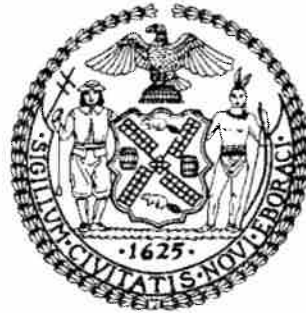


Shannon Manigault, Counsel  
Artyom Matusov, Policy Analyst



## **THE COUNCIL**

### **COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

Robert Newman, Legislative Director  
Alix Pustilnik, Deputy Director, Governmental Affairs

### **COMMITTEE ON CONTRACTS**

Council Member Darlene Mealy, Chair

**October 31, 2013**

**Oversight – The Department of Homeless Services' Use of Emergency Procurement**

## **Introduction**

On October 31, 2013, the Committee on Contracts (the Committee), chaired by Council Member Darlene Mealy, will hold an oversight hearing to examine the Department of Homeless Services' use of emergency procurement. Representatives from the Department of Homeless Services (DHS), the Mayor's Office of Contract Services (MOCS), the New York City Comptroller, advocates, and interested members of the community are invited to testify.

## **Background**

The New York City Charter permits emergency procurement<sup>1</sup> "in the case of an unforeseen danger to life, safety, property or a necessary service." Drawing on this provision, MOCS defines emergency procurement as the "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."<sup>2</sup>

Emergency procurements require prior approval from the City's Corporation Counsel (the Law Department) and the Comptroller.<sup>3</sup> Agencies that undertake emergency procurement must place a written determination of the basis for the emergency and the selection of the contractor in the agency contract file. Agencies must

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<sup>1</sup> The term 'emergency procurement' can refer both to the method of procurement and to the goods and/or services procured.

<sup>2</sup> New York City Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2012*, at 93, available at <http://www.nyc.gov/html/mocs/downloads/pdf/Fiscal2012ProcurementIndicators.pdf>.

<sup>3</sup> See New York City Charter §315.

then include that written determination or a summary thereof when publishing the notice of contract award in the City Record.<sup>4</sup>

### **Impact of Emergency Procurement**

Speed is imperative when procuring emergency goods and services. Accordingly, emergency procurement is subject to a streamlined review process that excises many of the procedural requirements that fetter other methods of procurement. While the Charter requires emergency procurements to be made with “such competition as is practicable under the circumstances,”<sup>5</sup> as the MOCS definition suggests, emergency procurements often occur with little or no competition. Further, in addition to exemption from competitive bidding requirements, emergency procurements are largely exempt from the requirements of local laws. For example, emergency procurement has been explicitly carved out of recently enacted legislation pertaining to minority and women-owned business enterprises, outsourcing, local food purchasing, and packaging reduction.<sup>6</sup>

Even with vastly increased spending on emergency procurement in FY2013 as a result of Hurricane Sandy--\$690.6 million versus \$59.2 million in FY2012—emergency procurement represents a relatively small fraction of the overall dollar value of Citywide contracts (4.2% of \$16.5 billion). However, in light of the decreased competition and circumvention of local laws attending emergency procurement, the use of emergency procurement merits heightened scrutiny.

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<sup>4</sup> See New York City Charter §§315, 325.

<sup>5</sup> See New York City Charter §315.

<sup>6</sup> See Local Law 1 of 2013, Local Law 63 of 2011, Local Law 50 of 2011, and Local Law 51 of 2011, respectively.

## Oversight of Emergency Procurement

On January 28, 2013, the Committee held an oversight hearing to explore the processes by which the City implements emergency procurement and the steps, if any, the Administration takes to limit the utilization of this method.

During this hearing, MOCS emphasized that it played no role in the approval of emergency contracts.<sup>7</sup> When asked what, if any, guidance it provides agencies regarding the standard for what constitutes an emergency, MOCS replied that it provided no such guidance, noting that the Comptroller and the Law Department make the decision to approve the contracts, and thus, ultimately the determination of what constitutes an “unforeseen danger to life, safety, property or a necessary service.”<sup>8</sup> MOCS suggested that its role is to assist with the mechanics of executing a contracting plan, not to manage agencies’ needs.<sup>9</sup>

MOCS does not routinely review emergency contracts of agencies once they are registered.<sup>10</sup> When asked if it could play a greater role in reviewing emergency procurements to determine if agencies might better plan for their contracting needs, MOCS noted only that it would participate if the City assembled a team to consider how to better plan for an emergency (such as Hurricane Sandy).<sup>11</sup>

On March 4, 2013, the Committee held a joint oversight hearing with the Committee on Finance on the preliminary budget for FY2014. When asked whether the Office of Management and Budget (OMB) reviews agencies’ emergency contracts, OMB

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<sup>7</sup> See Transcript, Oversight: Exploring the City’s Use of Emergency Procurement, Jan. 28, 2013, Committee on Contracts, at 21, 28-29.

<sup>8</sup> *Id.* at 29-31.

<sup>9</sup> *Id.* at 82.

<sup>10</sup> *Id.* at 87-88.

<sup>11</sup> *Id.*

described its general review of contracts to ensure that funding is available, but made no distinction between emergency contracts and contracts awarded in the normal course.<sup>12</sup> Further, the OMB director was not aware of whether emergency contracts were utilized by agencies under circumstances that were not “dire”<sup>13</sup> and questioned whether emergency procurements (which, as noted above, do not require competition) generally cost more.<sup>14</sup>

OMB went on to assert the inefficiencies that might exist by planning for certain emergencies, citing as an example the potential for wasted money if the Department of Sanitation contracted in advance for snow removal in the event that it did not snow.<sup>15</sup> (Note, however, that agencies can plan for just such circumstances by entering into arrangements where contracts are competitively bid and prices and vendors are set ahead of time, but payments are made only as the need for services arises. Indeed, this way of planning to stave off the additional costs and burdens of emergencies was expressly highlighted by the Administration during the oversight hearing following the blizzard of 2010.<sup>16</sup>)

### **Emergency Procurement at DHS**

During both the January oversight hearing with MOCS and the March oversight hearing with OMB, specific questions arose regarding DHS’ use of emergency

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<sup>12</sup> See Transcript, New York City Council Fiscal Year 2014 Preliminary Budget, Mayor’s FY ’13 Preliminary Management Report and Agency Oversight Hearings, Mar. 4, 2013, Committees on Finance and Contracts, at 144-146.

<sup>13</sup> *Id.* at 129-130.

<sup>14</sup> *Id.* at 128-129.

<sup>15</sup> *Id.* at 148-149.

<sup>16</sup> See Transcript, Oversight – The December Blizzard of 2010: Evaluating the City’s Response, Jan. 10, 2011, Committees on Sanitation and Solid Waste Management, Public Safety, Fire and Criminal Justice Services, and Oversight and Investigations, at 81.

procurement.<sup>17</sup> Within the larger inquiry of whether City agencies were planning for their needs sufficiently so as to avoid resorting to emergency procurement, the question of DHS' use was of particular interest, as the problem of homelessness has seemed, unfortunately, persistent, increasing, and—perhaps most importantly in the context of contract management—foreseeable.

During the January oversight hearing, the Comptroller submitted written testimony challenging DHS' use of emergency procurement. Although the Comptroller approved DHS' emergency requests to procure shelter beds, he questioned whether the emergency procurement method was being abused by DHS, given the number and value of contracts registered. The Comptroller attached to his testimony an August 2012 letter sent by his office to DHS recommending that the agency “base its shelter siting and service allocations on the City’s long-range policies and strategies to allow the City to more efficiently plan and budget for the provision of shelters rather than relying on emergency procurements.”<sup>18</sup>

By law, DHS must provide housing to every eligible homeless individual and family who seeks it.<sup>19</sup> While DHS engages in capacity management planning on an ongoing basis, projecting shelter demand is not an exact science.<sup>20</sup>

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<sup>17</sup> See Transcript, Oversight: Exploring the City’s Use of Emergency Procurement, Jan. 28, 2013, Committee on Contracts, at 24-27, 49-56; Transcript, New York City Council Fiscal Year 2014 Preliminary Budget, Mayor’s FY ’13 Preliminary Management Report and Agency Oversight Hearings, Mar. 4, 2013, Committees on Finance and Contracts, at 128-130, 141-142.

<sup>18</sup> Written Testimony of John C. Liu, New York City Comptroller, Oversight: Exploring the City’s Use of Emergency Procurement, Jan. 28, 2013, Committee on Contracts.

<sup>19</sup> See Briefing Paper, Oversight – New Homeless Shelter Eligibility Process for Single Adults, Nov. 9, 2011, Committee on General Welfare; Written Testimony of Michele Ovesey, Oversight: Examining the Use of Cluster Sites as Temporary Shelter for the Homeless, Oct. 10, 2013, Committee on General Welfare.

<sup>20</sup> See Written Testimony of Michele Ovesey, Oversight: Examining the Use of Cluster Sites as Temporary Shelter for the Homeless, Oct. 10, 2013, Committee on General Welfare.

Over the last four fiscal years, DHS spent nearly \$70 million on 49 contracts for goods and services acquired via emergency procurement.<sup>21</sup>

Emergency								
Agency	Fiscal 2013		Fiscal 2012		Fiscal 2011		Fiscal 2010	
	Count	Value	Count	Value	Count	Value	Count	Value
DHS	38	\$40,526,594	0	\$0	8	\$23,370,191	3	\$5,365,021

This paper affixes DHS’ most recent requests to the Comptroller and the Law Department for approval for emergency procurement. DHS has offered different justifications for seeking emergency relief over the last few years, some of which call into question the agency’s contingency planning.<sup>22</sup> During today’s hearing, the Committee hopes to learn more about DHS’ contract planning for providing shelter to the homeless and to explore alternatives to the agency’s use of emergency procurement.

<sup>21</sup> Mayor’s Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2013*, at Appendix C.

<sup>22</sup> In justifying its use of emergency procurement, DHS has cited to the fact that demand for single adult shelters has repeatedly exceeded its projections, breaking historically cyclical patterns whereby demand rises in the fall and winter, and falls in the spring and summer, presumably because more people seek indoor shelter during the colder months. This reason was cited both in 2010, and more recently in the summer of 2012. Yet, DHS shelter census data (<http://www.nyc.gov/html/dhs/downloads/pdf/dailyreport.pdf>) shows that over the last 6 fiscal years, this trend has only occurred in FY2011, a year when overall demand shot up significantly compared to the year before. Even then, the difference between the peak winter month, which was February, and the trough in the summer, July, was only eight percentage points. And the overwhelming trend since FY2009 has been for demand to grow every year over the year before. This seems unsurprising given that historically, homelessness appears closely tied to the long-term unemployment rate, which following the 2008 recession, is still at a 30 year high. (Based on data compiled by Committee staff from the Department of Labor). This draws DHS’ reasoning as to why it needed to use emergency procurement, namely because it expected demand to decrease when instead it increased, into doubt. Questions also arise regarding its rationale in May 2012, when it cited the unexpected decision in a court case which allowed the City to completely cease operation of its Advantage program—a rental assistance program for families transitioning out of shelters—following State cuts. Given that the case had been ongoing for approximately one year, and it was the City itself that was seeking to end the program for participants who were already enrolled, it would seem that DHS should have been well informed about the progress of the case, and making contingency plans for any spillover effects should the City be successful in achieving its objectives.



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January 19, 2010

**VIA E-MAIL AND BY HAND**

Hon. John C. Liu  
Comptroller  
City of New York  
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Director of Contract Administration  
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New York, New York 10007

Michael A. Cardozo  
Corporation Counsel  
New York City Law Department  
Attn: Steven Stein Cushman  
Division Chief, Contracts & Real Estate  
100 Church Street, Room 3-176  
New York, New York 10007

**Re: Emergency Declaration for the Operation of Two  
Shelters for Homeless Single Adults**

Gentlemen:

As discussed in recent conversations among members of your respective Offices, pursuant to Section 3-06 of the New York City Procurement Policy Board Rules (the "PPB Rules"), the Department of Homeless Services ("DHS" or the "Agency") is requesting your Offices' approval to procure, through a Declaration of Emergency, contracts to operate two new shelters for homeless single adults at sites that the Agency tentatively has identified. In addition to these two potential sites, DHS continues to look for additional shelter capacity to bring on line in the next four to six weeks.

In accordance with PPB Rule §3-06, we discuss below: (1) the emergency conditions that gave rise to DHS' request for a Declaration of Emergency; (2) why the need for additional shelter services cannot be met through normal procurement methods; and (3) our steps to date to identify potential shelter sites.

## DHS' Capacity Management Process

To put the emergency conditions that gave rise to the instant request in their proper context, we begin with a brief discussion of DHS' capacity management process pursuant to which the Agency's Adult Services Division ("Adult Services" or the "Division") projects its peak census for each month of the fiscal year. Adult Services uses a process that calculates shelter demand for a given month based on the average month-to-month percent change in actual peak census for the three years prior. This model takes into account the seasonality of the single adult shelter system and projects peak census into the coming months so that the Division can project a need for capacity additions or subtractions. For City Fiscal Years ("FY") 2007-2009, the projected peak census was within 1% below or above the actual peak census for the year, on average, validating the use of this particular methodology. This methodology is further made relevant because projections are updated to reflect actual monthly performance in the shelter system. Adult Services also closely monitors shelter entrants, exits (including placements), and length of stay, among other measures, to provide a comprehensive assessment of shelter utilization, and the Performance Investment Program (PIP) holds each shelter accountable for its ability to place clients quickly into safe and appropriate housing.

Projecting capacity, however, is not an exact science and is rendered more challenging by the need to balance two competing concerns. First, pursuant to a 1981 consent decree entered in *Callaban v. Carey*, Index No. 42582/79 (Sup. Ct. N.Y. Co.) (the "*Callaban Decree*") (Ex. 1) and state law — which not only codified key provisions of the Decree, but also mandates far more stringent shelter standards than those enunciated in the Decree (*See, e.g.*, 18 NYCRR §§ 491, et seq.) — the City of New York is mandated to provide temporary emergency housing to all homeless men and women who seek it. This means that DHS must shelter homeless men and women the day they apply at one of DHS' intake centers for homeless single adults and must do so 24 hours a day, seven days a week, 365 days a year. Second, the Agency must balance its legal mandate with its fiscal responsibility to bring on additional shelter capacity only when circumstances are likely to require it. DHS balances these two fundamental concerns through daily tracking and analysis of the shelter system census.

## Emergency Conditions

### ► Unanticipated Increase in Shelter Demand

The recent surge in shelter demand must be viewed in the context of historical trends, which in recent years has reflected a steady decline in the census of the single adult shelter system. For example, between FY2004 and FY2009, the average daily census of the shelter system decreased from 8,473 to 6,525 — a decrease of 23%. The current economic recession is widely acknowledged to have begun in the last quarter of 2008. In January 2009, demand for shelter was higher than predicted, but the system was able to accommodate the increase and still maintain a nearly 5% vacancy rate, since the average census for the month was still lower relative to January 2008. After this initial increase in 2009, demand essentially leveled off, with the shelter system increasing by only 0.5% during the first six months of the year. The second half of 2009, from July to December, has seen a 5% rise in the average daily census ("ADC"), a much steeper increase in demand than in the previous six months; DHS first identified these trends in July 2009, when it began identifying potential capacity increases in the shelter system (discussed further below). Therefore, the economic

crisis did not trigger a steady increase in demand for single adult shelter capacity until long after it began. For these reasons, notwithstanding Adult Services' careful monitoring of the ADC as compared to its projections for changes in historical trends, DHS did not foresee, nor could it have foreseen, the need for increased capacity prior to that time.

As mentioned above, in July 2009, Adult Services started to adjust its capacity projections to take into account the increase in shelter demand and explore options for expanding capacity. By the end of November 2009, the Agency had added approximately 100 beds to the system. Adult Services continued to adjust its projections upward upon its review of actual census data such as that set forth below and, by approximately mid-December 2009, had brought on line approximately 153 additional shelter beds.

- The actual peak census for December 2009 was 7,115 — the highest peak census since February 2008. The December 2009 peak was 9.2 percent higher than the peak in December 2008.
- The ADC rose to 6,976 in December 2009 — almost 9% higher than the ADC in December 2008.
- The number of unduplicated clients DHS served rose to 9,696 in December 2009 — approximately a 6% increase over December 2008.
- Each day in December 2009 had an average of 31.1 new entrants, an increase of 5% from November 2009 and 7% higher than December 2008. This is higher than any December figure since FY 2004.
- In December 2009 the average number of returning entrants (*i.e.*, out of the single adult shelter system for more than a year) increased by 3% to 22.7 clients/day from November 2009 forward; this is 2% higher than the December 2008 figure and higher than all other December averages back to FY04.

Given this surge in shelter demand, DHS increased its shelter capacity by 153 beds by December 20, 2009 and amended its capacity expansion plan to bring on additional beds by January 31, 2010. DHS added 183 beds between December 22, 2009 and January 10, 2010 and plans to add 168 more beds by January 31, 2010, for a total expansion of the single adult shelter system by 504 beds by the end of January.

The Agency now seeks your approval to further expand the City's shelter capacity by means of an Emergency Declaration. Notwithstanding the above-described efforts to expand the capacity of DHS' single adult shelter system, additional shelter beds are needed to meet a projected increase in demand which, for homeless men, we anticipate will reach a winter peak in March 2010. We also must plan for the possibility that demand may not decline significantly in the spring or summer months to come. As a result of the recession, in the summer and fall of 2009, demand increased where, historically, it had declined. Moreover, as discussed in greater detail below, a temporary restraining order issued against the City in a *Callaban* court proceeding on December 22, 2009 expanded the City's obligations under the *Callaban* Decree. In order to comply with these court-

imposed obligations, DHS must bring on capacity in addition to the 504 beds it determined were required to meet the increase in shelter demand resulting from the nationwide recession.

### ► Recent *Callahan* Court Proceedings

On December 9, 2009, the *Callahan* plaintiffs sought a temporary restraining order requiring, among other things, that the City immediately submit to the Court a plan for expanding shelter capacity. Specifically, they alleged that since October 2009, the City had engaged in a practice of placing new shelter entrants and clients who had not violated the system's 10:00 p.m. curfew in a shelter for one night and then transporting them back to their assigned assessment or program shelter in the early morning to receive services.<sup>1</sup> Plaintiffs further alleged that this practice continued for multiple nights until an assessment or program bed became available, was caused by lack of sufficient shelter capacity, and violated the Decree's mandate to house all homeless men and women who seek shelter.

At a Court hearing on December 11, 2009, the City responded that while it sought to avoid repeatedly placing new shelter entrants or non-curfew violators in overnight beds, the use of overnight beds was not prohibited by the Decree. While the Court denied plaintiffs' request for an order directing the City to submit a capacity expansion plan, the Court strongly suggested to DHS that it share with plaintiffs' counsel its plans to expand capacity in the coming weeks. Moreover, the Court issued a temporary restraining order requiring the City to provide lawful shelter to certain homeless men and women identified in plaintiffs' papers as having experienced multiple overnight placements; in fact, DHS had provided a shelter bed to all of these individuals and had provided almost all of them with a bed in an assessment shelter or program shelter prior to December 11. Finally, the Court adjourned the hearing to December 22, 2009 to allow time for the parties to submit further papers on plaintiffs' application for a temporary restraining order.

Prior to the adjourned date, the City shared its capacity expansion plan with plaintiffs' counsel and the Court. After oral argument, which primarily centered upon whether or not the City's use of overnight beds violated the *Callahan* Decree, the Court issued a temporary restraining order (the "December 2009 Order") directing the City to "make reasonable efforts to avoid the systemic, repeated use of overnight beds for sleeping purposes only and without . . . providing the full services that are otherwise required by the decree." (Ex. 2, excerpt from transcript of December 22, 2009 Court hearing, pp. 35-36) The Court adjourned the matter to January 20, 2010 for a hearing on whether plaintiffs were entitled to permanent injunction prohibiting systemic and repeated use of overnight beds<sup>2</sup> and requiring the City to submit a capacity expansion plan for plaintiffs' and the Court's review.

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<sup>1</sup> New entrants to the single adult shelter system are first placed in an "assessment bed" within one of DHS' shelters that has assessment beds ("assessment shelter") where they remain for up to 21 days while their needs are assessed in order to determine the shelter that meets their individual needs. Upon conclusion of a client's assessment, the client is transferred to a "program shelter" (e.g., a shelter for mentally ill clients or a shelter for employed or employable clients) where they receive an array of services including those designed to assist them in obtaining permanent housing.

<sup>2</sup> Although not recorded in the transcript, the Court stated that its Order did not apply to systemic curfew violators.

The Court's December 2009 Order expanded the City's obligations under the *Callaban* Decree. Whereas prior to the recent court proceedings, DHS' use of overnight beds was not limited by judicial order, now DHS is prohibited by the Court's Order from systemically and repeatedly using overnight beds for new entrants to the shelter system and for clients who are not systemic curfew violators. The City must comply with the December 2009 Order or risk being held in contempt.

### **The Surge in Demand Cannot Be Met through Normal Procurement Methods**

As demonstrated above, the need to increase the number of beds in the single adult shelter system in order to meet increased demand and to comply with the Court's Order, is serious and immediate. Homeless men and women who are in immediate need of shelter would be at serious risk of harm to their health and safety were the City required to proceed through the normal procurement process which, as already noted, typically takes 9 to 12 months assuming there are no delays beyond DHS' control.

Opening new shelters for homeless single adults is a complicated and lengthy process. Pursuant to the *Callaban* Decree, as well as state and local law, shelters for single adults, the vast majority of which serve clients in a congregate setting, must adhere to maximum capacity requirements, strict space requirements governing sleeping, dining and recreational areas, client/staff ratios and client/shower-toilet ratios. *See, e.g.*, 18 NYCRR §§491.9, 491.10, 491.12. State regulations further require that single adult shelters provide an array of services including services to assist clients in looking for and obtaining permanent housing. *See Id.* §491.8. Under state law, the NYS Office of Temporary Disability and Assistance ("OTDA") must approve each shelter's application for an operating certificate before allowing the provider to operate the shelter. *Id.*, §§485.1, 485.5, 485.6.

DHS maintains an Open Ended Request for Proposal ("OERFP") process through which nonprofit organizations, offer their services as long-term operators. Upon the Agency's selection of a provider, DHS commences the procurement process, which takes approximately nine months to one year and may be longer depending on financing needs and the extent to which renovation or construction is required.

Under the OERFP process, DHS has received a proposal from one nonprofit social services organization (CAMBA) and expects to receive a proposal from a second nonprofit provider (Palladia) imminently, to provide shelter and other services at two sites that have been tentatively identified. We are requiring all organizations that submit a proposal to us to simultaneously make community notification. We have confirmed that CAMBA has made such community notification and that Palladia will make community notification upon submission of their proposal to DHS. The Agency also has inspected each of the sites and determined that they are adequate for shelter use. Moreover, as discussed in greater detail below, both providers' work is known to DHS, and each of them provides social services to homeless clients across different divisions within the Agency.

### Scope of Work

The proposed emergency contract between DHS and the two vendors to be selected will run for a term of approximately twelve months, expiring January 31, 2011. Each selected vendor shall offer shelter on demand, services that will meet the clients' immediate needs, and more comprehensive services working toward the goal of placement in permanent housing. A 62-bed shelter in Brooklyn and a shelter with 68 (and possibly more) beds in Manhattan will be operated at the sites that have been tentatively identified.

### The Proposed Vendors' Past Performance History

The proposed Vendors' performance history is known to DHS, as each of them provides social services across different divisions within the Agency.

CAMBA operates three SROs (Ana Gonzales, Morris Manor, and Rugged Cross), three single adult shelters (Broadway House, CAMBA/Atlantic, and Park Slope), a drop-in center (Gathering Place), a respite bed program, and a rental assistance program. All three shelters and the drop-in center received a rating of "good" on the FY09 Vendex. The rental assistance program and the one SRO that was due for an FY09 Vendex evaluation received "fair" ratings. In the Adult Services PIP covering the period January 2009-June 2009, CAMBA's Park Slope shelter had the second highest score of all the 49 programs for single adults.

Palladia operates two SROs (Hill House and Chelsea Court), and one single adult shelter (Willow). The Willow shelter is a Next Step shelter model, focused on moving the most service-resistant clients into permanent housing. All three of Palladia's programs received a "good" rating on the FY09 Vendex evaluations. For the period January 2009-June 2009, Palladia had the 10<sup>th</sup> highest score in the Adult Services PIP, and operates the most successful Next Step shelter in moving clients into permanent housing. This provider also has operated a Homebase homelessness prevention program for over five years for which it has consistently received Vendex ratings of "very good" and met performance targets.

### Beyond January 31, 2011

It is DHS' intention to replace the bed capacity represented by the two proposed shelters under the OERFP. The process will include the requisite oversight approvals and public hearings. The contracts are intended to start February 1, 2011.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

ROBERT CALLAHAN, CLAYTON W. FOX,  
THOMAS DAMIAN ROIG, JAMES HAYES,  
JAMES SPELLMAN and PAUL E. TOOLE,  
on their own behalves and on behalf  
of all others similarly situated,

Plaintiffs,

-against-

HUGH L. CAREY, as Governor of the State  
of New York, BARBARA BLUM, as Commissioner  
of the New York State Department of Social  
Services, EDWARD I. KOCH, as Mayor of the  
City of New York, JAMES A. KRAUSKOPF, as  
Commissioner of the New York City Human  
Resources Administration, and CALVIN REID,  
as Director of the Shelter Care Center  
for Men,

Defendants.

Index No.:  
42582/79

FINAL  
JUDGMENT  
BY CONSENT

Plaintiffs Robert Callahan, Clayton Fox and Thomas Roig, having brought this action on October 2, 1979 challenging the sufficiency and quality of shelter for homeless men in New York City, and plaintiffs Callahan, Fox, Roig, James Hayes, James Spellman and Paul Toole, having filed their Amended Complaint on March 31, 1980, and defendants Hugh L. Carey, as Governor of the State of New York, and Barbara Blum, as Commissioner of the State of New York Department

of Social Services (the "State defendants"), having filed their Amended Answer on January 19, 1981 therein denying the material allegations of the Amended Complaint, and defendants Edward Koch, as Mayor of the City of New York, Stanley Brezenoff, as Administrator of the New York City Human Resources Administration, and Calvin Reid, as director of the Shelter Care Center for Men (the "Men's Shelter") (the "City defendants"), having filed their Amended Answer on January 19, 1981 therein denying the material allegations of the Amended Complaint, and plaintiffs and defendants by their respective attorneys, having consented to the entry of this Final Judgment without any final adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue:

NOW, therefore, without final adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any issue, and upon consent of all parties, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

Provision of Shelter

1. The City defendants shall provide shelter and board to each homeless man who applies for it provided

that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter.

Shelter Standards

2. The City defendants shall provide shelter at facilities operated in accordance with the standards set forth in this paragraph as soon as practicable and not later than September 1, 1981. The term "shelter facility" refers to the Kaener Building, Camp LaGuardia, the Men's Shelter and any other facility used by the City defendants to shelter homeless men. This paragraph does not apply to the Bowery lodging houses (Palace, Kenton, Union, Sunshine, Delevan and Stevenson) presently used by the City defendants to shelter homeless men (the "hotels"); if the City defendants choose to shelter homeless men in any additional Bowery lodging house, they will advise counsel for the plaintiffs and a good faith effort shall be made by plaintiffs and the City defendants to agree to operating standards for such facilities.

(a) Each resident shall receive a bed of a minimum of 30 inches in width, substantially constructed, in good repair and equipped with clean springs.

(b) Each bed shall be equipped with both a clean, comfortable, well-constructed mattress standard in size for the bed and a clean, comfortable pillow of average size.

(c) Each resident shall receive two clean sheets, a clean blanket, a clean pillow case, a clean towel, soap and toilet tissue. A complete change of bed linens and towels will be made for each new resident and at least once a week and more often as needed on an individual basis.

(d) Each resident shall receive a lockable storage unit.

(e) Laundry services shall be available to each resident not less than twice a week.

(f) A staff attendant to resident ratio of at least 2 per cent shall be maintained in each shelter facility at all times.

(g) A staff attendant trained in first aid shall be on duty in each shelter facility at all times.

(h) A minimum of ten hours per week of group recreation shall be available for each resident at each shelter facility.

(i) Residents shall be permitted to leave and to return to shelter facilities at reasonable hours and without hindrance.

(j) Residents of shelter facilities shall be provided transportation (public or private) to enable them to return to the site where they applied for shelter.

(k) Residents of shelter facilities shall be permitted to leave the facility by 7:00 a.m. if they so desire.

(l) Residents shall be permitted to receive and send mail and other correspondence without interception or interference.

(m) The City defendants shall make a good faith effort to provide pay telephones for use by the residents at each shelter facility. The City defendants shall bear any reasonable cost for the installation and maintenance of such telephones.

3. The capacity of shelter facilities shall be determined as follows:

(a) The capacity of newly constructed shelter facilities shall comply with the standards set forth in Appendix A, except

in cases of emergency need as defined in Appendix B.

(b) The City defendants shall disclose to plaintiffs' counsel any plan to convert an existing structure to a shelter facility and the intended capacity for that facility at least 30 days in advance of the implementation or execution of any such conversion plan. A reasonable capacity for each such facility shall be established. The standards set forth in Appendix A shall be used as guidelines in determining whether the planned capacity of the City defendants is reasonable.

(c) Effective December 31, 1981, the capacity of the Keener Building shall not exceed 416 except in cases of emergency need as defined in Appendix B, in which case the maximum number of men who may be sheltered in the Keener Building is 450. Between the date of entry of this judgment and December 31, 1981, the capacity of the Keener Building shall not exceed 450.

(d) The capacity of Camp LaGuardia shall comply -- by construction of new dormitory buildings -- with the standards set forth in Appendix A,

except in cases of emergency need as defined in Appendix B, as soon as practicable and not later than December 31, 1982, except that the individual rooms in the "Main Building" may be used as sleeping rooms for one person each. The construction start of such new dormitory buildings shall occur no later than March 1, 1982.

Bowery Lodging Houses

4. Hotels presently used by the City defendants shall meet the following standards at the time of entry of this judgment and the City defendants shall maintain such standards thereafter:

(a) Each resident shall receive a bed, a clean mattress, two clean sheets, one clean blanket, one clean pillow and one clean pillow case. A complete change of bed linens (sheets and pillow case) shall be made for each new resident and at least once a week and more often as needed on an individual basis.

(b) Each resident shall be supplied with a clean towel, soap and toilet tissue. A clean towel shall be provided to each new resident and towels shall be changed at least once a week and more often as needed on an individual basis.

(c) There shall be two trained security guards in the Palace Hotel between the hours of 8:00 p.m. and 4:00 a.m. and one trained security guard between the hours of 4:00 p.m. and 8:00 p.m., and 4:00 a.m. to 8:00 a.m. There shall be one trained security guard in the Kanton Hotel between the hours of 4:00 p.m. and 8:00 a.m. These security guards shall file with the City defendants incident reports on any incidents of violence or attempted violence occurring in the hotels.

(d) Showers shall be available at the Men's Shelter beginning at 7 a.m. and signs advising hotel residents of that fact shall be posted at the front desk in each hotel and at the door of each bathroom in each hotel. Persons showering at the Men's Shelter shall be provided adequate supervision (including safeguarding of personal property), a clean towel, soap and, if requested, a delousing agent.

(e) A lockable storage unit of adequate size to store personal property shall be available either at the Men's Shelter or at the hotels for each man sheltered by the City defendants at hotels.

(f) Heat shall be maintained in accordance with New York City guidelines for rental residences.

(g) Cleanliness shall be maintained throughout the hotels at all times.

Intake Centers

5. The City defendants shall accept applications for shelter at the Men's Shelter, 8 East Third Street, New York, New York and at 529 Eighth Avenue, New York, New York (the "central intake centers"). Applications for shelter shall be accepted at all times at the Men's Shelter, and applications for shelter shall be accepted at 529 Eighth Avenue between the hours of 5:00 p.m. and 1:00 a.m., seven days per week. The City defendants shall provide direct transportation to shelter facilities from the central intake centers to all homeless men for whom the City defendants must provide shelter pursuant to paragraph 1, supra. The 529 Eighth Avenue intake center, shall be opened as a central intake center not later than September 1, 1981.

6. The City defendants shall operate additional satellite intake centers on a 24-hour basis Monday through Friday at the following locations:

(a) Harlem Hospital Center, 506 Lenox Avenue, New York, New York;

- (b) Kings County Hospital Center,  
451 Clarkson Avenue, Brooklyn, New York;
- (c) Lincoln Hospital, 234 East 149th  
Street, Bronx, New York; and
- (d) Queens Hospital Center, 82-68 164th  
Street, Jamaica, New York.

Men seeking shelter at the satellite intake centers shall be provided adequate fare for public transportation and clear written directions to either (i) a shelter facility, or (ii) a central intake center --- according to the preference of the persons seeking shelter. The City defendants shall provide direct transportation from the satellite intake centers to a shelter facility to all men who appear so physically or mentally disabled that they are unable to reach a shelter facility by public transportation. Satellite intake centers shall be opened not later than September 1, 1981. It is understood that the above satellite intake centers shall be operated in conjunction with borough crisis centers. In the event that the borough crisis center program is terminated, the City defendants may, in their discretion, reduce the hours of operation of the satellite intake centers to between 5 p.m. and 1 a.m.

7. The City defendants shall accept applications for shelter at shelter facilities providing that such applicants have applied for and have been found eligible for

shelter by the City defendants within six months of the time of application at a shelter facility. Shelter facilities shall also provide shelter for one night to any person who has not previously applied for shelter who seeks shelter at a shelter facility after 8:00 p.m.

#### Community Participation

8. Each shelter facility, central intake center and satellite intake center, shall utilize the services of available community members to the maximum reasonable extent. These persons are not City employees or volunteers in a City sponsored program within the meaning of section 50(x) of the General Municipal Law and such persons shall execute statements to this effect.

#### Information

9. The City defendants shall provide applicants for shelter with clear written information concerning other public assistance benefits to which they may be entitled at the time applicants apply for shelter.

#### Compliance Monitoring

10. Defendant Krauskopf shall appoint qualified employees with no administrative responsibility for providing shelter to monitor defendants' shelter care program for men with respect to compliance with this decree. These employees shall visit each shelter facility, central intake center, satellite intake center and hotel at least twice a month and will submit to defendant Krauskopf a written report at least

twice a month describing compliance or lack thereof with each provision of this decree. These reports shall be made available to plaintiffs' counsel upon reasonable notice.

11. Plaintiffs' representatives shall have full access to all shelter facilities, central intake centers and satellite intake centers, and plaintiffs' counsel shall be provided access to any records relevant to the enforcement and monitoring of this decree.

12. Defendant Krauskopf shall deliver by hand each day to plaintiffs' counsel a statement listing:

- (a) the number of men who applied for shelter at each central intake center and at each satellite intake center;
- (b) the number of men who were provided shelter at each shelter facility or hotel;
- (c) the number of men who were denied shelter at each shelter facility, central intake center and satellite intake center and the reason for each such denial;
- (d) the number of men who were accepted for shelter at each central intake center and satellite intake center who did not reach a shelter facility; and
- (e) the number of men who were provided direct transportation from each satellite intake center to a shelter facility.

13. It is the intention of defendant Krauskopf to conduct daily inspections of the Palace Hotel and to deliver reports of such inspections each day to plaintiffs. It is also the intention of defendant Krauskopf to conduct inspections of the other hotels used by defendants to shelter homeless men not less than three times per week and to deliver reports of such inspections not less than three times a week to plaintiffs' counsel. A sample of the inspection report form to be used is attached hereto as Exhibit C.

No Waivers

14. Nothing in this judgment permits any person, not-for-profit corporation, charitable organization, or governmental entity or subdivision to operate a shelter, as defined in New York Code of Rules and Regulations, Title 18, § 435.2(c), in violation of the requirements of the New York Social Services Law, Title 18, of the New York Code of Rules and Regulations, or any other applicable law.

15. Nothing in this judgment should operate or be construed as res judicata or collateral estoppel so as to foreclose any signatory party from any claim or defense in any subsequent administrative or judicial proceeding.

16. Nothing in this judgment shall be deemed to authorize or to prevent the operation by the New York City Human Resources Administration of the Keener Building on

Wards Island as a shelter or shelter facility after October 15, 1981, except in accord with a valid contract or agreement among the New York State Department of Social Services, the New York State Office of Mental Health and the New York City Human Resources Agency and with an operating certificate issued by the New York State Department of Social Services.

17. The Commissioner of the New York State Department of Social Services agrees to reimburse the New York City Human Resources Agency for the operation of a shelter facility or shelter facilities referred to in this judgment pursuant to New York Social Services Law § 133, except if such shelter facility fails to comply with the requirements for shelters contained in the New York Social Services Law or the New York Code of Rules and Regulations, Title 18; provided that nothing in this judgment can or does obligate the Legislature of the State of New York to appropriate funds.

18. Nothing in this judgment shall prevent, limit or otherwise interfere with the authority of the Commissioner of the New York State Department of Social Services to enforce and carry out her duties under the New York Social Services Law, Title 18, of the New York Code of Rules and Regulations, or any other applicable law.

Continuing Jurisdiction

19. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification, or termination of this entire judgment or of any applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: New York, New York  
August 26, 1981

David Weschler  
The Legal Aid Society  
Volunteer Division  
125 Broad Street  
New York, New York 10004  
(212) 558-3575

By: Robert M. Hayes  
Robert M. Hayes

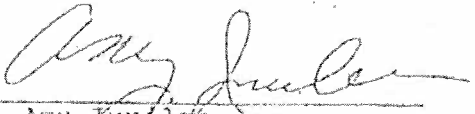
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Corporation Counsel  
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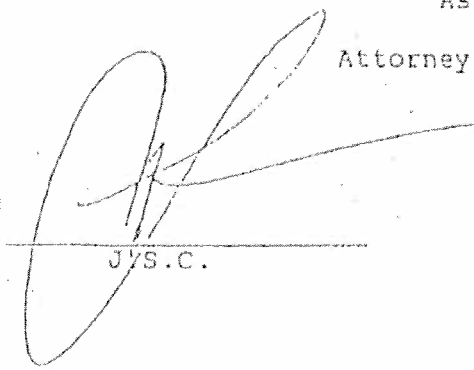
By: George Gutwirth  
George Gutwirth  
Assistant Corporation  
Counsel

Attorney for the City Defendants

Robert Abrams  
Attorney General  
Two World Trade Center  
New York, New York 10047  
(212) 488-6770

By:   
Amy Juviler  
Assistant Attorney General  
Attorney for the State Defendants

So ordered:

  
\_\_\_\_\_  
J.V.S.C.

Appendix ASpace Requirements for Shelters for Adults

- (1) Every facility shall have space for dining and leisure activities.
- (2) Sleeping areas shall not be considered as dining or leisure areas.
- (3) Space provided for dining shall be:
  - (i) at least 120 square feet in facilities with a certified bed capacity of less than 10 beds;
  - (ii) at least 12 square feet for each additional certified bed.
- (4) Space provided for leisure areas shall be:
  - (i) at least 120 square feet in facilities with a certified bed capacity of less than 10 beds.
  - (ii) at least 12 square feet per bed in facilities with a certified bed capacity of 10 or more beds.
- (5) When not in use, dining space may be used, with written approval from the New York State Department of Social Services ("Department"), as leisure space.

(6) An operator may request Department approval of a waiver to reduce the square footage requirements for dining and leisure space.

A waiver shall be granted only upon demonstration by the operator that the food service and the program needs of residents can be met.

(7) Baths and Toilet Facilities

There shall be a minimum of one toilet and one lavatory for each six residents and a minimum of one tub or shower for each ten residents.

(3) Sleeping Rooms

(i) in single occupancy sleeping rooms, a minimum of 80 square feet per resident shall be provided;

(ii) in sleeping rooms for two or more residents, a minimum of 60 square feet per resident shall be provided;

(iii) a minimum of 3 feet, which is included in the per resident minima, shall be maintained between beds and for aisles;

(iv) partitions separating sleeping areas from other areas shall be ceiling high and smoke tight;

## A P P E A R A N C E S:

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OFFICE OF THE CORPORATION COUNSEL  
Attorneys for the City Defendants  
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BY: THOMAS C. CRANE, ESQ.

DEPARTMENT OF HOMELESS SERVICES  
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Lori Ann Sacco  
Official Court Reporter



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET ROOM 602  
NEW YORK, N.Y. 10007-2341

John C. Liu  
COMPTROLLER

RICARDO ELIAS MORALES  
DEPUTY COMPTROLLER FOR LEGAL  
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January 20, 2010

Honorable Robert V. Hess  
Commissioner  
City of New York  
Department of Homeless Services  
33 Beaver Street, 17<sup>th</sup> Floor  
New York, NY 10004

Re: Emergency Request No. 2010024  
Operation of Two, New Shelters for Homeless Single Adults  
Cost Estimate: \$3,700,000

Dear Commissioner Hess:

This letter confirms the oral approval given by the Comptroller's Office on January 20, 2010 and serves as the written approval for the Department of Homeless Services to enter into two emergency contracts with two nonprofit social service organizations (CAMBA and Palladia) in order to provide shelter and other services to homeless individuals at two tentatively identified sites in Brooklyn and Manhattan. The contracts' terms will run for approximately six months, expiring July 31, 2010. Each selected vendor shall offer shelter on demand, services that will meet the clients' immediate needs, and more comprehensive services working toward the goal of placement in permanent housing.

According to an emergency declaration from the Department of Homeless Services dated January 19, 2010, the need to increase the number of beds in the single adult shelter system is due to two unforeseen issues: a surge in demand caused by the current economic recession and increased obligations imposed under a temporary restraining order issued against the City in a court proceeding on December 22, 2009. The order requires the City to avoid systemic, repeated use of overnight beds for sleeping purposes only without providing full services mandated by a 1981 consent decree (the Callahan Decree.) Approval is based on the Department of Homeless Services' representation that homeless men and women who are in immediate need of shelter would be at serious risk of harm to their health and safety were the City required to proceed through the normal procurement process.

If you have any questions or comments regarding this matter, please feel free to contact me at (212) 669-2048.

On behalf of Comptroller John C. Liu, I am pleased to be of assistance in this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "Ricardo Morales".

Ricardo Morales



Robert V. Hess  
Commissioner

Fran S. Winter  
First Deputy Commissioner

George Nashak  
Deputy Commissioner  
Adult Services  
gnashak@dhs.nyc.gov

33 Beaver Street  
16th Floor  
New York, NY 10004

212.361.0617 tel  
212.361.0610 fax

March 4, 2010

**VIA E-MAIL AND BY HAND**

Hon. John C. Liu  
Comptroller  
City of New York  
Attn: John Goddard  
Director of Contract Administration  
1 Center Street, Room 1005  
New York, New York 10007

**Re: Amendment to Emergency Declaration for  
Shelter for Homeless Single Adults**

Dear Mr. Goddard:

As discussed in a telephone conference on February 26, 2010, the Department of Homeless Services ("DHS" or the "Agency") is requesting your Office's approval to amend the Emergency Declaration that the Agency sought by letter dated January 19, 2010 ("January 19 Request") (copy enclosed) and that you approved on or about January 20, 2010.

As I explained during our conference call, at the time of our January 19 Request, we believed, incorrectly, that a request for an Emergency Declaration had to be site specific; thus, in that Request, we sought your approval to enter into emergency contracts with two proposed vendors and we stated that the Agency was continuing to look for additional shelter capacity to bring on line in the next four to six weeks (Request, p. 1). Subsequently, upon our finding additional suitable capacity, we requested your approval to enter into two additional emergency contracts by letter dated February 12, 2010.

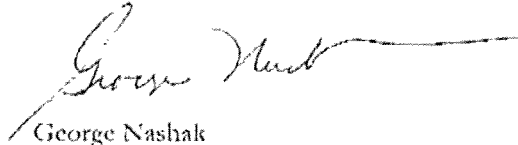
In our conference call, you clarified that we did not need to request approval for an Emergency Declaration each time we located new capacity and were ready to enter into an emergency contract with a proposed vendor. Instead, you requested that we amend the January 19 Request by explaining how much additional capacity we require to meet ongoing census demand. We address this request below.

As we explained in the January 19 Request, as a result of the nationwide economic crisis, the City continues to face an unprecedented demand for shelter (pp. 2-3). Locating suitable shelter sites and shelter providers to operate them is a complex and difficult process during any economic climate but particularly so in light of the current recession. Moreover, as explained in the January 19 Request (pp. 4-5), as a result of a recent court order in *Callahan v. City*, DHS was required to adjust its capacity needs upward in order to comply with the order. For these reasons, we must continue to bring on sufficient capacity until we reach a "balance point," *i.e.*, when the number of shelter beds is five percent over projected peak capacity. Since

New York City is obliged by law to provide shelter on demand, DHS needs to be prepared each day to have sufficient shelter capacity to meet the needs of homeless individuals who request shelter. It is impossible to predict with 100% accuracy how many clients will enter the system each day; therefore, DHS must have extra capacity, in excess of its projected need, to make certain we remain in compliance with law, regulation and the *Callahan* decree. In addition, the recent court order compels DHS to avoid moving a client repeatedly among shelters until a "permanent" shelter is identified for him or her. To accomplish this, we must ensure we have sufficient vacancies at our assessment shelters and other program shelters to meet a client's need at the shelter at which he or she presents. To accomplish these two goals, DHS needs a 5% capacity "cushion". Our current projection of peak winter demand in the shelter system is 7,633 beds. To achieve the 5% cushion we need 8,000 beds in the shelter portfolio. At present we operate 7,740 shelter beds. To reach the 8,000 target, we will need to procure approximately 260 shelter beds plus approximately 340 beds we anticipate coming off-line in the spring of this year. We therefore need 600 beds to address the current demand for shelter.

We trust that this information is helpful and we look forward to your response.

Sincerely,



George Nashak

Encl.

- cc: Robert V. Hess, Commissioner
- Fran Winter, First Deputy Commissioner
- Steve Pock, Deputy Commissioner, Fiscal & Procurement Operations
- Steven Stein Cushman, Esq., NYC Law Department
- Audrea Glick, Mayor's Office of Contact Services

APPROVED: \_\_\_\_\_

DATE:

John C. Liu  
Comptroller



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

John C. Liu  
COMPTROLLER

March 31, 2010

Honorable Robert V. Hess, Commissioner  
City of New York  
Department of Homeless Services  
33 Beaver Street, 17<sup>th</sup> Floor  
New York, NY 10004

Re: Emergency Request No. 2010051  
Shelter for Homeless Single Adults  
Cost Estimate: \$10,983,000

Dear Commissioner Hess:

This letter confirms the oral approval given by the Comptroller's Office on March 31, 2010 and serves as the written approval for the Department of Homeless Services to amend a prior emergency to serve the demand for shelter by the homeless individuals.

According to an emergency declaration from the Department of Homeless Services dated January 19, 2010, the need to increase the number of beds in the single adult shelter system is due to two unforeseen issues: a surge in demand caused by the current economic recession and increased obligations imposed under a temporary restraining order issued against the City in a court proceeding on December 22, 2009. The order requires the City to avoid systemic, repeated use of overnight beds for sleeping purposes only without providing full services mandated by a 1981 consent decree (the Callahan Decree.) DHS amended the emergency declaration on March 26, 2010 to address the spike in demand of up to 600 beds for shelter and other services.

Approval is based on the Department of Homeless Services' representation that failure to shelter homeless men and women on an immediate basis poses a danger to their health and safety and is limited to the award of contracts to satisfy the need for 600 beds and for terms limited to six months or less.

As you know, the initial shortened six month period initially granted in the January, 2010 emergency and this subsequent amended declaration for March, 2010 were to provide DHS with sufficient time to expedite the conventional procurement process. Accordingly, DHS should provide the Comptroller's Office with a status report on the progress of its RFP for additional beds and services for the homeless.

Your attention is directed to the requirements contained in Procurement Policy Board (PPB) Rules Section 3-06 and Section 315 of the New York City Charter. Specifically, the agency should ensure that such competition as is possible and practicable under the circumstances be obtained and that written documentation detailing the basis for the emergency and the selection of the supplier be submitted at the earliest practicable time. In addition, Section 2-12 of the PPB Rules

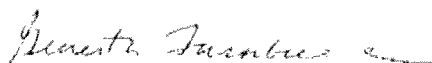
Honorable Robert V. Hess  
Commissioner  
March 29, 2010  
Page 2

requires a copy of the contract and related materials to be submitted to the Comptroller's Office within thirty (30) business days of award.

If you have any questions or comments regarding this matter, please feel free to contact me at (212) 669-4126. Our office welcomes the opportunity to meet with you and members of your staff in the very near future to work with DHS towards remaining in compliance with applicable procurement laws.

On behalf of Comptroller John C. Liu, I am pleased to be of assistance in this matter.

Yours truly,

  
Geneith Turnbull



Seth Diamond  
Commissioner

33 Beaver Street  
17th Floor  
New York, NY 10004

212.361.8000 tel  
212.361.8001 tty  
212.361.7977 fax

December 22, 2010

Hon. John C. Liu  
Comptroller  
City of New York  
1 Center Street  
New York, NY 10007

Michael A. Cardozo  
Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007

Re: Amended Request for Emergency Declaration

Gentlemen:

I am writing to request an emergency declaration to allow the Department of Homeless Services (DHS) to procure an additional 1,200 shelter beds. The declaration will assure we have sufficient capacity at a time of increasing demand for shelter in the single adult system.

As you know, in March 2010 DHS requested and received from your offices approval to enter into contracts for 600 shelter beds under the emergency declaration provision of the City's procurement rules. To date, we have successfully procured 223 beds at three sites under this declaration and we recently forwarded to the Comptroller a request for an emergency contract for an additional 122-bed program. We anticipate submitting a fifth request shortly for a 200-bed shelter.

In keeping with the commitment we made to register long-term, competitively procured contracts for the sites we procured through the emergency declaration, DHS has advanced long-term contracts for all four sites that have been submitted to the Comptroller. We have secured long-term contracts for the two sites (157 beds) opened the longest. In addition, we recently completed the public hearing for a third site (66 beds), open since July 2010, and we are at earlier stages on the other two, one of which only opened in September 2010 and the other of which opened in October 2010. Including the program we will submit shortly, DHS will have procured 545 of the 600 beds permitted.

The reason DHS needed the emergency declaration in March was the unprecedented demand for shelter services by single homeless adults in New York City. We demonstrated at the time that the demand had far surpassed our projections for shelter capacity. Your approval of the declaration, and DHS' work to procure additional shelter capacity following the approval, allowed the City to meet its legal obligation to provide shelter to all those in need.

We are writing to you now because we are once again experiencing a demand for shelter that vastly exceeds our projections. We have seen an extraordinary increase in the number of applications for shelter that started in June 2010, an increase that has no historical precedent. To meet this increased demand DHS must put in place additional shelter capacity. We are therefore requesting an extension of the emergency declaration to allow DHS to procure 1,200 additional shelter beds. We agree to follow the same protocol as the original declaration and quickly proceed to competitively procure contracts following an original six-month emergency contract.

Since June 2010 DHS has seen an increase in new entrants to the shelter system that has no historic precedent. In fact, September 2010 was the third month in a row that exceeded 1,100 new entrants. Prior to this recent period, we had not seen more than 1,100 new clients in any month for the prior five years. In September 2010, the average daily number of new entrants into the single adult system was 36.7 persons, a 12% increase from only a year ago (September 2009). In previous years, the shelter system followed a seasonal pattern, *i.e.*, the census increased in the winter months but always declined in the spring and summer months. In calendar year 2010, the census not only increased significantly in the winter months as compared to previous years — thus necessitating the first emergency declaration — but also, instead of remaining flat or declining, it actually increased dramatically over the spring and summer. Since this rise in shelter demand is unprecedented, determination of its underlying causes would require further analysis.

While we anticipate a seasonal increase over the winter of 2010-11, of great concern is that the increase is starting from a much higher baseline than normal. Because the new entrants and census are so high in mid-autumn, we need to plan for a significant increase in demand for shelter over the winter. On the night of November 2, to choose a recent example, we had a capacity of 8,508 shelter beds of which 8,346 (or 98%) were used. Assuming that the upcoming winter follows the pattern of last winter, we are projecting a need for at least 9,200 beds at the peak demand. This is 700 beds above our current capacity. As we described in our meetings discussing the first emergency declaration, we must be prepared for contingencies of demand beyond our projections; we would be irresponsible if we simply planned for the projected peak. We therefore need a 5% capacity cushion above our projected peak demand in case the demand for shelter exceeds what we think it will be. In this case, the 5% is about 500 beds. For these reasons, we are requesting an additional 1,200 beds at this time.

While the agency does make substantial efforts even in periods of substantial uncertainty to forecast demand and appropriately put on shelter capacity, DHS cannot simply procure shelter capacity instantaneously. The most difficult step in the process is identifying a building that is suitable for shelter. Few buildings in New York City lend themselves to such use or are immediately available without any renovation. Following the identification of an appropriate building, the non-profit vendor proposing the project must negotiate a lease with the landlord, submit a detailed proposal to DHS, secure various oversight approvals, and hire the necessary staff to operate the program.

These steps typically play out over months and, when DHS uses the standard procurement process -- which takes about one year, assuming there are no delays beyond the agency's control -- this timeframe is not a problem. When we need capacity that will be available in a few months, however, the process needs to be abbreviated initially to allow the shelter to be opened, with a more traditional process to follow shortly. The emergency declaration process, by offering vendors the opportunity to secure a contract at a much faster rate than the typical procurement, is the only means DHS has to bring on shelter capacity quickly in the single adult system.

We wish to assure you that the standard procurement protocol has been sufficient historically to meet DHS' need to develop shelter capacity. The substantially increased shelter demand our City has experienced over the last two years has simply created conditions that we did not foresee. The emergency declaration process is a provision for exceptional circumstances and we believe we are experiencing exceptional circumstances at present. Based on our projections, the 1,200 beds we will procure under this declaration will meet our needs for the foreseeable future and we will return to using the standard procurement process. Please note that DHS has several shelters in its pipeline that are being procured under the standard procedures. These shelters will open a year or more from now and no exceptions to the procurement rules are required. But to meet the shelter demand for the winter of 2010-11, we will need to expedite the procurement process. Please be assured that we will proceed with long-term contracts procured through the standard method following the initial six month emergency contract.

The homeless men and women we serve are an extremely vulnerable population. As reflected in a 2005 DHS/DOHMH report on the health of homeless adults in New York City, substance abuse, alcohol use, and mental illness account for 69 percent of hospitalizations among homeless adults, compared with 10 percent among non-homeless adults; and the average rates of TB and HIV diagnoses were 11 and 16 times higher, respectively, among those who used the single adult shelter system than among the NYC adult population. Given that many homeless men and women suffer from life-threatening physical and mental conditions, failure to shelter them on an immediate basis --- whether as a result of insufficient capacity or otherwise --- poses a danger to their health and safety. For this reason, and the reasons discussed above, we request your approval of an emergency declaration allowing DHS to enter into emergency contracts for up to an additional 1,200 beds.

We are very grateful for your consideration of this request. By working together, we can ensure that we have sufficient capacity to meet the needs of homeless single adults this winter.

Sincerely,



Seth Diamond

cc: Geneith Turnbull  
Steven Stein Cushman



Department of  
Homeless Services

Seth Diamond  
Commissioner

33 Beaver Street  
17th Floor  
New York, NY 10004

212.361.8000 tel  
212.361.8001 tty  
212.361.7977 fax

December 27, 2010

Hon. John C. Liu  
Comptroller  
City of New York  
1 Center Street  
New York, NY 10007

Michael A. Cardozo  
Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007

Re: Second Amended Request for Emergency Declaration

Gentlemen:

I am writing to request an emergency declaration to allow the Department of Homeless Services (DHS) to procure an additional 1,200 shelter beds. The declaration will assure we have sufficient capacity at a time of increasing demand for shelter in the single adult system.

As you know, in March 2010 DHS requested and received from your offices approval to enter into contracts for 600 shelter beds under the emergency declaration provision of the City's procurement rules. To date, we have successfully procured 223 beds at three sites under this declaration and we recently forwarded to the Comptroller a request for an emergency contract for an additional 122-bed program. We anticipate submitting a fifth request shortly for a 200-bed shelter.

In keeping with the commitment we made to register long-term, competitively procured contracts for the sites we procured through the emergency declaration, DHS has advanced long-term contracts for all four sites that have been submitted to the Comptroller. We have secured long-term contracts for the two sites (157 beds) opened the longest. In addition, we recently completed the public hearing for a third site (66 beds), open since July 2010, and we are at earlier stages on the other two, one of which only opened in September 2010 and the other of which opened in October 2010. Including the program we will submit shortly, DHS will have procured 545 of the 600 beds permitted.

The reason DHS needed the emergency declaration in March was the unprecedented demand for shelter services by single homeless adults in New York City. We demonstrated at the time that the demand had far surpassed our projections for shelter capacity. Your approval of the declaration, and DHS' work to procure additional shelter capacity following the approval, allowed the City to meet its legal obligation to provide shelter to all those in need.

We are writing to you now because we are once again experiencing a demand for shelter that vastly exceeds our projections. We have seen an extraordinary increase in the number of applications for shelter that started in June 2010, an increase that has no historical precedent. To meet this increased demand DHS must put in place additional shelter capacity. We are therefore requesting an extension of the emergency declaration to allow DHS to procure 1,200 additional shelter beds. We agree to follow the same protocol as the original declaration and quickly proceed to competitively procured contracts following an original six-month emergency contract.

Since June 2010 DHS has seen an increase in new entrants to the shelter system that has no historic precedent. In fact, September 2010 was the third month in a row that exceeded 1,100 new entrants. Prior to this recent period, we had not seen more than 1,100 new clients in any month for the prior five years. In September 2010, the average daily number of new entrants into the single adult system was 36.7 persons, a 12% increase from only a year ago (September 2009). In previous years, the shelter system followed a seasonal pattern, *i.e.*, the census increased in the winter months but always declined in the spring and summer months. In calendar year 2010, the census not only increased significantly in the winter months as compared to previous years — thus necessitating the first emergency declaration — but also, instead of remaining flat or declining, it actually increased dramatically over the spring and summer. We understand your concern about determining the reason for this increase. We share your desire to understand it better and have been investigating the matter using data matches and analysis and interviews with applicants. To date, we have not determined a definitive cause but we will continue our research.

While we anticipate a seasonal increase over the winter of 2010-11, of great concern is that the increase is starting from a much higher baseline than normal. Because the new entrants and census are so high in mid-autumn, we need to plan for a significant increase in demand for shelter over the winter. On the night of November 2, to choose a recent example, we had a capacity of 8,508 shelter beds of which 8,346 (or 98%) were used. Assuming that the upcoming winter follows the pattern of last winter, we are projecting a need for at least 9,200 beds at the peak demand. This is 700 beds above our current capacity. As we described in our meetings discussing the first emergency declaration, we must be prepared for contingencies of demand beyond our projections; we would be irresponsible if we simply planned for the projected peak. We therefore need a 5% capacity cushion above our projected peak demand in case the demand for shelter exceeds what we think it will be. In this case, the 5% is about 500 beds. For these reasons, we are requesting an additional 1,200 beds at this time.

While the agency does make substantial efforts even in periods of substantial uncertainty to forecast demand and appropriately put on shelter capacity, DHS cannot simply procure shelter capacity instantaneously. The most difficult step in the process is identifying a building that is suitable for shelter. Few buildings in New York City lend themselves to such use or are immediately available without any renovation. Following the identification of an appropriate building, the non-profit

vendor proposing the project must negotiate a lease with the landlord, submit a detailed proposal to DHS, secure various oversight approvals, and hire the necessary staff to operate the program.

These steps typically play out over months and, when DHS uses the standard procurement process -- which takes about one year, assuming there are no delays beyond the agency's control -- this timeframe is not a problem. When we need capacity that will be available in a few months, however, the process needs to be abbreviated initially to allow the shelter to be opened, with a more traditional process to follow shortly. The emergency declaration process, by offering vendors the opportunity to secure a contract at a much faster rate than the typical procurement, is the only means DHS has to bring on shelter capacity quickly in the single adult system.

We wish to assure you that the standard procurement protocol has been sufficient historically to meet DHS' need to develop shelter capacity. The substantially increased shelter demand our City has experienced over the last two years has simply created conditions that we did not foresee. The emergency declaration process is a provision for exceptional circumstances and we believe we are experiencing exceptional circumstances at present. Based on our projections, the 1,200 beds we will procure under this declaration will meet our needs for the foreseeable future and we will return to using the standard procurement process. Please note that DHS has several shelters in its pipeline that are being procured under the standard procedures. These shelters will open a year or more from now and no exceptions to the procurement rules are required. But to meet the shelter demand for the winter of 2010-11, we will need to expedite the procurement process. Please be assured that we will proceed with long-term contracts procured through the standard method following the initial six-month emergency contract.

The homeless men and women we serve are an extremely vulnerable population. As reflected in a 2005 DHS/DOHMH report on the health of homeless adults in New York City, substance abuse, alcohol use, and mental illness account for 69 percent of hospitalizations among homeless adults, compared with 10 percent among non-homeless adults; and the average rates of TB and HIV diagnoses were 11 and 16 times higher, respectively, among those who used the single adult shelter system than among the NYC adult population. Given that many homeless men and women suffer from life-threatening physical and mental conditions, failure to shelter them on an immediate basis -- whether as a result of insufficient capacity or otherwise -- poses a danger to their health and safety. For this reason, and the reasons discussed above, we request your approval of an emergency declaration allowing DHS to enter into emergency contracts for up to an additional 1,200 beds.

We are very grateful for your consideration of this request. By working together, we can ensure that we have sufficient capacity to meet the needs of homeless single adults this winter.

Sincerely,



Seth Diamond

cc: Geneth Turnbull  
Steven Stein Cushman



Geneith Turnbull  
DEPUTY COMPTROLLER

CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
JOHN C. LIU

BUREAU OF CONTRACT ADMINISTRATION

MUNICIPAL BUILDING  
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January 31, 2011

Honorable Seth Diamond, Commissioner  
City of New York  
Department of Homeless Services  
33 Beaver Street, 17<sup>th</sup> Floor  
New York, NY 10004

Re: Emergency Request No. 2010279  
Shelter for Homeless Single Adults  
Cost Estimate: \$30,140,484

Dear Commissioner Diamond:

This letter confirms the oral approval given by the Comptroller's Office on December 14, 2010 and serves as the written approval for the Department of Homeless Services (DHS) to enter into a number of emergency contracts in order to expediently procure additional shelter beds for homeless single adults.

According to the emergency declaration from DHS dated January 19, 2011, the demand for shelter beds has vastly exceeded the agency's projections and therefore, an emergency procurement is the only means that DHS has to bring on shelter capacity quickly. The substantially increased shelter demand over the last two years has created conditions that DHS did not foresee. DHS is engaged in analysis to try to understand the trend. Two important changes that DHS has identified are a dramatic increase in the percentage of individuals entering the shelters from shared living situations and a decrease in the age of shelter entrants. DHS interprets these data to indicate that part of the shelter bed surge may be attributable to the support network of those applying for shelter being under greater stress. This office hereby requests a meeting with DHS staff in order to discuss the results of their analysis and plans for the future with regard to adjusting its projection models to more accurately predict future bed demand.

Approval is based on the DHS's representation that failure to shelter homeless men and women on an immediate basis poses a danger to their health and safety and is limited to the award of contracts to satisfy the need for 1,200 additional beds having terms limited to six months or less. It is also understood that our approval is limited to contracts to be awarded within six months of the date of this letter.

As previously discussed, the six month term granted in this and prior shelter bed emergency approvals were to provide DHS with sufficient time to expedite the conventional procurement process. Accordingly, DHS should provide the Comptroller's Office with a status report on the

Honorable Seth Diamond  
Commissioner  
January 31, 2011  
Page 2

progress of its RFP for additional beds and services for the homeless.

Your attention is directed to the requirements contained in Procurement Policy Board (PPB) Rules Section 3-06 and Section 315 of the New York City Charter. Specifically, the agency should ensure that such competition as is possible and practicable under the circumstances be obtained and that written documentation detailing the basis for the emergency and the selection of the supplier be submitted at the earliest practicable time. In addition, Section 2-12 of the PPB Rules requires a copy of the contract and related materials to be submitted to the Comptroller's Office within thirty (30) business days of award.

If you have any questions or comments regarding this matter, please feel free to contact Stephen Malusa at (212) 669-2082.

On behalf of Comptroller John C. Liu, I am pleased to be of assistance in this matter.

Yours truly,



Geneith Turnbull

Cc: Charles Odiase  
John Goddard



Department of  
Homeless Services

Seth Diamond  
Commissioner

33 Beaver Street  
17th Floor  
New York, NY 10004

212.361.8000 tel  
212.361.7977 fax

May 4, 2012

**VIA E-MAIL AND REGULAR MAIL**

Hon. John C. Liu  
Comptroller  
City of New York  
Attn.: Geneith Turnbull  
Deputy Comptroller  
1 Centre Street, Room 1005  
New York, New York 10007

Michael A. Cardozo  
Corporation Counsel  
New York City Law Department  
Attn.: Steven Stein Cushman, Esq.  
Division Chief, Contracts & Real Estate  
100 Church Street, Room 3-176  
New York, New York 10007

**Re: Emergency Declaration for Additional Shelter Units  
for Homeless Families with Children and Adult Families**

Dear Ms. Turnbull and Mr. Cushman:

Pursuant to Section 3-06 of the New York City Procurement Policy Board Rules (the "PPB Rules"), the Department of Homeless Services ("DHS" or the "Agency") is requesting your Offices' approval to procure, through a Declaration of Emergency, approximately 904 additional shelter units for homeless families with children and approximately 258 additional units for homeless adult families (*i.e.*, families without children) (collectively, "family" or "families"). The Declaration will assure we have sufficient capacity to meet the anticipated increase in demand for family shelter caused by the State's sudden and unforeseen withdrawal of funding for the City's Advantage rental subsidy program in March 2011. As you know, upon commencement of legal proceedings following the City's termination of the program, the City continued to pay the rental subsidy from March 2011 through January 2012 for Advantage households (who had not timed out of the 2-year subsidy program) pursuant to court order. On February 2, 2012, the court order was lifted and on March 14, 2012, the appellate court upheld the trial court's decision that the City was within its legal rights to terminate the program and therefore were not required to continue making payments to current Advantage participants. Since January 2011, DHS has procured or is in the process of procuring over 400 additional

units for families with children. We did not have the need until now to procure new capacity for adult families; instead, in order to meet the increased demand for single adult shelter in FY 2009-FY 2010 as cost-effectively as possible, we used available adult family capacity to shelter homeless single adults. However, as explained below, based on the increase in the family shelter census and in families' length of stay in shelter that has occurred since the City terminated the Advantage program a year ago, and now that the City is no longer under court order to continue Advantage subsidy payments, DHS requires an additional 904 units for families with children and an additional 258 units for adult families in order to meet the projected increase in shelter demand.

In accordance with PPB Rule §3-06, we discuss below: (1) the emergency conditions that gave rise to DHS' request for a Declaration of Emergency; (2) why the need for additional shelter services cannot be met through normal procurement methods; and (3) our steps to date to identify potential shelter sites.

### Legal Mandates

To put the emergency conditions that gave rise to the instant request in their proper context, we begin with a brief discussion of the legal mandates pursuant to which the City is required to provide shelter to every eligible homeless family who seeks it. Pursuant to state and local law, and a class action settlement so ordered in Boston v. City of New York, Index No. 402295/08 (Sup. Ct. N.Y. Co.) (December 12, 2008) ("Final Judgment"), the City must provide shelter to every eligible homeless family with children who apply for temporary housing assistance. Moreover, state and local law require DHS to place families with children and adult families in shelter pending investigation of their application for shelter. As a practical matter, this means that the Agency must shelter families the very same day that they apply. (See Soc. Serv. Law § 133; 18 NYCRR § 350.3(c); Administrative Directive 02 ADM 02 (March 4, 2002); New York City Administrative Code ("Admin. Code") § 21-313)). In accordance with this legal mandate, we must and do successfully shelter homeless families 24 hours a day, 7 days a week, 365 days a year.

Pursuant to the Final Judgment, the City must provide homeless families with children with "safe, sanitary and decent shelter as defined by applicable law." (§§ 3, 4) State regulations also require compliance with physical standards for shelter (See 18 NYCRR § 900.12) for homeless families with children, and state and local law prohibit the placement of homeless families with children in congregate settings. In addition, state law requires the City to provide each homeless family with children and pregnant women with their own "private room," and local law requires that each such family be afforded with their own individual unit, which must also contain a bathroom and cooking facility. (*Id.*, § 900.2(c)(2); Admin. Code § 21-124(b)(1)(2)). As a matter of long-standing practice and policy, DHS has sheltered adult families in their own individual units and have conducted semi-annual physical inspections of adult family shelters to ensure they are safe and clean.

These legal mandates require that the City ensure that, at all times, it has sufficient capacity to meet demand even in the face of unforeseen events which cause, or are likely to cause, an increased need for shelter.

### Projected Increase in Family Shelter Census and Length of Shelter Stay

Two-thirds of the total cost of the Advantage program was funded with state and federal funds (which the State controls). Upon the State's withdrawal of this funding last year, the City could not shoulder 100% of the cost on its own and had no choice but to discontinue the program. The State's withdrawal of funding was completely unforeseen; indeed, just six months before this

funding cut, the Office of Temporary and Disability Assistance (OTDA), DHS' State oversight agency, approved a one-year extension of the program, which the City, in partnership with the State, had revised to include a greater emphasis on employment.

The City stopped offering the Advantage subsidy to families who entered shelter after the program had ended in March 2011. Moreover, the City is no longer under court order to make rental subsidy payments to families who were continuing to receive the subsidy at the time the program ended. For these reasons, we expect that the shelter census, coupled with families' length of stay in shelter, will fuel increased demand for short-term emergency housing to shelter homeless families for children and adult families.

#### ► Homeless Families with Children

In fact, even before dissolution of the court order requiring the City to continue Advantage payments, the average daily census of families with children in shelter in January 2012 increased 4 percent over the average daily census in January of the preceding year. Significantly, families' length of stay in shelter increased approximately 27 percent between April 1, 2011 and March 31, 2012. In light of these trends, DHS projects a 6 percent increase in the family with children shelter census through December 2012. This includes the spring and summer months, when the shelter system for homeless families with children experiences a precipitous seasonal increase in applications.

DHS projects that the family shelter census will likely rise as a result of (1) the anticipated return to shelter of a number of families who exited shelter with the Advantage subsidy; and (2) a projected increase in families' length of shelter stay occasioned by termination of Advantage in March 2011. Specifically, we project that 15 percent of the approximately 6,715 families with children who exited shelter on Advantage, or approximately 1,000 families, will return to shelter in the next nine months. This equates to 39 additional families applying for shelter each week, for a total of 868 per week. This, in turn, would result in a census increase of approximately 800 families or 8 percent, by the end of December. This projected increase stands in stark contrast to the over 100 families who exited shelter each week with the Advantage rental subsidy.

Based upon a projected 15% rate of return within the next six months (or through September 30, 2012), we are projecting a need for 10,286 units by December 31, 2012. This is 648 units<sup>1</sup> above our current capacity of 9,638. Projecting shelter demand is not an exact science; moreover, given that the City is under a legal mandate to shelter all eligible homeless families, we cannot risk a situation where our capacity projections come up short. We therefore need a 5% capacity cushion above our projected demand in case the demand for shelter exceeds what we think it will be. In this case, 5% is about 514 units. For these reasons, we are requesting an additional 904 units at this time.<sup>2</sup>

Our best-guess estimate for the fully annualized cost of approximately 904 units is approximately \$39 million (*see* chart annexed as Exhibit A) of which 29% or approximately \$11 million is the City's

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<sup>1</sup> Not included in the 648 units are 258 cluster units that have not yet been, but can be, obtained under the maximum unit cap in our cluster contracts.

<sup>2</sup> The 904 units of total projected capacity is calculated as follows: 648 units (difference between actual capacity and projected capacity) minus 258 units (currently available under cluster contracts) = 390 units (projected capacity need) plus 514 units (5% capacity cushion or 10,286 x .05) = 904 units.

share. (The remaining cost is covered by approximately 64% in Federal funds and approximately 7% in State funds).

► **Adult Families**

DHS is faced with a similar increase in the adult family shelter census and an increase in adult families' length of stay in the DHS shelter system. The average daily census of adult families in January 2012 increased 5 percent over the average daily census in January of the preceding year. Significantly, adult families' length of stay in shelter increased approximately 18 percent between April 1, 2011 and March 31, 2012. In light of these trends alone, DHS projects a 13 percent increase in the adult family shelter census through December 2012.

We further project that 15 percent of the approximately 790 adult families who had active Advantage leases at the time the program ended, or about 119 adult families, will return to shelter in the next six months. This equates to 19 additional adult families applying for shelter, for a total of 5 per week. This, in turn, would result in an additional census increase of approximately 112 families or 9 percent increase, by the end of December. This projected increase stands in contrast to the over 8 adult families who exited shelter each week with the Advantage rental subsidy.

Based upon a projected 15% rate of return over the next six months, we are projecting a need for 188 adult family units by December 31, 2012. As with families with children, we need a 5% capacity cushion above our projected demand in case the demand for adult family shelter exceeds what we think it will be. In this case, 5% is about 70 units. For these reasons, we are requesting a total of 258 adult family units at this time.

Our best guess estimate for the fully annualized cost of approximately 258 units is approximately \$11 million (*see* chart annexed as Exhibit B) of which 72% or approximately \$8 million is the City's share. (The remaining cost is covered by approximately 9% in Federal funds and approximately 19% in State funds).

**The State's Withdrawal of Two-Thirds of the Funding for the Advantage Program Was Completely Unforeseen**

In March 2007, DHS and the New York City Human Resources Administration ("HRA"), in consultation with OTDA, developed the Advantage rental supplement to provide a monthly rental subsidy to homeless families and single adults, permitting them to return to the community without an extended length of stay in the City's shelter system. The program, while discretionary, was based on existing successful policy that emphasized employment and self sufficiency for the most vulnerable New Yorkers. From the outset, the program design required and included city, state and federal cost-sharing, with the combined state and federal contribution covering approximately two thirds of the total program cost. From inception of the program through August 2010, the total cost was approximately \$440 million.

In May 2010, the State reaffirmed its commitment to Advantage by collaborating with the City to enhance the program. With the State's full support, DHS and HRA launched the revised Advantage program in September 2010, with strengthened work requirements and increased client contribution so that families and individuals would be better prepared for independent living after the subsidy ended. Again the continuation of the program was contingent on the state and federal contribution. For FY 2011 and FY 2012, the program budget was over \$430 million.

Since the Program began in 2007, more than 20,000 domestic violence and homeless shelter residents have exited shelter with Advantage and over 90% of those who started the Program remained out of shelter when their two-year subsidy ended. During the last six months of Advantage, an average of more than 100 households exited shelter each week to homes of their own.

On February 1, 2011, Governor Cuomo released his proposed Executive Budget and accompanying appropriations bills, which withdrew all federal and state funding for Advantage effective April 1, 2011. This withdrawal of funding came only six months after the State had approved an extension of the program and thus was completely unforeseeable. Notwithstanding the City's significant efforts to halt termination of the program, the final Executive Budget and accompanying appropriations bills passed by the State Legislature did not restore any of the funding for the program.

Equally unforeseeable was the fact that the appellate court stay, which required the City to continue Advantage payments and was issued on June 2, 2011, would continue for *10 months* — from April 1, 2011 through January 31, 2012. Although the City moved in October 2011 to dissolve the stay shortly after it had won at trial, and even though the City also had prevailed in defeating plaintiffs' motion for a preliminary injunction before trial, the Appellate Division, First Department did not grant the City's motion to vacate the stay until February 2, 2012.

As of February 2012, when the appellate court lifted the stay, there were approximately 8,000 families and individuals still in receipt of the subsidy, of whom 85 percent were families with children and 10 percent were adult families (the remaining 5% were single adults). This means that there is a heightened possibility that a certain percentage of Advantage families will return to shelter just as the number of families with children applying for shelter increases consistent with the seasonal surge in applications over the summer months.

### **The Projected Increase in Demand Cannot Be Met by Using Standard Procurement Methods**

While DHS does make substantial efforts even in periods of substantial uncertainty to forecast demand and appropriately expand shelter capacity, the Agency simply cannot procure shelter units instantaneously. The most difficult step in the process is identifying a building that is suitable for shelter and that meets the various physical requirements enumerated in New York State Social Services Regulations. (*See* 18 NYCRR § 900.1, *et. seq.*) Few buildings in New York City are immediately available without any renovation. Following the identification of an appropriate building, the non-profit vendor proposing the project must negotiate a lease with the landlord, submit a detailed proposal to DHS, secure various oversight approvals, and hire the necessary staff to operate the program. These steps typically play out over many months and, when DHS uses the standard procurement process — which takes about one year — this timeframe is not a problem. Thus, since January 2011, DHS has procured or has been in the process of procuring over 400 additional units for families with children and for the reason explained above, has not yet procured any additional capacity for adult families.

When we need capacity that will be available in a few months, however, the process needs to be abbreviated initially to allow the shelter to be opened, with a more traditional process to follow shortly. The emergency declaration process, by offering vendors the opportunity to secure a contract at a much faster rate than the typical procurement, is the only means DHS has to bring on

shelter capacity quickly in the family shelter system. DHS proposes to enter into emergency contracts for the additional family units for a term of approximately six months, after which we will proceed with long-term contracts procured through the standard method following the initial six-month emergency contract. The selected vendors will provide shelter to eligible homeless families as well as social services designed to assist them to achieve self-sufficiency and transition to housing in the community.

**Emergency Conditions**

The homeless families we serve are an extremely vulnerable population and failure to shelter them on an immediate basis -- whether as a result of insufficient capacity or otherwise -- poses a danger to their health and safety. Many of our families with children enter shelter as a result of domestic violence or eviction. The same is true for our adult family clients, many of whom have substance abuse and mental health issues that further contribute to their homelessness. All of them are in crisis for they literally have no other place to go. The DHS shelter system is our clients' housing of last resort until we can assist them to get back on their feet and obtain housing in the community. Thus, the City must ensure that, at all times, it has sufficient capacity to meet demand.

**Conclusion**

For all of the reasons discussed above, we request your approval of an emergency declaration allowing DHS to enter into six-month emergency contracts for up to 904 shelter units for homeless families with children and up to 258 shelter units for homeless adult families. Based on our projections, the total number of units we will procure under this declaration will meet our needs for the foreseeable future, and we will proceed with long-term contracts procured through the standard method following the initial six-month emergency term.

We are very grateful for your consideration of this request. By working together, we can ensure that we have sufficient capacity to meet the needs of homeless families.

Sincerely,



Seth Diamond

cc: Geneith Turnbull  
Steven Stein Cushman, Esq.

APPROVED: \_\_\_\_\_

John C. Liu  
Comptroller

DATE: \_\_\_\_\_

APPROVED: \_\_\_\_\_

Michael A. Cardozo  
Corporation Counsel

DATE: \_\_\_\_\_

4/26/2012

EMERGENCY DECLARATION REQUEST  
Department of Homeless Services - Families

Projected to need an additional 904 Family shelter units by 12/28/12

Projected census as of 12/28/12	10,286
5% vacancy cushion	514
Projected Capacity with vacancy cushion	10,800
Projected census with vacancy cushion	10,800
Current capacity as of 4/25/12	9,638
Projected Need	1,162
Available Cluster Contract Space	258
Revised Projected Need	904
Projected Cost at \$125 per diem to add 904 units	\$39,182,750
City Share - 29%	\$11,362,998

4/26/2012

EMERGENCY DECLARATION REQUEST

Department of Homeless Services - Adult Families

Projected to need an additional 250 Family shelter units by 12/28/12

Projected census as of 12/28/12	1,391
5% vacancy cushion	70
Projected Capacity with vacancy cushion	1,461
Projected census with vacancy cushion	1,461
Current capacity as of 4/27/12	1,203
Projected Need	258
Projected Cost at \$125 per diem to add 258 units	\$11,182,688
City Share - 72%	\$8,051,535



Geneith Turnbull  
DEPUTY COMPTROLLER

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OFFICE OF THE COMPTROLLER  
JOHN C. LIU

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June 15, 2012

Honorable Seth Diamond, Commissioner  
City of New York  
Department of Homeless Services  
33 Beaver Street, 17<sup>th</sup> Floor  
New York, NY 10004

Re: Emergency Request No. 2012043  
Shelter for Homeless Families with children and Adult Families  
Cost Estimate: \$19,414,533

Dear Commissioner Diamond:

This letter confirms the oral approval given by the Comptroller's Office on June 14, 2012 and serves as the written approval for the Department of Homeless Services (DHS) to enter into a number of emergency contracts to procure up to an additional 904 shelter units for homeless families with children and up to 258 additional units for homeless adult families.

According to DHS' emergency declaration dated May 4, 2012, the additional units will assure that DHS will have sufficient capacity to meet the likely increase in demand for family shelter caused by the State's sudden and unforeseen withdrawal of funding for the City's Advantage rental subsidy program and by increases in families' length of stay in the DHS shelter system due to program termination. Legal proceedings required the City to continue to pay the Advantage rental subsidy to families already in the program until February 2, 2012, when the court granted the City's motion to vacate the stay. On March 14, 2012, the appellate court upheld the trial court's decision that the City was within its legal rights to terminate the program and therefore was not required to continue making payments to current Advantage participants. For this reason, DHS estimates that a certain percentage of Advantage families will return to shelters just as the seasonal summer surge in demand hits.

Approval is based on DHS' representation that failure to provide shelter to homeless families poses a danger to their health and safety. DHS has agreed to limit these emergency contracts to terms of not more than six months. It is also understood that our approval is limited to contracts awarded within six months of the date of this letter and that the emergency procurement is limited to the award of contracts necessary to satisfy the need to provide for additional capacity necessitated by termination of the Advantage program. At that time, if conditions warrant, an extension of this emergency approval may be sought.

Your attention is directed to the requirements contained in Procurement Policy Board (PPB) Rules Section 3-06 and Section 315 of the New York City Charter. Specifically, the agency should

Honorable Seth Diamond  
Commissioner  
June 15, 2012  
Emergency Request No. 2012043  
Shelter for Homeless Families with children and Adult Families  
Cost Estimate: \$19,414,533  
Page 2

ensure that such competition as is possible and practicable under the circumstances be obtained and that written documentation detailing the basis for the emergency and the selection of the supplier be submitted at the earliest practicable time. In addition, Section 2-12 of the PPB Rules requires a copy of the contract and related materials to be submitted to the Comptroller's Office within thirty (30) business days of award.

On behalf of Comptroller John C. Liu, I am pleased to be of assistance in this matter.

Yours truly,

1



✓ Geneith Turnbull

cc: Charles Odiase  
Wilfred Anigekwu



Department of  
Homeless Services

Seth Diamond  
Commissioner

33 Beaver Street  
17th Floor  
New York, NY 10004

212.361.8000 tel  
212.361.8001 tty  
212.361.7977 fax

July 18, 2012

**Via E-Mail and Regular Mail**

Hon. John C. Liu  
Comptroller  
City of New York  
Attn: Geneith Turnbull  
Deputy Comptroller  
1 Center Street, Room 1005  
New York, NY 10007

Michael A. Carlozo  
Corporation Counsel  
New York City Law Department  
Attn: Steven Stein Cushman  
Division Chief, Contracts & Real Estate  
100 Church Street, Room 3-176  
New York, NY 10007

**Re: Amended Emergency Declaration for Additional  
Shelter Beds for Homeless Single Adults**

Dear Ms. Turnbull and Mr. Cushman:

Pursuant to Section 3.06 of the New York City Procurement Policy Board Rules (the "PPB Rules"), the Department of Homeless Services ("DHS" or the "Agency") is requesting your Offices' approval to procure through a Declaration of Emergency, approximately 800 shelter beds. The Declaration will assure we have sufficient capacity at a time of increasing demand for shelter in the single adult system.

In January 2011, after procuring additional beds through an earlier Emergency Declaration approved by your respective Offices, the single adult shelter system returned to seasonal patterns — the census declined in the spring and summer months and climbed back up in the fall and winter. For example, between March and May of 2011, the average daily census declined from 8,844 to 8,438 — a decrease of almost 5 percent. However, in mid May, the census climbed to 8,965, its highest point ever. Overall, the average daily census for May 2012 was 5 percent higher than it was in May 2011 and almost 17 percent higher than in May 2010. If the census remains this high throughout the summer, DHS will enter the fall and winter months — when the census typically rises — at a much higher

starting point. Therefore, for the reasons explained below, DIHS requires an additional 800 beds in order to meet the projected increase in shelter demand. In the remainder of this letter, we also discuss our efforts to date to expand the capacity of the adult shelter system, and why the need for additional shelter capacity cannot be met through normal procurement methods.

### Projected Increase in Adult Shelter Census

At the outset, it is important to put the emergency conditions that gave rise to the instant request in their proper context. Pursuant to a 1981 consent decree entered in *Callahan v. City*, Index No. 42582/79 (Sup. Ct. N.Y. Co.), (the “*Callahan Decree*”) (copy annexed) and state law – which not only codified key provisions of the Decree, but also mandates far more stringent shelter standards than those enunciated in the Decree (e.g., 18 NYCRR §§ 491, et seq.) – the City of New York is mandated to provide temporary emergency housing to all homeless men and women who seek it. This means that DIHS must shelter homeless men and women the day they apply at one of DIHS’ intake centers for homeless single adults and must do so 24 hours a day, seven days a week, 365 days a year. These legal mandates further require that the City ensure that, at all times, it has sufficient capacity to meet demand, even in the face of unforeseen events which cause, or may cause, an increased need for shelter.

The significant increase in the adult shelter census this past month as compared to the same month in 2011 and 2012 could not have been foreseen. There was simply no way to predict that the census in spring 2012 would not reflect the seasonal pattern of prior years and instead of trending down would not only go up but increase significantly. As noted above, the average daily census for May 2012 was 5 percent higher than in May 2011 and 17 percent higher than in May 2010. Assuming this trend continues, the increased demand for shelter will exceed our current supply. In that event, we are projecting a need for at least 300 beds at the peak winter demand. Projecting shelter demand is not an exact science; moreover, given that the City is under a legal mandate to provide shelter to all homeless men and women who request it, we cannot risk a situation where our capacity projections come up short. We therefore need a 5% capacity cushion above our projected demand in the case the demand for shelter exceeds what we think it will be. To achieve the 5% cushion, we need 10,600 beds in the shelter portfolio. At present we operate 9,600 shelter beds and expect to have 9,860 beds online at by the close of FY 2013. To reach the 10,600 target, we will need to procure approximately 800 beds. Our best guess estimate for the fully annualized cost of 800 beds is approximately \$29,784,000 annually (i.e., \$102 per diem x 800 beds x 365 days). Based upon six month emergency contracts for these 800 beds, it is estimated that the cost for a six month period would be half of approximately \$30 million or \$15 million (at 100% CPE).

### The Projected Increase in Demand Cannot Be Met Using Standard Procurement Methods

Opening new shelters for homeless single adults is a complicated and lengthy process. Pursuant to the *Callahan Decree*, as well as state and local law, shelters for single adults, the vast majority of which serve clients in a congregate setting, must adhere to maximum capacity requirements, strict space requirements governing sleeping, dining and recreational areas, client staff ratios and client-shower/toilet ratios. See e.g., 18 NYCRR §§ 491.9, 491.10, 491.12. State regulations further require the single adult shelters to provide an array of services including services to assist clients in looking for and obtaining permanent housing. See *Id.*, § 491.8. Under state law, the NYS Office of Temporary and Disability Assistance (OTDA) must approve each shelter’s application for an operating certificate before allowing the provider to operate the shelter. *Id.*, § 485.1, 485.5, 485.6.

While DHS does make substantial efforts even in periods of substantial uncertainty to forecast demand and appropriately put on shelter capacity, the Agency cannot simply procure shelter capacity instantaneously. The most difficult step in the process is identifying a building that is suitable for shelter. Few buildings in New York City lend themselves to such use or are immediately available without any renovation. Following the identification of an appropriate building, the non-profit vendor proposing the project must negotiate a lease with the landlord, submit a detailed proposal to DHS under the Open-Ended Request for Proposal process, secure various oversight approvals pursuant to the City's procurement process under the PPB Rules, and hire the necessary staff to operate the program.

These steps typically play out over months and, when DHS uses the standard procurement process – which takes about one year, assuming there are no delays beyond the Agency's control – this timeframe is not a problem. When we need capacity that will be available in a few months, however, the process needs to be abbreviated initially to allow the shelter to be opened, with a more traditional process to follow shortly. The emergency declaration process, by offering vendors the opportunity to secure a contract at a much faster rate than the typical procurement, is the only means DHS has to bring on shelter capacity quickly in the single adult system. DHS proposes to enter into emergency contracts with long-term contracts procured through the standard method following the initial six-month emergency contract. The selected vendors will provide shelter to homeless single adults as well as social services designed to assist them to achieve self-sufficiency and transition to housing in the community.

We fully recognize that the emergency declaration process is a provision for exceptional circumstances and we believe we are experiencing exceptional circumstances at present. That said, it is important to note that since our last request for an emergency declaration in January 2011, all shelters that were opened under emergency contracts were subsequently procured through the standard procurement method and registered by the Comptroller. In addition, while your Offices approved the Agency's request for 1,200 beds of emergency capacity, we procured only 687 beds, or 57 percent, of that total. It also bears emphasis that in FY 2012, DHS procured a total of 789 beds of capacity through the standard procurement process. The Agency currently has 308 beds in its pipeline that are being procured under the standard procedures that will open a year or more from now and no exceptions to the procurement rules are required. But to meet the shelter demand for the winter of 2012-13, we will need to expedite the procurement process. Please be assured that we will proceed with long-term contracts procured through the standard method following the initial six-month emergency contract.

### Emergency Conditions

The homeless men and women we serve are an extremely vulnerable population and failure to shelter them on an immediate basis – whether as a result of insufficient capacity or otherwise – poses a danger to their health and safety. Many of our single adult clients have substance abuse and mental health issues that caused or contributed to their homelessness. All of them are in crisis for they literally have nowhere else to go. The DHS shelter system is our clients' housing of last resort until we can assist them in obtaining housing in the community. Thus, the City must ensure that at all times it has sufficient capacity to meet demand.

### Conclusion

For all of the reasons discussed above, we request your approval of an emergency declaration allowing DHS to enter into six-month emergency contracts for up to 800 shelter beds for homeless

single adults. Based on our projections, the total number of units we will procure under this declaration will meet our needs for the foreseeable future, and we will proceed with long-term contracts procured through the standard procurement method following the initial six month emergency term.

We are very grateful for your consideration of this request. By working together, we can ensure that we have sufficient capacity to meet the needs of homeless single adults this winter.

Sincerely,



Seth Diamond

cc: Douglas C. James, Deputy Commissioner, Adult Services

APPROVED: \_\_\_\_\_

John C. Liu  
Comptroller

DATE: \_\_\_\_\_

APPROVED: \_\_\_\_\_

Michael A. Cardozo  
Corporation Counsel

DATE: \_\_\_\_\_



Geneith Turnbull  
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July 26, 2012

Honorable Seth Diamond, Commissioner  
City of New York  
Department of Homeless Services  
33 Beaver Street, 17<sup>th</sup> Floor  
New York, NY 10004

Re: Emergency Request No. 2012068  
Shelter for Homeless Single Adults  
Cost Estimate: \$15,000,000

Dear Commissioner Diamond:

This letter confirms the oral approval given by the Comptroller's Office on July 23, 2012 and serves as the written approval for the Department of Homeless Services (DHS) to enter into a number of emergency contracts in order to expediently procure an additional 800 shelter units for homeless single adults.

According to DHS' amended emergency declaration dated July 18, 2012, the additional units will assure that DHS will have sufficient capacity at a time of increasing demand for shelter in the single adult system. Further, DHS' declaration states that normal seasonal patterns show that census numbers decline in spring and summer and increase in the fall and winter. However, in mid-May of this year, instead of declining, the census climbed to its highest point ever. The average daily census for May 2012 was 5 percent higher than it was in May 2011 and almost 17 percent higher than in May 2010. DHS also represents that this significant increase in the adult shelter census could not have been foreseen and if the census remains this high throughout the summer, DHS will enter the fall and winter months, when the census typically rises, at a much higher starting point. Therefore, DHS requires an additional 800 beds in order to meet the projected increase in shelter demand. Approval is based on DHS' representations noted above as well as DHS representation that failure to provide shelter to homeless single adults poses a danger to their health and safety.

DHS has agreed to limit these emergency contracts to terms of not more than six months. It is also understood that our approval is limited to contracts awarded within six months of the date of this letter. At that time, if conditions warrant, an extension of this emergency approval may be sought.

Your attention is directed to the requirements contained in Procurement Policy Board (PPB) Rules Section 3-06 and Section 315 of the New York City Charter. Specifically, the agency should ensure that such competition as is possible and practicable under the circumstances be obtained and that written documentation detailing the basis for the emergency and the selection

Honorable Seth Diamond  
Commissioner  
July 26, 2012  
Emergency Request No. 2012068  
Shelter for Homeless Single Adults  
Cost Estimate: \$15,000,000  
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of the supplier be submitted at the earliest practicable time. In addition, Section 2-12 of the PPB Rules requires a copy of the contract and related materials to be submitted to the Comptroller's Office within thirty (30) business days of award.

On behalf of Comptroller John C. Liu, I am pleased to be of assistance in this matter.

Yours truly,



Geneith Turnbull

cc: Charles Odiase  
Wilfred Anigekwu