

9 Things New Yorkers Should Know About How New York City Buys Stuff

By Ana Champeny

New York City contracts with private firms to provide many public services, such as mental health and afterschool programs, construction of new public facilities, and security at public buildings. Procurement—contracting with external vendors to deliver goods or services—is an important aspect of government. The process for designing and awarding a contract is governed by a complex web of statutes, regulations, and practices intended to ensure a fair process; however, outdated laws, antiquated systems, and layers of bureaucracy result in inefficient and lengthy procedures that fail to deliver the best value.

This policy brief describes nine things New Yorkers should know about City procurement and how it could be improved.



1

NYC BOUGHT ALMOST \$20 BILLION IN GOODS AND SERVICES IN FISCAL YEAR 2018

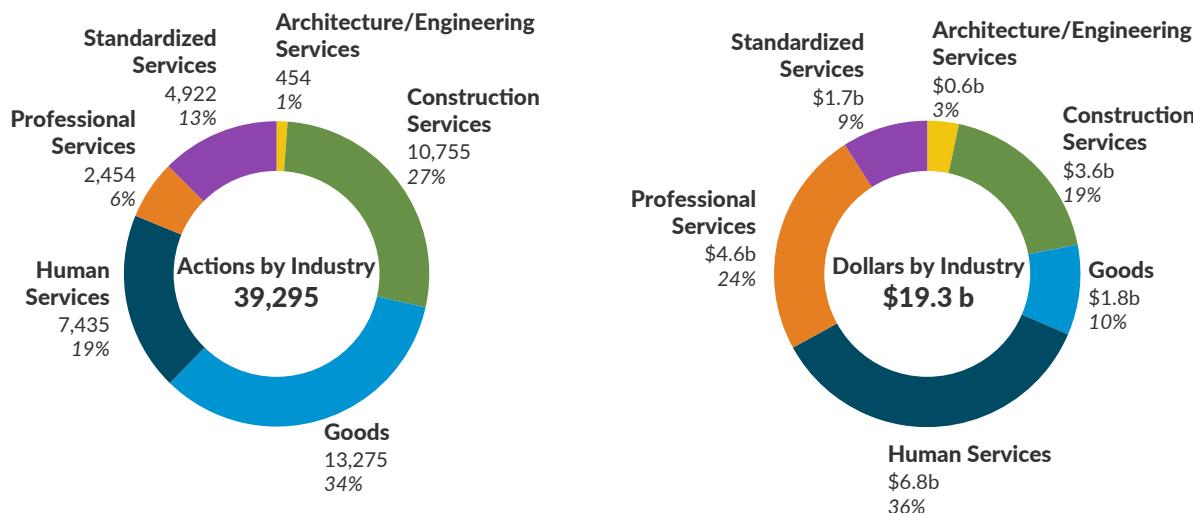
In fiscal year 2018 the City, excluding the Department of Education (DOE), procured \$19.3 billion in goods and services.¹ This figure reflects the full value of all contracts registered in that year; spending against a contract may take place over several years. While exceptionally large or multiyear contracts can skew an annual figure, City procurement has exceeded \$15.3 billion annually since fiscal year 2016.

There are five major categories of contracting: goods, construction services, human services, professional services, and standardized services. (See Figures 1 and 2.) In fiscal year 2018 about one-third of all contracts and one-tenth of all contract dollars were for the purchase of goods—the commodities and materials the City needs to operate, from pens and paper to road salt to asphalt.

Construction contracts accounted for 27 percent of contract actions and 19 percent of contract value. Given the size and complexity of many capital projects, these are often multiyear projects. Additionally, related services, such as engineering, architecture, and construction management, represented fewer than 500 actions for \$641 million.

Contracts with nonprofit social service agencies to provide human services represented the largest share, 36 percent, of contract value.² These include contracts to operate homeless shelters,

Figures 1 and 2: New York City Procurement by Industry, Actions and Dollars, FY 2018



Note: Procurement by mayoral agencies only; excludes Department of Education and non-mayoral agencies.

Source: City of New York, Mayor's Office of Contract Services, *Fiscal 2018 Agency Procurement Indicators Report Appendices: Appendix B - Agency Procurement by Industry*, accessed February 11, 2019; and *Agency Procurement Indicators Fiscal Year 2017: List of Mayoral Agencies, Acronyms & Initialisms*.

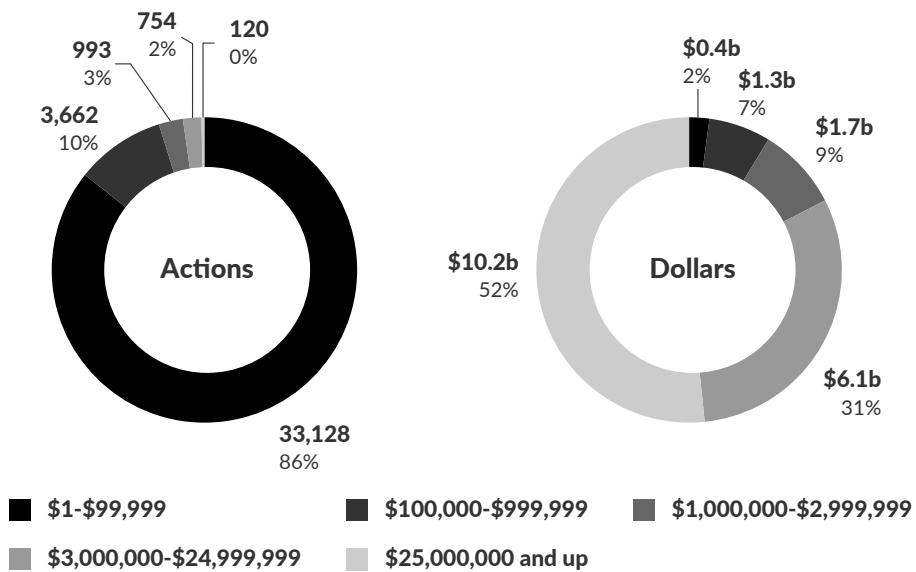
daycare centers, and senior centers; provide foster care and case management services; and offer health services, such as health programs for New Yorkers with HIV/AIDS. Nearly 7,500 human service contracts were signed and many are multiyear contracts.

Professional services contracts, which include agreements with firms to provide accounting, auditing, management consulting, research services, and information technology, were 6 percent of contract actions and almost one-quarter of the contract dollars. The City also classifies contracts with quasi-governmental entities such as the New York City Economic Development Corporation (EDC), NYC & Company, and Brooklyn Navy Yard as professional services; in fiscal year 2018, these made up 61 percent of the value of professional services contracts, though much of the spending was for capital projects.³

Standardized services, which include janitorial services, security services, and waste export services, were worth \$1.7 billion.

Contracts vary substantially in size, and a small share of actions represented the majority of dollars. Contracts up to \$100,000 were 86 percent of actions but just 2.0 percent of fiscal year 2018 procurement dollars. (See Figure 3.) Conversely, there were fewer than 1,000 large contracts, but they made up the lion's share of dollars. Contracts greater than \$3 million were 84 percent of contract value. The 120 contracts greater than \$25 million represented more than half of the value of all procurements.

Figure 3: Distribution of Procurement Actions and Dollars by Procurement Size, FY 2018



Note: Procurement by mayoral agencies only; excludes Department of Education and non-mayoral agencies.

Source: City of New York, Mayor's Office of Contract Services, *Fiscal 2018 Agency Procurement Indicators Report Appendices: Appendix C - Agency Procurement by Size of Contract*, accessed February 11, 2019, and *Agency Procurement Indicators Fiscal Year 2017: List of Mayoral Agencies, Acronyms & Initialisms*.

2

A COMPLEX WEB OF ACTORS REGULATES AND PROCURES GOODS AND SERVICES

Agencies usually cannot simply order items from Amazon or use firms with which they have done business previously. Strict rules guide the purchase of items and services, and a complex web of government actors is tasked with establishing, monitoring, implementing, and overseeing the process. (See Figure 4.)

Figure 4: NYC Procurement Players



Policy Setters

Policy setters establish the laws, rules, and policies intended to ensure the integrity of the process and prevent corruption, but also often advance other policy goals, such as diversity. The overarching framework for public procurement is set in New York State's General Municipal Law. The Mayor and City Council enact the relevant local laws and the Procurement Policy Board (PPB) makes the rules, which must be in line with relevant State laws. The PPB is comprised of five members: three appointed by the Mayor and two by the City Comptroller. Federal laws and regulations govern contracts with federal funding.

Procurement Staff

Procurement is managed by Agency Chief Contracting Officers (ACCOs), with oversight by the City's Chief Procurement Officer, who heads the Mayor's Office of Contract Services (MOCS). Additionally, employees at agencies such as the Department of Citywide Administrative Services (DCAS) and the Department of Information Technology and Telecommunications (DoITT) are responsible for contracts that procure goods or services for all City agencies (such as fuel, cell phones, copiers, and office supplies). At the end of fiscal year 2018, about 1,200 full-time employees across City agencies were involved in procurement as their primary job function.⁴

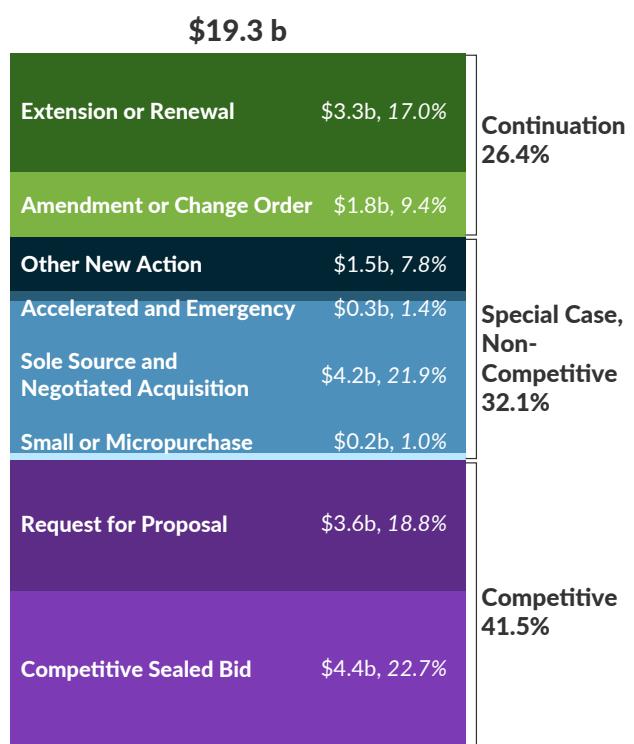
Oversight Agencies

Multiple agencies—including MOCS, the Mayor's Office of Management and Budget (OMB), the Law Department, the Department of Investigation (DOI), the Department of Small Business Services (SBS), and the Comptroller's Office—review the contract to ensure it is valid, the vendor is responsible, and the process is fair.

3

MOST CITY CONTRACTS ARE NOT BID COMPETITIVELY

Figure 5: New York City Procurement By Method, FY 2018



Note: Procurement by mayoral agencies only; excludes Department of Education and non-mayoral agencies.

Source: City of New York, Mayor's Office of Contract Services, *Fiscal 2018 Agency Procurement Indicators Report Appendices: Appendix A—Agency Procurement by Method*, accessed February 11, 2019; and *Agency Procurement Indicators Fiscal Year 2017: List of Mayoral Agencies, Acronyms & Initialisms*.

A key tenet of public procurement is that a process with robust competition can secure the best price while ensuring a fair process. In fiscal year 2018, 41.5 percent of contract dollars were awarded through two competitive methods. (See Figure 5.) Almost 23 percent were competitive sealed bids, in which a bidder submits the best price his or her firm can offer, and the award is made to the “responsive, responsible” bidder offering the lowest price.⁵ Use of this method of procurement for construction services is required under State law in almost all cases. PPB rules permit award based on best value which can consider factors in addition to price for goods and standardized services.⁶

Almost 19 percent were requests for proposals (RFPs) that allow consideration of additional parameters identified by the agency and can be awarded based on best value.⁷ For example, prior experience, analytic approach, and staffing could be factors considered when awarding an audit or research contract, and this method is most often used for professional services, architectural and engineering services, and human services.

Laws and procurement rules try to balance the need for competition with flexibility and reasonableness. For example, response to an emergency requires a nimble and speedy process. Similarly, an onerous process should not govern small purchases. Exceptions to fully competitive methods are permitted if criteria set in PPB rules have been satisfied.⁸ Table 1 provides a brief description of the non-competitive methods.⁹

The largest type of non-competitive new contracts were sole source, which totaled \$2.7 billion or 14 percent. This included contracts with EDC, the Brooklyn Navy Yard, and NYC & Company. The criteria for sole source contracts are stringent to offset the risk of overspending and corruption.¹⁰

Table 1: Description of Key Special Case, Non-Competitive Procurement Methods Permitted in New York City

Small Purchases	Micropurchases	Goods and services below \$20,000 and construction contracts below \$35,000. No competition required.
	Small Contracts	Goods, services, and construction up to \$100,000. Many requirements for competition waived. New policies allow contracts for goods, standard services, and professional services up to \$150,000 to be procured from City-certified MWBE firms without competition.
Emergency	Emergency	ACCO and Comptroller agree “unforeseen danger to life, safety, property, or a necessary service.”
	Accelerated	For commodities, ACCO determines market shortages and/or short-term price fluctuations require quick procurement.
Specific Source	Negotiated Acquisition	ACCO must determine for reasons that include time-sensitivity, limited vendors, or benefits of remaining with vendor.
	Preferred Source	State law requires use of specific list of bidders (organizations employing the disabled, for example) for certain commodities.
Other	Sole Source	ACCO determines only one source is available for the good, service, or construction.
	Intergovernmental Purchase	Faster method to purchase goods or services through pre-existing contract between vendor and other government agency, such as the U.S. General Services Administration or New York State Office of General Services. For goods, price should be lower than prevailing; for construction, price should be reasonable and fair.
Continuation	Innovative Procurement	Time-limited option to test a new procurement method.
	Demonstration Projects	Short-term pilot to assess the feasibility of an innovative program, approach, or technology not currently in use by the City.
	Contract Amendment or Extension	Amendments to the amount of work included in contract, without extending the term; extensions lengthen the term, generally up to one additional year.
	Contract Renewal	Ability to continue a contract past initial term; terms of renewals are stipulated in the original contract.

Source: City of New York, Mayor's Office of Contract Services, *Agency Procurement Indicators Fiscal Year 2017*; City of New York, *Procurement Policy Board Rules* (effective November 2018).

Another 8 percent of contract dollars, \$1.5 billion, were spent through negotiated acquisitions, which can have elements of competition. Twenty-six percent of dollars were contract continuations—amendments, extensions and renewals—that may have been bid competitively originally, but are continued because the potential benefit of speed or continued service in not having to re-bid the contract outweighs the benefit of going back to the market.

4

THE PROCESS TAKES TOO LONG WITH TOO MANY ACTORS

Figure 6 presents a simplified procurement process for a competitive sealed bid or RFP. The process can be divided into six phases: 1) determination and specification of the need, 2) solicitation and competition, 3) award, 4) review and registration, 5) delivery of goods or services, and 6) post-award contract management and performance evaluation.

An agency develops solicitation documents that are made available to potential bidders.¹¹ There are opportunities for interested bidders to ask questions and get additional information; depending on that feedback, the City may amend or alter the solicitation.¹² Each solicitation sets a date and time by which bids must be submitted to the City. For RFPs, agency committees review the submissions and complete a ranking and scoring process by which the best proposal is selected. The City

Figure 6: Simplified Procurement Process



also may also further negotiate to secure the best terms for the City. When the award determination is made, results of the bids are made publicly available.

To finalize an agency's preliminary agreement, a typical contract undergoes review by no less than five additional agencies. MOCS ensures compliance with procurement rules and conducts any necessary public hearings.¹³ OMB ensures sufficient available funding and capital eligibility. The Law Department verifies compliance with local, State, and federal laws. DOI reviews vendor integrity, and SBS ensures compliance with the local, State and federal equal opportunity laws and regulations.

Finally, the Comptroller has 30 days to register the contract or send it back to the agency. No other steps in the process have specific timelines or are tracked systematically, and the lack of transparency makes it difficult to hold reviewers accountable, hone in on bottlenecks, or identify systematic obstacles. The process takes so long that, in many cases, the contract is registered after the start date, or retroactively. According to an analysis by the Comptroller, 81 percent of new and renewal contracts in fiscal year 2017 were sent to the Comptroller for registration after the start date, with 43 percent more than six months late.¹⁴ This includes discretionary awards from elected officials, which are authorized during the budget adoption process for a July 1 start date.

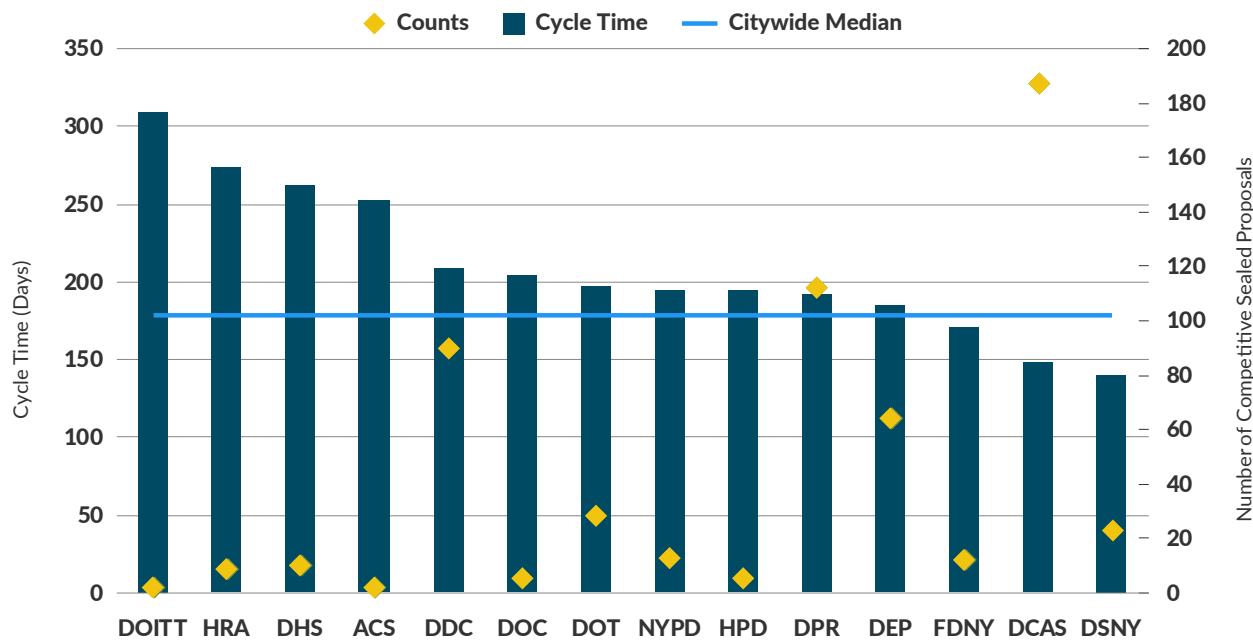
In many instances when contract registration is delayed, vendors will take on risk and begin work before final approval. This is common in human services, especially for contract renewals or extensions, where the provider will continue to deliver services to clients while waiting for the contract to be registered.¹⁵

The City reports on cycle time—the number of days between a solicitation being released and a contract registered—for competitive sealed bids.¹⁶ In fiscal year 2018 the median cycle time was 179 days or about six months. (See Figure 7.) DCAS handled the greatest number of competitive sealed proposals in 2018, and completed the process in less than 150 days for half of the bids. The Department of Parks and Recreation and the Department of Design and Construction (DDC), on the other hand, each handled more than 150 competitive sealed bids, with median cycle times of 192 days and 209 days, respectively.

Cycle time significantly underrepresents how long the procurement process takes the City for two reasons. First, it only reports the time from being released to registered, excluding the lengthy process of developing and approving the solicitation. This process can easily add months, or even a year, to the process. Second, cycle time is reported only for the most straightforward method, a competitive sealed bid, which is likely faster than an RFP.

For the majority of contracts, the review process is so lengthy that registration occurs after the start date.

Figure 7: Median Cycle Time for Competitive Sealed Proposals, by Agency, FY 2018



Note: Cycle time is from when public is notified of a procurement to when the contract is registered.

Source: City of New York, Mayor's Office of Contract Services, 2018 Citywide Indicators Reports: How the City Spends its Money: Cycle Time, accessed February 11, 2019.

This lengthy, convoluted process has implications for the City and vendors. First, cost can increase, or specifications can become outdated.¹⁷ Second, the City may incur additional contract costs during the time the vendor is waiting (for example, if construction equipment is on-site waiting approval of a change order, there can be associated costs for the City).¹⁸ Third, emergency extensions of existing contracts may be needed to ensure continuation of services. Fourth, the delays can create cash-flow problems for the City's vendors.¹⁹

For nonprofit human service providers that deliver services prior to registration, the City offers a no-interest, no-fee loan through the Returnable Grant Fund, which generally provides one to three months of contract expenses for rent, utilities, and payroll. In fiscal year 2017 the fund made 751 loans totaling \$150 million. Other organizations utilize lines of credit to fund operations. According to an analysis by SeaChange Capital Partners, the fiscal impact of fiscal year 2017 delays on human service vendors was \$675 million: \$662 million in negative cash flow from delays between contract start date and registration, plus \$13 million in financing costs.⁴⁵

5

DCAS IS THE CITY'S CENTRALIZED PURCHASING AGENCY, BUT ITS ROLE IS MOSTLY LIMITED TO PURCHASE OF GOODS AND STANDARDIZED SERVICES

DCAS is supposed to serve as the central purchaser for goods greater than \$100,000, and it handles the majority of City contracts to purchase goods. Between fiscal years 2014 and 2018, DCAS processed 941 contract actions valued at \$1.1 billion per year on average. This ranged from 62 percent of all dollars spent on goods contracts in fiscal year 2017 to 82 percent in fiscal year 2014. Additionally, DCAS is handling an increasing share of standard services contracts. In fiscal year 2015 DCAS processed 534 contract actions valued at \$102 million (4.6 percent of the total). Last year DCAS processed fewer, more costly standard services contracts—165 actions valued at \$399 million or 22.9 percent of all standard services contracts.

Due to the volume of solicitations processed by DCAS each year, the agency has extensive expertise in the process and City systems. As shown in Figure 7, DCAS has the highest volume of competitive sealed bids and the second fastest median cycle time. Further centralization of procurement—both through purchasing goods and standard services across City agencies and by DCAS on behalf of an agency—has the potential to generate additional savings.²⁰

6

STATE RESTRICTIONS FOR CONSTRUCTION ARE ONEROUS AND PROJECTS ARE OFTEN DELAYED AND OVERBUDGET

An open marketplace fostering robust competition and management flexibility are essential to getting the most out of the City's capital budget; yet restrictive State laws and poor management practices limit the pool of qualified firms that bid on City projects, fail to allocate risk properly, and result in cost overruns and delays.²¹

Three mandates are particularly costly. First, construction contracts must be awarded to the lowest bidder; the City is not permitted to use best value to award construction contracts. Under best value bidding, the City would be allowed to consider bidder's experience and expertise, the quality of the material, and other relevant factors in awarding the contract, rather than awarding merely on price as required under State Law.²²

Second, construction contracts must be procured under "design-bid-build," which requires the design contract to be bid separately from a construction contract. The City must go through the time-consuming solicitation process twice, rather than once. More importantly, it fractures the in-

tegration of design, architecture, engineering, and construction teams necessary for successful execution of large projects, making cost overruns more likely.²³ The State granted the City limited authority to use other models, such as design-build, which provide for more integrated project management.²⁴ Expanded design-build authority could generate substantial savings; for example, the City could realize savings of \$2 billion over 10 years on bridge reconstruction, based on the State's experience.²⁵

Third, Wicks Law requires the City to bid separate construction, electrical, plumbing and heating, and ventilation contracts for construction projects greater than \$3 million.²⁶ Rather than issuing one large contract to a general contractor who would subcontract and manage the workload and timeline of the full project, the City is required to bid and manage these services separately. Wicks Law increases the cost of capital projects; since 2008, projects built under a Project Labor Agreement (PLA) have been exempt from Wicks Law.²⁷

In construction, the adage time is money is especially true. Construction costs escalate more rapidly than general inflation; from 2011 to 2017, the Consumer Price Index averaged 1.4 percent per year, while the Construction Cost Index and Building Cost Index averaged 3.7 percent and 5.0 percent per year, respectively.²⁸ This rapidly escalating construction market means that taking a long time to approve contracts, process change orders, and finish projects substantially increases the City's cost. In fiscal year 2018, the median time to process a design change order was 65 days, while the median time for a construction change order was 62 days. However, projects can have multiple change orders, which add up to considerable delays. For example, the average capital project for cultural organizations and libraries between fiscal years 2002 and 2014 took well over four years (nearly 1,600 days) to complete.²⁹

Data on modified capital contracts active as of October 2018 show that current costs are 22.6 percent higher than the original contract amount.³⁰ The 677 contracts had a value of \$8.3 billion when originally registered; today, the value is \$10.1 billion.³¹ Table 2 shows the data for the top four agencies with 50 or more modified capital contracts. The two largest agencies, DDC and the

Table 2: Original and Current Contract Amounts for Active Construction Contracts with Modifications as of October 2018

(dollars in millions)

	<u>Number</u>	<u>Original Amount</u>	<u>Current Amount</u>	<u>Change</u>	<u>% Change</u>
Design and Construction	309	\$3,006	\$3,592	\$586	19.5%
Environmental Protection	157	\$3,466	\$4,020	\$554	16.0%
Transportation	74	\$966	\$1,435	\$469	48.5%
Parks and Recreation	76	\$138	\$149	\$11	8.1%
All Other	61	\$696	\$944	\$248	35.6%
TOTAL	677	\$8,272	\$10,140	\$1,868	22.6%

Note: Reflects active construction contracts with modifications as of October 10, 2018. In total, there were 6,590 active construction contracts at that time with an original amount of \$13,937 million and a current amount of \$15,805 million, a 13.4 percent increase.

Source: CBC staff analysis of data from the Office of the New York City Comptroller, *Checkbook 2.0* (accessed October 10, 2018).

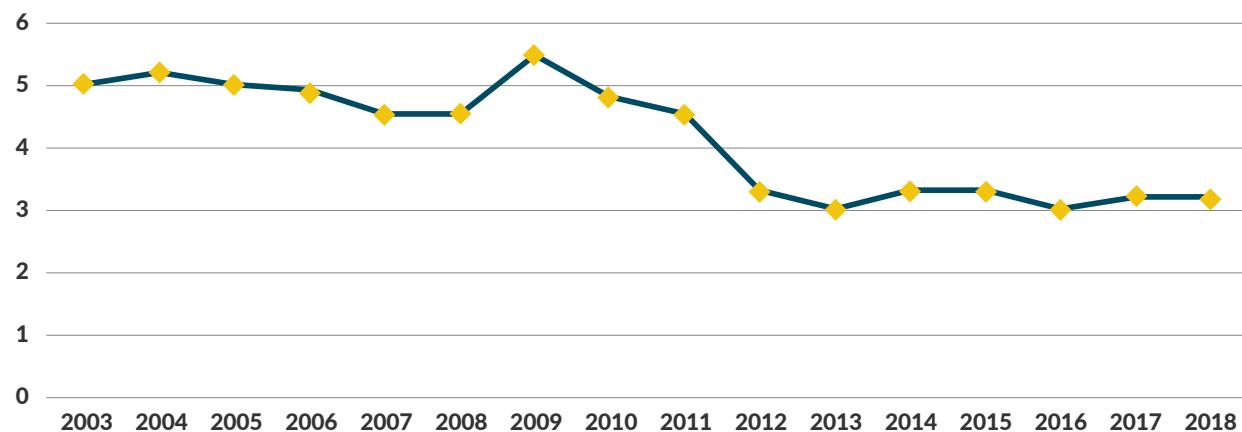
Department of Environmental Protection, together saw a \$1.1 billion increase on contract amount (18 percent of the original amount of modified contracts). The Department of Transportation saw a nearly 50 percent increase in contract amount, with the 74 modified contracts increasing from \$966 million to \$1,435 million.

7

CITY FALLS SHORT AS RESPONSIVE AND RESPONSIBLE PARTNER TO VENDORS

For many qualified firms, the City is not perceived as a desirable client, a problem that may have worsened in recent years. Between fiscal years 2003 and 2012, the number of bidders per bid issued declined from five to three. (See Figure 8.) The *Mayor's Management Report* from fiscal year 2012 attributed the decrease to a switch to electronic notification of solicitations; however, the decrease occurred over two years and has been sustained in the last five years.³² While three bidders is considered the minimum level for a competitive process, this level of bidding activity could be driving up City costs.

Figure 8: Average Number of Bidders per Bid, FY 2003 - FY 2018



Source: City of New York, Mayor's Office of Operations, *Mayor's Management Report* (September 2018), and fiscal years 2003 to 2017 editions.

Antiquated systems, complex rules and regulations, inefficient and lengthy bidding processes, extensive review and oversight, and bureaucratic payment processes all make the City a less attractive business partner. For many contracts, the City may be paying a premium due to these shortcomings; this is the case in construction, where vendors reportedly build in a margin for the "cost of doing business with the City" when bidding on public construction projects.³³

While vendors compete against each other, the City is also competing with private businesses in the City's robust and growing economy to attract bidders, which puts further pressure on the City to pay competitive prices, especially since private companies are likely to have less red tape and many pay more promptly. When top-tier firms opt out of government work, the City is left with less experienced firms.³⁴

Alternatively, in human services, government is the primary (and in some cases only) buyer of services. The nonprofit sector has been lobbying actively for reimbursement rates to meet their costs, adequate salaries for their staff and sufficient funding for space, insurance, and administrative costs.³⁵

8

CITY HAS BEEN SLOW TO MODERNIZE ANTIQUATED E-PROCUREMENT SYSTEMS, BUT EFFORTS ARE UNDERWAY

The City's antiquated procurement systems have made the bidding process unnecessarily onerous for some potential vendors, thereby reducing competition and increasing the cost to the City. Until very recently, the City's vendor management system was paper-based: vendors would submit necessary disclosure forms and City employees would then manually key-in mountains of paperwork into the Vendor Exchange System (VENDEX).³⁶

The City launched a robust digital system called PASSPort in summer 2017 to transform this process. The first phase allows vendor forms to be submitted electronically and vendor determination to be managed electronically. The second phase, expected this spring, will allow for electronic ordering, receiving, invoicing, and payment for commodities. The third phase will move solicitation, competition, contract tracking, invoicing, and payment to the portal; release is planned for 2020.

For many contracts, the current process of invoicing and payment requires hard copy documents, manual data entry, and electronic payments. Vendors have argued the City is slow to issue payment.³⁷ Data on prompt payment is incomplete because the City defines a late payment as after receipt of a completed invoice, which is a self-reported date entered by the City employee managing the payment process, oftentimes after an invoice went back and forth prior to payment.

A prior digital effort shows there is promise in updating and streamlining processes and systems. HHS Accelerator, launched in March 2013, was developed to centralize and streamline procurement in the human services. First, vendors prequalify to bid, meaning they provide disclosures and other related information ahead of time to be certified to bid on City solicitations, which speeds up the bidding process. Second, use of boilerplate forms standardizes the information being requested across agencies and RFPs. Third, HHS Accelerator eliminates the need for nonprofits bidding on multiple RFPs to re-upload the same documents or forms as vendors can access their stored docu-

ments within HHS Accelerator. Fourth, invoicing and payment for human services contracts is done through HHS Accelerator. The Human Services Council (HSC), a membership group representing human services providers in New York City, has praised the HHS Accelerator and reported that users found the system streamlined procurement and reduced duplication.

9

PROCUREMENT REFORMS HAVE THE POTENTIAL TO SAVE TAXPAYER DOLLARS AND IMPROVE CITY GOODS AND SERVICES

An improved procurement system—better vendor relations, streamlined processes, technology, and flexibility—is critical to a competitive procurement environment where the City gets the best deal. The City stands to get the biggest fiscal return from greater efforts to improve the process for large procurements greater than \$3 million; savings of just 1 percent on those contracts would exceed \$160 million per year.³⁸

1. Continue to improve e-procurement systems, including e-invoicing and payment.

Development of PASSPort should remain a priority for MOCS. It is important to implement quickly a full online procurement system, including comprehensive contract management that allows for tracking contracts through various agency approval processes. The approval process should be streamlined and limited to essential reviewers. If projects become stalled, MOCS should be charged with addressing the delay and shepherding the procurement to registration.³⁹

To address issues of payment delays and invoice reviews, the City should implement electronic invoicing for all contracts, included in the third phase of PASSPort, which would bring transparency and accountability to the payment process.⁴⁰

2. Centralize a greater share of procurement under DCAS.

In the November 2018 Financial Plan, the City proposed a savings initiative to consolidate citywide consulting services contracts under DCAS in order to reduce costs and work overlap.⁴¹ Such efforts should be continued in order reap the benefits of efficiency and economies of scale. Procurement responsibilities for small agencies should also be centralized under DCAS to leverage staff expertise in managing solicitations.⁴² Each agency can continue to have a designated ACCO to work with staff on identifying the needs, but the actual work of developing the solicitation, reviewing the bids, and issuing the contract should rest with a central citywide procurement office. Increased centralization of procurement could save more than \$80 million, assuming a 5 percent saving on procurements shifted to DCAS.⁴³

3. Streamline approval of capital projects and change orders.

Too many entities are reviewing capital projects to ensure compliance with capital expensing rules, and the process should be streamlined. The DDC Strategic Blueprint for Construction Excellence emphasized the need to streamline procurement through better interagency coordination, especially between DDC and OMB.⁴⁴ Additionally, greater transparency through the PASSPort system will allow for identification of agency bottlenecks that can be used to rationalize the system and move contracts through the approval process more expeditiously.

4. Continue to urge the State to change construction procurement laws.

State requirements for capital procurement, specifically, lowest bid requirements, Wicks Law, and the prohibition against design-build contracting, add substantially to the City's cost. The State granted the City limited design-build authority for specific projects, but the City should continue to seek broader authority. Lastly, Wicks Law should be eliminated.

ENDNOTES

- [1] DOE procured \$3.3 billion in fiscal year 2017. It is excluded from this report because DOE procures under State Law and its own set of Policies and Procedures, with contracts greater than \$1 million subject to approval by the Panel for Education Policy. Reporting of its procurement actions is not included with other city agencies in the City's annual procurement report.
- [2] The industry representing the largest share can change from year to year, especially when large, multiyear contracts are executed. In the last 10 years, human service contracts have been the largest category in 6 years, followed by construction in 2 years, professional services in 1 year, and standardized services in 1 year.
- [3] The agreements between the City and these quasi-governmental entities are quite different from contracts between the City and private vendors, however, as the City uses a contract vehicle to authorize this spending, the data are included in this report. In fiscal year 2018, the two contracts with the EDC, plus the contracts with the Brooklyn Navy Yard and NYC & Company represented nearly 15 percent of all contract value. While categorized as professional services by the City, much of the spending flowing through these agreements is for construction.
- [4] Includes full-time staff active on June 30, 2018, serving as ACCOs, contract specialists, contract reviewers, and procurement analysts across all City agencies, plus all staff within MOCs. CBC staff analysis of data from NYC Open Data, "Citywide Payroll Data (Fiscal Year)" (accessed October 5, 2018, last updated September 28, 2017), <https://data.cityofnewyork.us/City-Government/City-wide-Payroll-Data-Fiscal-Year-/k397-673e>.
- [5] Responsive means that the bid meets the criteria laid out by the City, while responsible means that the vendor has the qualifications and integrity to deliver the good or service.
- [6] Though this requires a special case determination per Section 3-01(d)(1)(i).
- [7] Bidders must be determined to be responsive and responsible.
- [8] Determination is made by the Mayor, a Deputy Mayor, the City Chief Procurement Officer, or an ACCO.
- [9] Some of these may entail limited competition, but not to the level required in competitive sealed bids and RFPs. Others are permitted, but used less frequently. See: City of New York, Mayor's Office of Contract Services, Agency Procurement Indicators (Fiscal Year 2017 edition), https://www1.nyc.gov/assets/mocs/downloads/pdf/MWBEReports/2017_AgencyProcurementIndicators.pdf.
- [10] National Association of State Procurement Officials, Non-Competitive/Sole Source Procurement: Seven Questions (January 2015), https://www.naspo.org/SoleSourceProcurement/7-Question_Sole_Source_Procurement_briefing_paper-1-13-15.pdf; and Richard Losch, "The Risks of Single Sourcing," The Digital Nirvana Blog (March 21, 2011), <http://thedigitalnirvana.com/2011/03/the-risks-of-single-sourcing>.
- [11] The City must then agree on the details of the need and develop solicitation documents; for new so-

cial service programs, agencies are required to produce concept papers that notify providers of the programmatic intent. The solicitation itself must conform to procurement rules and be approved. There is no set timeline for how long this part of the process should take; it can be very short for a specific need, such as new furniture, or lengthy for development of a new social service program.

- [12] Any responses provided by the agency are shared with all vendors to ensure a level playing field. Some solicitations have pre-bidding conferences with vendors, and attendance may be required to submit a responsive bid.
- [13] MOCs can delegate some or all of these responsibilities to agency ACCOs.
- [14] Retroactivity is more of a problem for human services contracts; in fiscal year 2017, 91 percent were retroactive upon receipt by the Comptroller's Office.
- [15] Nolan Hicks, "De Blasio administration is still paying late for services: charities," *New York Post* (January 28, 2019), <https://nypost.com/2019/01/28/de-blasio-administration-is-still-paying-late-for-services-charities/>.
- [16] As competitive sealed bids should be the most straightforward since the determination is based solely on lowest price, cycle times are likely longer for RFPs.
- [17] Lengthy procurement cycle, especially with very detailed specifications, is a frequently cited issue in IT procurement. See: Theo Douglas, "3 Strategies for Procurement Success," *Government Technology* (September 2017), <http://www.govtech.com/budget-finance/GT-September-2017-3-Strategies-for-Procurement-Success.html>.
- [18] CBC discussion with staff at the Office of the New York City Comptroller (October 11, 2018).
- [19] Testimony of Angel Vasquez, Representative of American Council of Engineering Companies of New York, Regarding Int. No. 1292, before the New York City Council Committee on Contracts (April 27, 2017), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=5143517&GUID=CB1D7ED2-1BD0-4FAA-AF45-CDE93C441466>; Testimony of Beatriz Diaz Taveras, Executive Director, Catholic Charities Community Services, Archdiocese of New York, before the New York City Council Committees on General Welfare and Contracts (June 21, 2018), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6339308&GUID=75FDB457-4DBF-4231-864B-DDF848DA8349>; and Testimony of Rob DeLeon, Associate Vice President of Programs, The Fortune Society, before the New York City Council Committees on General Welfare and Contracts (June 21, 2018), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6339308&GUID=75FDB457-4DBF-4231-864B-DDF848DA8349>.
- [20] Adam Stone, "11 Ways to Speed Up Government Procurement," *Government Technology* (September 2017), <http://www.govtech.com/budget-finance/GT-September-2017-Good-Stewards.html>.
- [21] See: The General Contractors Association of New York, Inc., *Deconstructing the Cost of Construction: the real story behind the cost of public works projects in NY* (January 2019), http://gcany.com/wp-content/uploads/2018/11/GCA_AnnualReport_2018_pages.pdf.
- [22] For more detailed discussion of best value, see: NIGP: The Institute for Public Procurement, *Best Value in Government Procurement: Concepts and practices*. (2013), <https://www.nigp.org/docs/de>

[fault-source/New-Site/position-papers/150105_best-value_position-paper-complete_updated.pdf?sfvrsn=4](https://www.nyc.gov/assets/operations/downloads/pdf/mmr0912/0912_mmr.pdf?sfvrsn=4).

- [23] New York Building Congress, Task Force on Innovation and Best Practices, *Government Procurement and Procedures Committee: Final Report* (October 15, 2015), pp. 5-6, <https://www.buildingcongress.com/uploads/pdf/Government-Procurement-Committee-01112016.pdf>.
- [24] Specifically, the Enacted Fiscal Year 2019 New York State Budget permitted the City to use design-build procurement for new facilities to replace those currently on Rikers Island and the Brooklyn-Queens Expressway reconstruction.
- [25] Jamison Dague, "Design-Build Contracting: A Way to Fix More Bridges for Less Money," Citizens Budget Commission Blog (February 17, 2016), <https://cbcny.org/research/design-build-contracting>.
- [26] State of New York, Office of General Services, "Chapter 9 – Design Guides: 9.3 Multiple Prime Contracts Guide (Wicks Law)" OGS Design Procedures Manual (April 13, 2015), <https://www.ogs.ny.gov/bu/dc/docs/pdf/09030MultiplePrimeContractsGuide.pdf>.
- [27] New York School Boards Association, NYSSBA Issue Brief: Wicks (accessed November 9, 2018), https://www.nyssba.org/index.php?src=gendocs&ref=Wicks&category=advocacy_legislation; and E.J. McMahon, "Mandate relief still kicking around," NY Torch: A Public Policy Blog (Empire Center, March 2, 2011), <https://www.empirecenter.org/publications/mandate-relief-still-kicking-around/>.
- [28] CBC staff analysis of U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Northeast Region--December 2018 (press release, January 11, 2019), and Engineering News Record, ENR Cost Indexes in New York (1978-2019), https://www.enr.com/economics/historical_indices/NewYork.
- [29] Center for an Urban Future, *Slow Build: Creating a More Cost-Efficient Capital Construction Process for Cultural Organizations and Libraries in New York City* (April 2017), p. 10, https://nycfuture.org/pdf/CUF_Slow_Build.pdf.
- [30] Modified contracts have been amended and the total contract amount has changed.
- [31] These are among the larger construction contracts; while the 677 contracts with modifications is just 10 percent of active construction contracts, they represent 59 percent of original dollars and 65 percent of current dollars.
- [32] City of New York, Mayor's Office of Operations, *Mayor's Management Report* (September 2012), p. 183, https://www1.nyc.gov/assets/operations/downloads/pdf/mmr0912/0912_mmr.pdf.
- [33] Center for an Urban Future, *Slow Build: Creating a More Cost-Efficient Capital Construction Process for Cultural Organizations and Libraries in New York City* (April 2017), https://nycfuture.org/pdf/CUF_Slow_Build.pdf.
- [34] Center for an Urban Future, *Slow Build: Creating a More Cost-Efficient Capital Construction Process for Cultural Organizations and Libraries in New York City* (April 2017), https://nycfuture.org/pdf/CUF_Slow_Build.pdf; and City of New York, 2003 Charter Revision Commission, *Enhancing Access, Opportunity and Competition: A Blueprint for Reform: Final Report: Summary of Expert Testimo-*

ny on Procurement at Public Meetings (September 4, 2003), https://www1.nyc.gov/assets/charter/downloads/pdf/final_report2003.pdf.

- [35] See: Testimony from New York City Council Committees on General Welfare and Contracts, Oversight Hearing on Model Budgets (June 21, 2018), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6339308&GUID=75FDB457-4DBF-4231-864B-DDF848DA8349>.
- [36] Vendors must be in VENDEX prior to receiving a contract award if they meet minimum levels of contract dollars; data in VENDEX are used in determining the responsibility of vendors who bid on City solicitations. Vendors are required to file disclosure forms every three years if they have done \$100,000 worth of business with the City in the prior 12 months or have sole source contracts totaling \$10,000 or more.
- [37] See: Testimony of Felice Farber, Senior Director, Policy and External Affairs, The General Contractors Association of New York, Inc. before the New York City Council Committee on Contracts, Hearing on Intro. 1067 (November 15, 2018); and Testimony of Donald Ranshte, Senior Vice President of the Building Trades Employers' Association, before the New York City Council Committee on Contracts (November 15, 2018), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6796528&GUID=137AF8A4-39FE-48AD-984D-6C0AC053FAF3>.
- [38] Procurements greater than \$3 million totaled \$17.9 billion in fiscal year 2017 and \$16.4 billion in fiscal year 2018.
- [39] Not unlike the SWAT team recommended by SeaChange Capital Partners. See: SeaChange Capital Partners, *New York City Contract Delays: The Facts: An Analysis of the Financial Impact* (August 2018), <http://seachangecap.org/wp-content/uploads/2018/08/NYC-Contract-Delays-The-Facts.pdf>.
- [40] Testimony of Scott Stringer, New York City Comptroller, before the New York City Council Committee on Contracts (April 27, 2017), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=5143517&GUID=CB1D7ED2-1BD0-4FAA-AF45-CDE93C441466>.
- [41] City of New York, Office of Management and Budget, *November 2018 Financial Plan: Citywide Savings Programs* (November 8, 2018), p. 10, <https://www1.nyc.gov/assets/omb/downloads/pdf/csp11-18.pdf>.
- [42] A similar recommendation was considered by the 2003 Charter Revision Commission. See: New York City Charter Revision Commission, *Enhancing Access, Opportunity & Competition: A Blueprint for Reform* (September 4, 2003), p. 96, https://www1.nyc.gov/assets/charter/downloads/pdf/final_report2003.pdf.
- [43] This estimate is based on shifting procurement to DCAS, with DCAS expected to achieve savings equal to 5 percent on half of the procurements that are currently being handled by agencies. DCAS currently handles 75 percent of the goods procurement, valued at \$1.8 billion, while DOITT handles another 7 percent. Savings of 5 percent on half of the remaining value would save \$8 million. DCAS handles 23 percent of the standard services procurements that total \$1.7 billion. Savings of 5 percent on half of the remaining \$1.3 billion would save \$33 million. DCAS handles 1.3 percent of professional services contracts (excluding SBS, DDC, and DOITT). Savings of 5 percent on half

of the remaining contract volume, \$1.3 billion), would equal \$32 million. Centralization of procurement at agencies that record less than 150 procurement actions per year, where DCAS expertise could relieve administrative burden from the agencies, could also generate savings of nearly \$18 million, assuming the same 5 percent savings rate on half of the contract (to account for overlap with the savings already discussed). These 18 agencies processed 1,096 actions for a value of \$723 million in fiscal year 2018.

- [44] City of New York, Department of Design and Construction, *A Strategic Blueprint for Construction Excellence* (January 2019), https://www1.nyc.gov/assets/ddc/images/content/pages/press-releases/2019/2019_DDC_Strategic_Plan.pdf.
- [45] SeaChange Capital Partners, *New York City Contract Delays: The Facts: An Analysis of the Financial Impact* (August 2018), <http://seachangecap.org/wp-content/uploads/2018/08/ NYC-Contract-Delays-The-Facts.pdf>.

9 Things New Yorkers Should Know About How New York City Buys Stuff

Policy Brief ■ February 2019

www.cbcny.org

@cbcny

540 Broadway
Fifth Floor
Albany, NY 12207
518-429-2959

Two Penn Plaza
Fifth Floor
New York, NY 10121
212-279-2605