successful capacity-building efforts. M/WBE participation on prime contracts between \$100,000 and one million dollars increased from 6.1% in Fiscal 2008 to 8.9% this past year, a 46% increase. M/WBEs also show growing strength in prime contracts valued at over one million dollars, with participation more than doubling, from 1.7% to 4%. Again this year, M/WBEs won several large contracts – nearly \$190 million worth. Several of these multi-million dollar awards are highlighted in the boxed insert following this section.



The higher success rate in Fiscal 2009 stems from DSBS’ continued progress in certifying new M/WBEs. The number of certified M/WBEs in the vendor pool increased by 37% just this past fiscal year, rising to 2,200, from the 1,604 at the end of Fiscal 2008 and 1,236 at the end of Fiscal 2007.⁵² As shown in the table below, this more competitive pool of M/WBEs has yielded increased success.

Table IV-4: Local Law 129 Prime Contracting Fiscal 2007-2009

Industry/ \$ Range	Fiscal 2009			Fiscal 2008			Fiscal 2007		
	Total	M/WBE		Total	M/WBE		Total	M/WBE	
		%	\$		%	\$		%	\$
Micropurchase	\$53,711,252	14.8%	\$7,962,907	\$58,609,206	11.8%	\$6,939,330	\$57,766,706	9.6%	\$5,534,050
A/E	\$361,709,262	13.0%	\$46,919,560	\$341,719,943	2.3%	\$7,962,075	\$186,974,272	9.8%	\$18,379,571
>\$5K - \$100K	\$1,630,305	12.6%	\$204,846	\$1,354,415	29.1%	\$394,677	\$508,400	53.1%	\$270,011
>\$100K-\$1M	\$10,845,043	1.1%	\$117,404	\$9,339,255	0.0%	\$0	\$1,439,532	0.0%	\$0
>=\$1M	\$349,047,490	13.3%	\$46,597,309	\$331,026,272	2.3%	\$7,580,502	\$185,026,340	9.8%	\$18,114,079
Construction	\$2,502,205,913	3.9%	\$96,807,533	\$5,399,156,535	1.5%	\$80,447,432	\$1,647,625,929	3.6%	\$58,820,246
>\$5K - \$100K	\$19,763,979	15.7%	\$3,108,304	\$14,886,190	10.7%	\$1,586,868	\$11,270,923	6.5%	\$737,118
>\$100K-\$1M	\$112,300,328	15.9%	\$17,831,586	\$77,367,843	11.6%	\$9,005,617	\$77,126,920	16.4%	\$12,625,677
>=\$1M	\$2,370,046,951	3.2%	\$75,867,644	\$5,306,902,502	1.3%	\$69,520,423	\$1,559,228,085	2.9%	\$45,373,537
Goods	\$723,824,878	1.5%	\$10,535,012	\$740,856,029	2.5%	\$18,299,144	\$943,470,230	0.9%	\$8,302,538
>\$5K - \$100K	\$59,902,176	10.7%	\$6,390,970	\$67,508,084	11.1%	\$7,500,148	\$74,354,188	9.7%	\$7,204,921
>\$100K-\$1M	\$66,735,297	0.8%	\$506,541	\$90,795,597	1.3%	\$1,198,502	\$100,603,909	1.1%	\$1,086,522
>=\$1M	\$567,270,551	0.6%	\$3,637,500	\$582,552,348	1.6%	\$9,553,859	\$768,512,134	0.0%	\$0
Prof'l Services	\$444,229,271	1.7%	\$7,320,490	\$737,938,837	1.2%	\$8,560,091	\$2,565,470,224	0.0%	\$0
>\$5K - \$100K	\$17,692,282	6.3%	\$1,109,220	\$16,363,109	6.0%	\$975,241	\$15,770,861	0.4%	\$58,352
>\$100K-\$1M	\$25,491,546	8.7%	\$2,211,270	\$19,070,381	7.4%	\$1,416,929	\$28,447,914	0.0%	\$0
>=\$1M	\$397,499,639	1.0%	\$4,000,000	\$702,505,347	0.9%	\$6,111,797	\$2,521,251,448	0.0%	\$0
Std. Services	\$1,135,049,977	6.1%	\$67,759,476	\$5,118,338,993	2.3%	\$116,186,295	\$2,568,270,809	0.5%	\$11,814,046
>\$5K - \$100K	\$40,461,822	8.3%	\$3,339,348	\$33,869,865	8.4%	\$2,851,843	\$36,101,990	8.1%	\$2,906,210
>\$100K-\$1M	\$68,804,319	8.4%	\$5,790,214	\$45,946,968	6.9%	\$3,188,720	\$57,267,967	7.5%	\$4,289,371
>=\$1M	\$1,005,816,322	5.8%	\$58,629,914	\$5,038,522,159	2.2%	\$109,839,783	\$2,474,900,852	0.3%	\$8,414,663
All Industries	\$5,167,019,301	4.6%	\$237,304,979	\$12,338,010,337	1.9%	\$230,720,793	\$7,911,811,463	1.1%	\$87,821,107
<=\$5K	\$53,711,252	14.8%	\$7,962,907	\$58,609,206	11.8%	\$6,939,330	\$57,766,706	9.6%	\$5,534,050
>\$5K - \$100K	\$139,450,564	10.1%	\$14,152,689	\$133,981,664	9.9%	\$13,304,379	\$138,006,362	8.7%	\$11,978,952
>\$100K-\$1M	\$284,176,534	9.3%	\$26,457,015	\$242,520,045	6.1%	\$14,793,723	\$264,886,242	7.5%	\$19,839,980
>=\$1M	\$4,689,680,952	4.0%	\$188,732,367	\$11,961,508,628	1.7%	\$203,345,647	\$7,508,918,859	0.9%	\$63,825,810

⁵² The data reported reflect City contracts won by *certified* M/WBEs, i.e., approved by DSBS. Other “minority-owned” or “women-owned” companies that may qualify to be certified but have not yet sought to do so are not included.

The M/WBE share of City procurement has steadily increased over the course of LL 129’s three-year ramping up period, across all industries and at each dollar threshold.⁵³ While the City continues to strive for ever-increasing levels of participation, M/WBE procurement success rates to date demonstrate that LL 129 has substantially increased opportunities for new firms to participate in City procurement.

2. Subcontracting Opportunities

The tables below show City agency awards of Fiscal 2009 contracts that included LL 129 M/WBE subcontracting goals. During Fiscal 2009, City agencies registered 217 prime contracts valued at about \$989 million within the industries for which LL 129 subcontractor goals were authorized: construction, professional and architecture/engineering (A/E) services.⁵⁴

Subcontracting goals may only be set for subcontracts that are valued at below one million dollars, and apply only to subcontracts for construction, professional and A/E work. Participation goals are established for individual contracts. The City agency first determines the percentage of the prime contract that is likely to be subcontracted for those three types of work where the subcontract’s dollar value will fall under the one million dollar threshold. Once this calculation, termed the “target subcontracting percentage” (TSP), is performed, the agency determines the appropriate M/WBE goals and applies those to the dollar value of the TSP, using the estimate of the value of the prime contract about to be bid out.

Much of the dollar value of prime contracts awarded during Fiscal 2009 (or any given fiscal year) is work that is intended to occur over a multi-year period as the project is built out. For this reason, the subcontracts that will be awarded to meet the goals for those prime contracts will typically be awarded incrementally over several years. As shown below, for the 217 Fiscal 2009 contracts within the LL 129 universe, based on the TSPs and LL 129 goals identified at the time of bid, M/WBE subcontractors should eventually obtain \$63 million in construction and professional services work, or about 39% of the target subcontracting amounts projected for those prime contracts. This amount is consistent with, and indeed slightly ahead of, the LL 129 citywide goals. The TSPs for these contracts average a little more than 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, architecture/engineering and professional services.

Table IV-5: Value of Fiscal 2009 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	\$159,323,385	47	\$20,369,820	\$1,309,364	\$0	\$851,713	\$1,590,211	\$4,211,959	\$7,963,247
Construction Services	\$774,441,160	155	\$133,351,508	\$11,464,752	\$8,584,814	\$8,531,300	\$0	\$23,620,953	\$52,201,820
Professional Services	\$55,703,510	15	\$6,685,212	\$97,267	\$0	\$67,787	\$110,418	\$2,829,495	\$3,104,967
Total	\$989,468,055	217	\$160,406,541	\$12,871,383	\$8,584,814	\$9,450,800	\$1,700,629	\$30,662,407	\$63,270,033

For approximately 18% of the dollar value of contracts eligible for LL 129 coverage, as shown below and detailed in Appendix K-3, agencies set no goals because no subcontracting was anticipated to

⁵³ Agency-by-agency tables for prime contracts are included in Appendix K-1. Year-to-year comparisons of prime contracts for the entire LL 129 ramping up period (Fiscal 2007 through 2009) are included in Appendix K-2.

⁵⁴ LL 129 treats all professional services, including A/E, as one category (professional services), and applies one set of goal numbers. MOCS tracks A/E separately, as utilization rates differ somewhat between A/E and other professional services.

occur in the relevant dollar thresholds and/or in the covered industries.⁵⁵ Examples of the types of services which agencies found unlikely to result in subcontracting within the parameters of LL 129 are litigation support, medical services and other specialized professional services; street lighting installation and maintenance; and tree planting. In addition, for construction contracts required by the Wicks Law to be bid out with separate prime contracts for plumbing, electrical and heating/air conditioning/ventilation (HVAC) work, LL 129 subcontracting rarely occurs. It should be noted that agencies may not set LL 129 goals to reflect any subcontracts they anticipate that vendors may use to obtain goods or standardized services, even if the prime contract itself falls within the construction or professional services arena.⁵⁶

Table IV-6: Fiscal 2009 Construction, Professional Services & Architecture/Engineering Contracts >\$100,000										
Industry	Total	Goals Established		No Relevant Subcontracting Anticipated		State/Federal Goals		Vendor Received Full Waiver		
		#	%	#	%	#	%	#	%	
A/E	#	76	47	62%	10	13%	18	24%	1	1%
	\$	\$337,363,868	\$159,323,385	47%	\$34,448,955	10%	\$142,306,736	42%	\$1,284,792	0%
Construction Services	#	314	155	49%	95	30%	52	17%	12	4%
	\$	\$2,384,128,708	\$774,441,160	32%	\$222,150,915	9%	\$1,369,640,330	57%	\$17,896,304	1%
Professional Services	#	73	15	21%	51	70%	3	4%	4	5%
	\$	\$388,126,491	\$55,703,510	14%	\$313,097,277	81%	\$12,551,245	3%	\$6,774,459	2%
Total	#	463	217	47%	156	34%	73	16%	17	4%
	\$	\$3,109,619,067	\$989,468,055	32%	\$569,697,147	18%	\$1,524,498,310	49%	\$25,955,555	1%

In addition, the major reason many contracts are exempt from LL 129 is that they are covered by state and federal goals programs that govern City procurement because of the funding source. Just under half (49%) of the dollar value of Fiscal 2009 contracts in the three industries relevant to LL 129, including many major infrastructure procurements, was exempt from the City’s program for this reason. The state or federal programs assign goals for minority- or women-owned business enterprises (MBE or WBE), and/or for “disadvantaged business enterprise” (DBE) firms. Prime contracts registered in Fiscal 2009 for a total dollar value of almost \$1.6 billion, are projected to generate over \$328 million worth of MBE, WBE or DBE subcontracts, approximately 21% of the total value.⁵⁷ The difference between Fiscal 2008 and 2009 relates to the decline in overall procurement volumes.

Table IV-7: Fiscal 2009 Federal & State Goals		
Goals	Fiscal 2009	Fiscal 2008
MBE	\$237,639,669	\$444,000,000
WBE	\$71,897,396	\$131,000,000
DBE	\$18,627,540	\$69,000,000
Total Subcontract Value	\$328,164,605	\$644,000,000
Total Prime Contract Value	\$1,570,900,701	\$3,340,779,736
Goals as % of Total Values	21%	19%

⁵⁵ In 16 instances, for a dollar value that amounts to less than 1% of the total volume of Fiscal 2009 contracts in the three industry categories relevant to LL 129, vendors obtained full waivers of the LL 129 goals (see Part III.D.3).

⁵⁶ For example, services such as security, trucking or fencing at construction sites do not count toward the LL 129 goals, as they are considered standardized services. The economic study upon which LL 129 is based did not find statistically significant disparity for M/WBEs in subcontracts for standardized services; thus, LL 129 does not set goals for such services.

⁵⁷ Some of the contracts shown in Table IV-7 as continuing to generate subcontracting goals were solicited prior to the effective date of LL 129, and thus are not included in Table IV-6 above.

For those contracts that are covered by LL 129, the prime contractor must submit a plan to meet the applicable goals at the time of the bid, proposal or other solicitation response, although the subcontractors to be retained need not be identified until the agency orders work under the contract to commence. Thus, most of the 217 Fiscal 2009 prime contracts that were awarded with LL 129 goals have not yet reached a point where substantial amounts of work are underway.

Agencies have continued to approve subcontractors on Fiscal 2007 and 2008 prime contracts that were also subject to LL 129 goals, as work has progressed further on these projects and vendors entered into qualifying subcontracts. As the table below reflects, for LL 129-covered prime contracts that were either first awarded in Fiscal 2009 and/or remained open at the conclusion of FY 2009, agencies have so far approved more than \$68 million worth of subcontracts for certified M/WBE firms to perform construction, architecture/engineering or professional services work. This amounts to 44% of the total subcontracting dollars approved on those contracts to date, within the relevant dollar range and industries, for those prime contracts.⁵⁸ On that same universe of prime contracts, certified M/WBEs obtained \$1.5 million worth of subcontracts in non-covered industries (primarily standardized services) and \$14.5 million worth of subcontracts valued at or above one million dollars, although LL 129 does not provide for goals for those categories. These subcontracts are detailed in Appendix K-4.

Table IV-8: Fiscal 2009 Subcontracting Subject to LL129 on All Primes With TSP (By Industry)												
Prime Industry	Total Value of Primes	Avg. TSP	Subcontract Industry	Value	African American		Asian American		Hispanic American		Caucasian Women	
A/E	\$313,908,748	16%	A/E	\$3,060,026	\$0	0%	\$404,033	13%	\$542,500	18%	\$1,011,850	33%
			Construction	\$2,232,624	\$1,425,636	64%	\$235,472	11%	\$150,000	7%	\$421,517	19%
			Professional	\$5,276,137	\$750,315	14%	\$1,696,782	32%	\$540,690	10%	\$1,156,068	22%
Construction Services	\$1,427,944,483	15%	A/E	\$2,586,446	\$200,000	8%	\$0	0%	\$138,987	5%	\$1,060,399	41%
			Construction	\$130,305,867	\$22,702,886	17%	\$9,335,219	7%	\$14,498,157	11%	\$6,981,035	5%
			Professional	\$715,973	\$142,600	20%	\$0	0%	\$20,000	3%	\$0	0%
Professional Services	\$374,852,262	36%	Construction	\$9,932,860	\$305,795	3%	\$3,223,126	32%	\$0	0%	\$84,112	1%
			Professional	\$978,819	\$95,500	10%	\$57,500	6%	\$57,500	6%	\$479,319	49%
Total	\$2,116,705,494	19%	Total	\$155,088,752	\$25,622,732	17%	\$14,952,132	10%	\$15,947,834	10%	\$11,194,299	7%

Based on an average TSP of 19%, these prime contracts can be anticipated to eventually generate about \$121 million worth of subcontracting work in the categories to which LL 129 assigns participation goals. Many of these prime contracts, particularly the very large construction contracts, will continue for as long as a decade. Overall, the value of the subcontracts that have been approved to date amounts to approximately 45% of the eventual total subcontracting volume.

EDC also provides work for many M/WBE subcontractors. While not covered by LL 129 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 2009, EDC had \$210.7 million in prime contracts subject to subcontractor participation goals, which generated nearly \$27 million (13%) in such subcontracts. Of that, about \$12.6 million was generated in DBE subcontracts, \$7.2 million in state MBE or WBE subcontracts, and \$8.1 million in



⁵⁸ Some \$13.7 million of that \$68 million total does not, however, count toward the LL 129 goals, as LL 129 establishes neither construction subcontractor participation goals for women-owned firms nor professional services subcontractor participation goals for Asian American firms.

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 2009.

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 2009 for all prime contracts open during Fiscal 2009.

Table IV-9: All Subcontracts Approved in Fiscal 2009 (Grouped by Relevance to LL129)

Subcontract Size	Prime/Sub Industry	Value	African American		Asian American		Hispanic American		Caucasian Women		All M/WBEs (%)
			\$	%	\$	%	\$	%	\$	%	
< \$1M	LL 129 industry	\$244,495,059	\$20,237,708	8%	\$23,248,670	10%	\$13,759,741	6%	\$16,560,998	7%	30%
	Non-Covered	\$39,030,575	\$1,057,924	3%	\$2,619,792	7%	\$892,600	2%	\$397,450	1%	13%
	<i>Subtotal</i>	\$283,525,634	\$21,295,632	8%	\$25,868,462	9%	\$14,652,341	5%	\$16,958,448	6%	28%
\$1M & Over	LL 129 industry	\$610,281,846	\$13,577,540	2%	\$11,896,711	2%	\$57,254,526	9%	\$17,874,900	3%	16%
	Non-Covered	\$49,475,040	\$1,000,000	2%	\$0	0%	\$0	0%	\$0	0%	2%
	<i>Subtotal</i>	\$659,756,886	\$14,577,540	2%	\$11,896,711	2%	\$57,254,526	9%	\$17,874,900	3%	15%
All Sizes	LL 129 industry	\$854,776,905	\$33,815,248	4%	\$35,145,381	4%	\$71,014,267	8%	\$34,435,898	4%	20%
	Non-Covered	\$88,505,615	\$2,057,924	2%	\$2,619,792	3%	\$892,600	1%	\$397,450	0%	7%
	Grand Total	\$943,282,520	\$35,873,172	4%	\$37,765,173	4%	\$71,906,867	8%	\$34,833,348	4%	19%

Note: LL 129 industry subcontracts are those where the industry of the prime contract and of the subcontract are both covered by LL129 goals (e.g., construction subcontracts on construction primes), and non-covered subcontracts are those in industries not covered by LL129 (e.g., subcontracts for standardized services). All contracts of \$1M or more fall outside of LL 129's coverage, but the above table provides data on subcontracts that fall within the industries relevant to LL 129, i.e., construction, professional and A/E services.

The table above includes both the LL 129 contracts and the many types of contracts that fall outside the purview of LL 129. Whereas Table XX presented information only on those subcontracts that were approved on prime contracts covered by LL 129, the table below presents information on all of the subcontracts approved for certified M/WBEs for all contracts – including those that are subject to state or federal subcontracting participation goals and those that are not subject to any goals program. Certified M/WBEs won approximately 19% of all subcontracts approved during Fiscal 2009. For subcontracts below one million dollars, that proportion was 28%, and to the extent that such smaller subcontracts fell within the construction, professional services and A/E industries, it was 30%.

Finally, as the table below indicates, the M/WBE share of the City's total subcontracting volume has also steadily increased over the course of LL 129's three-year ramp up period. The fact that agencies were able to award over \$180 million in subcontracts to certified M/WBEs during Fiscal 2009 stands as strong testament to the success of the City's outreach and capacity-building efforts.

Table IV-10: M/WBE Subcontracting Fiscal 2007-2009

Dollar Range	Fiscal 2009			Fiscal 2008			Fiscal 2007		
	Total	M/WBE		Total	M/WBE		Total	M/WBE	
		%	\$		%	\$		%	\$
<\$1M	\$283,525,634	27.8%	\$78,774,883	\$162,516,337	22.2%	\$35,991,872	\$230,492,558	12.2%	\$28,109,466
>=\$1M	\$659,756,886	15.4%	\$101,603,677	\$619,525,082	14.8%	\$91,514,060	\$675,270,049	4.6%	\$31,073,390
Total Subcontracting	\$943,282,520	19.1%	\$180,378,560	\$782,041,418	16.3%	\$127,505,932	\$905,762,607	6.5%	\$59,182,856

Clearly, in Fiscal 2009, despite a challenging economic climate, M/WBEs have continued to grow and to win larger subcontracts and prime contracts within the City's portfolio.

3. Waivers and Modifications of Subcontracting Goals

Waivers are determined at the pre-bid stage of the procurement. In the end, most of the bidders that are granted waivers do not end up winning the contracts for which they compete. Waivers do not relate to the M/WBE participation goals, but rather to the extent that subcontracting will or will not occur. To qualify for a waiver, a bidder must establish that it has *both* the capacity to perform the prime contract without subcontracting at the levels (TSP) the agencies have projected *and* a prior contracting history of doing so.

Only 17 Fiscal 2009 contracts went to vendors that obtained full waivers, and eight went to vendors that obtained partial waivers.⁵⁹ Most of those firms (12 with full waivers and four with partial waivers) had obtained waivers in prior years, for contracts were not registered until Fiscal 2009. The total dollar value of Fiscal 2009 contracts for which a full waiver was granted was approximately \$26 million. Vendors filed a total of 182 requests for waivers of the target subcontracting requirements during Fiscal 2009. Appendix K-5 details all waiver determinations. Of those requests, 28 were denied, 35 were approved as full waivers and 97 were approved as partial waivers. Since waivers depend on the specific prior contracting history of the applying vendors, some of those granted involved repeated requests from the same firms, as they sought multiple bidding opportunities. Thus, the 132 waivers granted covered a total of 96 individual firms. But, as noted above, most of the vendors that received waivers did not ultimately win the contracts for which they were competing.⁶⁰

4. Vendor Complaints

LL 129 requires the tracking of compliance complaints by M/WBE vendors. Only one complaint was made in Fiscal 2009 and the evidence did not indicate non-compliance by the City agency.⁶¹

⁵⁹ Full waivers are those in which vendors provide documentation that they plan to do no subcontracting. Partial waivers allow firms to do less than the target subcontracting percentage, but retain partial M/WBE goals.

⁶⁰ Six firms that received waivers during Fiscal 2009 also succeeded in winning the awards they competed for, but their contracts had not been registered by the end of the year. The remaining 22 waiver submissions include eight withdrawn by the vendor, two where no determination was made because a review of the contract concluded that no subcontracting would in fact occur, and twelve where the procurements were cancelled or postponed.

⁶¹ The complaint concerned a standardized services subcontract on a DDC contract. DDC correctly responded that LL 129 does not allow subcontracting goals for standard services.

5. Large-Scale Procurement Approvals

LL 129 requires agencies to seek MOCS' approval before they solicit prime contracts that they expect to exceed \$10 million. MOCS reviews the proposed solicitations to determine if they are structured to maximize competition and M/WBE participation. In Fiscal 2009, MOCS reviewed 115 registered contracts, worth \$5.1 billion. Of these, 36 were both solicited and awarded in Fiscal 2009; another 79 were Fiscal 2009 awards based on approvals from prior years. MOCS approved all large-scale contracts submitted for review in Fiscal 2009.⁶² A full list is included in Appendix K-6.

Basis of Determination	# of Contracts	Dollar Value	% of Total
Human Services (not-for-profit vendors)	20	\$13,779,733	2%
Indivisible Purchase, Project or Service	7	\$158,912,283	19%
Requirement Contract	3	\$213,180,705	26%
Unique Goods/Services	6	\$447,455,992	54%
Total	36	\$833,328,714	100%

Approvals related to the factors shown in the accompanying table. Twenty were human services contracts for which awardees were all anticipated to be nonprofits not subject to LL 129. Other factors included the scale, indivisibility or unusual nature of the procurements.⁶³

⁶² A full list of all such approvals and registered contracts is included in Appendix K. Approvals that occurred during Fiscal 2009 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.

⁶³ During Fiscal 2009 three contracts, valued at nearly \$36 million were registered for which agencies had failed to obtain the required pre-solicitation approval. Each of these contracts – one from DOT and two from DDC – qualified for approval, although it was inadvertently was not requested. In addition, three contracts with a combined valued of \$32.2 million were not brought for pre-solicitation approvals because the agency estimates fell below the \$10 million threshold. Two were DEP contracts and one was a DCAS contract. The full list of these contracts is also included in Appendix K-6

Certified Success Stories

Adil Business Systems Inc., an Asian-American owned firm founded in 1989, is a leading technology services company. Adil provides a wide range of services to government and commercial customers including IT solutions, IS security, integrated business solutions and staffing support. Adil was awarded ten Fiscal 2009 contracts totaling more than \$23.5 million, including a \$9.7 million contract with HRA for temporary clerical staffing services.

Ash Tree Service Inc. is an African American-owned tree care specialist firm, founded in 2004 by Lloyd B. Allen. Allen brings more than 25 years of tree care experience to his work, and today Ash Tree prunes trees throughout the City's playgrounds, providing the most environmentally responsible and innovative methods in the industry. Ash Tree Services has been a certified MBE since 2007 and was awarded Fiscal 2009 sub contracts valued at more than \$2 million.

Compulink Technologies Inc., is a Hispanic-American owned computer firm, founded by Rafael Arboleda in 1987 and certified as an MBE in 1996. In Fiscal 2009, Compulink won \$606,448 in awards with multiple City agencies for a variety of professional and standardized services, as well as goods. As Arboleda notes, "DSBS has opened the door for us to stand out as one of the best in the industry."

Ebony Office Products, Inc. is an African American owned firm, based in Long Island City, selling office equipment, computers and janitorial supplies since 1982. According to Michael Ukhueduan, Director of Business Development, "certification is good to have because the City wants to do more business with minority and women owned businesses." In Fiscal 2009, Ebony was awarded 194 small and micropurchase contracts valued at nearly \$270,000.



Source: Ebony Office Products, Inc.

DB Grant Associates, Inc. is a woman-owned firm specializing in workforce development since its founding in 1997. Through its federal, state and City contracts DB Grant places people into jobs in growing industries and works to build their skills, develop their human capital and increase their earning potential. DB Grant was awarded Fiscal 2009 human services contracts worth almost \$7.4 million, including a \$1.6 million RFP award from DSBS to operate the Bronx Workforce1/Business Solutions Center.

Gandhi Engineering, Inc., is an Asian-American owned firm, founded by Kirti Gandhi in 1975. Since then, it has grown from a small MBE/DBE to a large consulting firm providing a broad range of engineering and architectural design, construction management and related services. In Fiscal 2009 Gandhi was awarded more than \$18 million in City contracts, including a \$2.5 million renewal of its "on-call" contract with ACS. According to Gandhi, certification as an M/WBE helped the firm become successful, providing opportunities to work with larger firms, gain valuable experience and, learn about available City work. Today, the firm seeks to include as many M/WBE subcontracts on its projects as it can: "I appreciate the opportunity given to Gandhi and we try to give a lot of participation to M/WBEs," says Gandhi.

Padilla Construction Services, Inc., founded in 1998, is a Hispanic-American owned general contractor that applied for certification when the City's first M/WBE Program began in 1992. Being a certified MBE helped Padilla get its start as a sub-contractor; today Padilla bids as a prime contractor and helps other M/WBEs get their start. In Fiscal 2009, Padilla won nearly \$17 million in prime contracts, including DPR's \$7.6 million award for the reconstruction of and additions to the 59th Street Recreation Center.

D. Promoting Health Insurance Coverage for Vendors' Employees – Equal Treatment

As required by Executive Order 72 (EO 72), signed by the Mayor in 2005, MOCS collects information from vendors concerning health insurance coverage offered to their full-time employees. The focus of this data collection effort is to measure whether provided or offered coverage treats spouses and domestic partners of the vendor's employees on an equal basis.

Table IV-12: Vendors' Health Insurance Availability			
Health Insurance Availability	% of Total		
	FY 2009	FY 2008	FY 2007
Yes, all full-time employees are provided / offered coverage	86%	83%	88%
No, all full-time employees are not provided / offered coverage	5%	7%	5%
Not applicable (vendor has fewer than two employees)	7%	7%	5%
Refused to answer	2%	3%	2%

EO 72 reflects the City's strong commitment to making coverage available on an equal basis for all New Yorkers, including those families with same- and opposite-sex domestic partners.⁶⁴ Fiscal 2009 provides us with the third full year of EO 72 data. During Fiscal 2009, 1,785 vendors whose procurement volumes fell within the ranges specified in EO 72 received surveys, and 7,945 (53%) responded, with 86% of the respondents indicating that all full-time employees are provided or offered health insurance coverage.

Among those vendors offering health coverage to some or all employees, 46% indicated that they did so for both spouses and domestic partners, while 10% responded that they did not offer coverage to either. Another 33% stated that only spouses were offered coverage, while 7% reported spouses and domestic partners were both offered coverage, but not on equal terms. The remaining 4% declined to answer.

Table IV-13: Equality of Coverage			
Health Insurance Coverage Offered to Spouses and Domestic Partners	% of those answering "Yes" above		
	FY 2009	FY 2008	FY 2007
Domestic partners are offered coverage equal to that of spouses	46%	45%	44%
Neither spouses nor domestic partners are offered coverage	10%	8%	8%
Only spouses are offered coverage	33%	35%	35%
Both spouses and domestic partners are offered coverage, but not on equal terms	7%	4%	5%
Refused to answer	4%	8%	8%

MOCS will continue to work with the Office of Citywide Health Insurance Access to conduct additional outreach to vendors to notify them of the ever-widening array of insurers now offering coverage equally to both spouses and domestic partners.

E. Providing Affordable Insurance Coverage Options to Human Services Vendors

In its contracts, the City requires vendors to demonstrate that they carry sufficient insurance to protect the City against undue risk. In addition to such legally-mandated employee-related coverage as workers' compensation and disability, contracts require vendors to carry adequate coverage for general liability, to insure against the risk of injuries to members of the public. Access to affordable insurance has often proved challenging for small business vendors, and at times has become a prohibitive cost for community-based nonprofits. As the primary funding source for many of its nonprofit vendors, the City often pays for nonprofits' insurance through the overhead provisions of its contracts.

⁶⁴ EO 72 requires agencies to collect 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. Since the information requests (and responses) do not impact vendors' ability to obtain contracts, MOCS collect this data through quarterly mailings, not as a prerequisite to initial contract award. Vendors are expressly informed that they may refuse to answer questions concerning insurance. Vendors with two or fewer employees (i.e., self-employed) are instructed that the questionnaire does not apply.

The City helps meet the vital insurance needs of its human service partners through its innovative Central Insurance Program (CIP), which it pioneered in 1982. CIP provides nonprofit vendors that hold certain types of City contracts with comprehensive general liability, workers' compensation, disability, property and, for a smaller segment of the portfolio, health insurance, at no direct cost. CIP procures insurance in bulk; agencies pay the cost of that insurance directly to the insurers, deducting proportionate shares from their human services contracts and passing the savings of the bulk purchasing program to the vendors.

Table IV-14: Central Insurance Program Fiscal 2009: Insured Sites						
Agency/ Group	# of Sites	% of Sites	# of Vendors	# of Contracts	\$ Value of Contracts	% of Total Value
ACS-Day Care	289	61%	163	209	\$474,327,961	36%
ACS-Head Start	191	40%	75	82	\$451,608,498	35%
DFTA	242	100%	114	417	\$286,278,919	22%
DYCD	586	100%	459	629	\$72,828,027	6%
HRA	45	100%	45	74	\$18,197,988	1%
Total	1,353	74%	856	1,411	\$1,303,241,393	100%
Note: HRA's Home Attendant contracts are paid directly by the state and federal government, with little, if any, City funding in the contracts.						

CIP's portfolio predominantly consists of nonprofits providing day care and Head Start programs (ACS), senior services (DFTA), home health care services (HRA), and after-school and other programs (DYCD). In Fiscal 2009, CIP's core products covered 856 nonprofits, at more than 1,300 sites. The number of sites and contracts varies during the year as programs change and new contracts are registered. Costs are projected at the outset of the fiscal year and payments made based on these projections. At the end of each fiscal year projected and actual costs are reviewed and any amounts owed to or due from the City are adjusted in the subsequent year.

Table IV-15: Central Insurance Program Fiscal 2009 - Costs					
Program	ACS	DFTA	DYCD	HRA	Total by Category
WC/GL	\$6,300,000	\$1,800,000	\$150,000	\$72,000,000	\$80,250,000
Disability	\$1,298,750	\$400,000	\$230,000	\$4,400,000	\$6,328,750
Other Coverage	\$108,000	\$403,000	\$5,335	\$0	\$516,335
Health	\$93,465,000	\$23,000,000	n/a	n/a	\$116,465,000
Add'l Costs	\$657,863	\$177,723	\$54,844	\$5,734,891	\$6,625,321
Total by Agency	\$101,829,613	\$25,780,723	\$440,179	\$82,134,891	\$210,185,406
Note: Additional Costs include administrative costs associated with brokerage fees and costs for retroactive payments on ongoing claims.					

In Fiscal 2009, the City spent over \$210 million for CIP coverage. All of the programs receive coverage for worker's compensation and general liability (WC/GL), disability and other coverages, at a total cost of \$87 million. HRA's home attendant program accounted for more than 90% of citywide WC/GL costs and more than 70% of the disability costs. Health insurance, offered only to DFTA and ACS providers, accounted for more than 55% of total CIP expenditures.

Given the growth and shifts in the City's human services portfolio since CIP was founded in 1982, as part of the Mayor's Nonprofit Assistance Initiative, MOCS is evaluating the needs of the City's other nonprofit partners for other types of services and with other City agencies. See Nonprofit Assistance Initiatives, page 35.

Glossary of Procurement Terms

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 used when an agency needs to continue a contract (most often for a human services program) that would otherwise expire, but has no renewal provisions available. An amendment may be used to extend such a contract for up to one year. 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 does it include the preparation of environmental studies. Contracts to hire licensed architects or professional engineers are included.

Assignment. An agreement to effectuate the complete 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.

Business Questionnaire. See Vendor Information Exchange System (VENDEX).

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.

Certification. Agreements, separate from the procurement contracts themselves, entered into by the vendor and the City, either through a particular agency doing business with the vendor, or with the Law Department or DOI, setting forth specific commitments by the vendor to establish affirmatively its status as a responsible business partner for the City. Once executed, the certification becomes a part of the vendor's contracts (current and future) with the City for a stated period of time.

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.

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 typical length of time it takes City 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 in American society as a result of causes not common to individuals 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 participation goals for prime contracts and subcontracts apply to the same industries as M/WBE goals. The Department of Small Business Services 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 2009 runs from July 1, 2008 through June 30, 2009.

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: one appointee each of the Mayor, Office of the Mayor, the Corporation Counsel, the 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 for franchises, concessions and revocable consents 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 Department of Citywide Administrative Services.

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. This law sets standards designed to reduce New York City's electricity consumption, air pollution and water use, as well as improve occupant health and worker productivity for certain capitol 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 not-for-profit; some services, such as home care, also have for-profit providers.

Independent Private Sector Inspector General (IPSIG). A program created by DOI to establish a method to permit the City to enter into contracts with firms that might otherwise be precluded from doing business with the City due to integrity issues. Under the program, a company may be awarded City contracts based upon its agreement to be monitored by an outside, independent monitor that is selected by and reports to DOI, and to take other steps to ensure it demonstrates the requisite business integrity.

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.

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 not-for-profit groups. The contracts through which those funds flow are classified as line item or discretionary appropriations. This type of contract usually results in a high volume of small awards, some valued at only a few thousand dollars.

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 Citywide Performance Report (CPR). The CPR is a web-based collection of data from more than 40 City agencies that identifies service delivery trends by agency, making agency performance transparent and accessible to the public.

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 of procurement used to quickly 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. Agencies that use micropurchases the most tend to be those responsible for widely dispersed facilities including infrastructure, police station houses, parks and housing complexes.

Minority/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. The Department of Small Business Services 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 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.

Negotiated Acquisition Extension. The only option to extend a contract when renewal term 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.

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.

Principal Questionnaire. See *Vendor Information Exchange System (VENDEX)*.

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

Professional Services. Professional services are a class of services that require an individual to hold an advanced degree or have experience in a specialized field. Professional services are usually procured through a Request for Proposals, where emphasis is placed on the quality of the vendor's approach as the service is likely to be highly individualized. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health, architecture, pure construction management (without including construction) and environmental analysis.

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.

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 not-for-profit) 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 New York City Charter (e.g., for cafés and other obstructions), which may be revoked at the City's discretion.

Small Purchase. Method of procurement used for buying goods, services and construction valued at up to \$100,000. It involves a fast-track competitive process that incorporates expanded opportunities for certified M/WBEs.

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.

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.