



City Council Contracts Committee Hearing
“Oversight: The Department of Homeless Services’ Use of Emergency Procurement”
Thursday, October 31, 2013

INTRODUCTION

Good afternoon Chair Mealy and members of the City Council Committee on Contracts. I am Michele Ovesey, Commissioner of the Department of Homeless Services (DHS). Joining me at the table is Steve Pock, DHS’ Deputy Commissioner for Fiscal and Procurement Operations. Thank you for the opportunity to testify about DHS’ use of the emergency procurement process to contract for essential emergency shelter for homeless New Yorkers.

As I will explain, DHS engages in capacity management planning on an ongoing basis. In an effort to bring new capacity on-line, we rely on a variety of procurement mechanisms, including the open-ended Request for Proposal (RFP) process and the RFP process for City-owned facilities. Under certain circumstances, however, we make an emergency procurement authorized under the City’s Procurement Policy Board (PPB) Rules (PPB Rule 3-06). This occurs when, for example, there is an unforeseen increase in shelter demand which creates an immediate need for shelter that cannot be met through normal procurement methods, but that is required to avoid serious danger to the lives or safety of homeless New Yorkers. In these instances, DHS seeks and obtains the approval of the New York City Comptroller and the City’s Law Department for an Emergency Declaration permitting the agency to procure six-month emergency contracts with nonprofit providers to operate shelter facilities. The emergency declaration additionally provides DHS with the authority to open a shelter prior to the Comptroller’s registration of an emergency or long-term contract. Importantly, if we determine to keep the shelter open past the six-month term of an emergency contract, we follow all of the required steps in the City’s normal procurement process to procure a long-term contract with the provider. As discussed later in my testimony, these steps include review by multiple City agencies— such as the Office of Management and Budget (OMB), the Mayor’s Office of Contract Services (MOCS), and the Department of Investigation (DOI)— as well as the holding of a public contract hearing, and submission of the contract to the Comptroller for registration.

THE CITY’S LEGAL MANDATE

As you may know, in the City of New York, homeless individuals and families who lack available housing have a right to shelter. The City is mandated by law and court order to provide short-term, emergency shelter to every eligible homeless family and individual on an immediate basis. In meeting this mandate, we also must comply with a complex set of Federal, State and local laws and regulations governing the physical conditions in shelter and the services to be provided to shelter clients. Under the terms of a 1981 Consent Decree in *Callahan v. Carey*, the City is mandated to provide short-term, emergency housing to all eligible homeless men and women who seek it. Pursuant to a 2008 court-ordered settlement in *Boston v. City of New York*, which resolved over 25 years of litigation, the City must also provide shelter to all eligible homeless families with children.

DHS must balance its legal mandate with its fiscal responsibility to bring on additional capacity only when circumstances are likely to require it. We balance these two fundamental concerns through daily tracking and analysis of the shelter census. To that end, the agency successfully shelters thousands of homeless families and individuals 24 hours a day, seven days a week, 365 days a year. Providing shelter for every man, woman and child who needs it — and on an immediate basis — is a priority for this Administration, and we at DHS are very proud of our success in meeting this mandate.

THE CHALLENGES DHS FACES

Among the many challenges we face in meeting our legal mandate is ensuring that we have enough shelter capacity to meet demand while also taking into account fluctuations in our shelter census caused by economic and other factors outside the agency's control. We engage in capacity management planning on an ongoing basis — every day we monitor exits from and entrants into the shelter system, increases or decreases in the shelter census and the shelter vacancy rate.

Generally, with exceptions I will discuss in a moment, DHS accurately projects its capacity needs. For example, historical trends reflected that single adults were more likely to seek shelter in the cold winter months while families with children more frequently applied for shelter in the late spring and summer months when school is closed. Although DHS makes its best efforts to forecast its capacity needs as accurately as possible, projecting shelter demand is not an exact science. None of us could have predicted the severity of the economic recession that first gripped the nation, including New York City, in Fiscal Year 2009, which created an emergency need for shelter capacity in January 2010. Nor could the City have predicted that the State, only six months after approving a retooling of the Advantage rental assistance program, would cut two-thirds of the program's funding in 2011, thereby necessitating termination of the program. This fueled the emergency need for shelter capacity in 2012. These unforeseen events caused unforeseen consequences: a significant rise in the City's shelter census and a significant increase in clients' length of stay in shelter. As a result, DHS sought and obtained the Comptroller's approval of emergency declarations to expand the City's shelter capacity to meet this unprecedented demand and ensure the right to shelter for all homeless New Yorkers.

MEETING UNPRECEDENTED DEMAND FOR SHELTER

DHS first began to see a significant increase in demand for single adult shelter in the second half of 2009. This surge in demand was the result of the deep economic recession. After first identifying this trend, we began to adjust our capacity projections to take into account the increase in demand as well as explore options for expanding capacity in existing facilities.

January 2010 Request

On January 19, 2010, in accordance with the City's Procurement Policy Board (PPB) Rules, DHS submitted a written request to the Comptroller and the Law Department for approval to procure, through an Emergency Declaration, contracts to operate two new shelters for homeless single adults. The Comptroller and the Law Department approved this request. Subsequently, the Comptroller instructed DHS that, going forward, it should seek approval to utilize the emergency process for procuring a set number of beds required to meet the increase in demand.

Accordingly, DHS submitted a request for up to 600 beds, which the Comptroller then approved on March 31, 2010.

In the ensuing months, DHS opened six shelters with a combined total of 585 beds utilizing the emergency procurement process under the PPB Rules. In all instances, we provided notification to the Coalition for the Homeless (as required under the Callahan Consent Decree), as well as the affected community boards and elected officials, that we were going to open a shelter or change populations at an existing shelter in their district. In accordance with the PPB Rules, we registered each emergency contract with the Comptroller and subsequently published notice of the contract award in the City Record.

November 2010 Request

Seven-and-a-half months later, in November 2010, DHS requested the Law Department's and Comptroller's approval to procure an additional 1,200 shelter beds for homeless single adults through an Emergency Declaration. As we explained in our request, since June 2010, DHS saw an increase in new entrants to the adult shelter system that had no historic precedent. In fact, September 2010 was the third month in a row that exceeded 1,100 new entrants. Prior to this period, we had not seen more than 1,100 new clients in any month for the past five years.

Given the unprecedented rate at which new applicants were entering shelter, we projected the need for an additional 1,200 beds as we headed into the winter months. We reiterated why this substantial number of beds could not be procured quickly under the normal procurement process and why failure to shelter homeless single adults on an immediate basis would pose a serious risk to their health and safety. On January 31, 2011, the Comptroller approved the agency's request for this Emergency Declaration.

In the ensuing months, utilizing the emergency procurement process, DHS opened five shelters with a combined total of 702 beds. In all instances, we provided notification to the Coalition for the Homeless as well as to the affected community boards and elected officials that we were going to open or reconfigure an existing shelter in their districts. In accordance with the PPB Rules, we registered each emergency contract with the Comptroller and subsequently published notice of the contract award in the City Record. Thereafter, in accordance with normal procurement methods, DHS procured long-term contracts for operation of these sites, each of which was registered by the Comptroller.

May 2012 Request

On May 4, 2012 DHS submitted a written request to the Comptroller and the Law Department for approval to procure, through an Emergency Declaration, approximately 904 shelter units for homeless families with children and 258 additional units for homeless adult families.

We sought the Declaration to ensure that we had sufficient capacity to meet the anticipated increase in demand for shelter caused by the State's sudden and unforeseen withdrawal of funding for the City's Advantage rental subsidy program in March 2011. Equally unforeseeable was the impact of the program's demise. This is because a lawsuit challenging termination of the subsidy led to a court order directing the City to continue making subsidy payments pending the outcome of the litigation. Moreover, longer lengths of stay and increased returns to shelter did

not become apparent trends until months after the court order was vacated. At that point, we sought an Emergency Declaration, which the Comptroller approved on June 15, 2012.

Through this Emergency Declaration, DHS opened four shelters for families with children, totaling 307 units and one 200-unit adult family shelter. We also procured six-month emergency contracts with providers to operate them, and all of these emergency contracts were registered by the Comptroller. The agency subsequently procured long-term contracts for three of the family with children sites, each of which the Comptroller registered.

June 2012 Request

On June 29, 2012, DHS requested the Law Department's and Comptroller's approval to procure through an Emergency Declaration an additional 800 beds for homeless single adults. We explained that while the single adult shelter census had always declined in the spring and summer months and increased in the fall and winter, in mid-May 2011, instead of declining, the census climbed to its highest point ever. This reversal of historic trends was unprecedented.

Upon the Comptroller's approval of our request, DHS opened four shelters with a combined total of 408 beds and entered into six-month emergency contracts with nonprofit providers to operate them. Here again, DHS provided notification to the Coalition for the Homeless as well as to the affected community boards and elected officials prior to each shelter's opening and the Comptroller registered each of these emergency contracts. The agency also procured long-term contracts to operate these facilities in accordance with the City's normal procurement process, all of which the Comptroller registered.

Serious Danger to Life and Safety

In all of our requests for an Emergency Declaration, we explained the emergency conditions that gave rise to the need for additional shelter capacity, why this need could not be met through standard procurement methods, and that failure to shelter these extremely vulnerable populations posed a serious danger to their health and safety.

Specifically, we pointed out that the high incidence of substance use, alcoholism, physical disease and mental illness among homeless men and women rendered them extremely vulnerable. As a result, failure to shelter clients on an immediate basis poses a serious danger to their health and safety.

We explained that homeless families are also an extremely vulnerable population. 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 which contribute to their homelessness.

The Need for a Streamlined Procurement Method

Under the normal procurement process, upon selection of a provider's proposal under the open-ended RFP, we commence negotiations of a contract. If these negotiations are successful, the proposed contract undergoes review by multiple City agencies. OMB reviews and approves the expenditure of funds under each the contract. Our ACCO's Office, in consultation with MOCS, makes a determination that the proposed provider is a "responsible bidder." DHS accomplishes

this by reviewing, among other things, VENDEX questionnaires in which each vendor provides information regarding its ownership, financial capability, business structure, affiliations and involvement in government investigations. Prior to making its responsibility determinations, DHS requested the City's DOI to review the names on the VENDEX questionnaires and other information to determine whether the provider or its affiliated individuals are or have been the subject of a DOI investigation. The Law Department approves the contract as to form. Advance notice of the public contract hearing is published in the City Record and the proposed contract is made available for public review. In addition, as a matter of courtesy and policy, DHS notifies, in writing, several parties of the public hearing, including the Comptroller's Office, the Council, and the Borough Presidents of all five boroughs. Prior to submission of each contract to the Comptroller for registration, DHS provides copies of its fair share analysis to the community board as well as to the district's elected officials at the local, State and Federal level. The fair share analysis documents the agency's review of the proposed shelter site in accordance with specific Fair Share Criteria, including the facility's compatibility with existing nearby facilities and programs, its potential to affect neighborhood character, and the suitability of the site to provide intended services.

These steps typically play out over months and, 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 must be abbreviated to allow the shelter to be opened on an emergency basis, with a more traditional process to follow shortly thereafter.

Prior to opening each of the shelters under the emergency procurement process, DHS notified the affected community boards and elected officials (and in the case of single adult sites, the Coalition for the Homeless). We also received from the provider a written description of the services to be provided and a proposed budget. Prior to referring clients to any of these facilities, we determined that the shelter space was free of hazardous conditions and compliant with state regulations. In the case of single adult shelter, our state oversight agency, the Office of Temporary and Disability Assistance (OTDA) physically inspected and approved our use of the site as shelter. In addition, the emergency contracts are approved by the Law Department as to form and we include in the emergency contract package submitted to the Comptroller, a Responsibility Determination based on facts known at the time of submission. In the event the proposed provider needs to submit a new VENDEX, it is submitted within 30 days of registration of the emergency contract.

CONCLUSION

As you can see, the challenges DHS faces in ensuring that all homeless individuals and families receive shelter on an immediate basis are enormous. Procurement is not without risk, and DHS often must confront events beyond its control, such as construction delays or a provider's loss of site control. In the event of unforeseen circumstances, the emergency procurement method provides DHS with the ability to expand capacity more quickly than under normal procurement process and thus meet our right-to-shelter mandate. The Emergency Declaration, along with its safeguards, is an essential and invaluable tool in ensuring that all homeless New Yorkers receive immediate shelter in times of great demand.

We are now available to answer any questions you may have.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

26

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/31/13

(PLEASE PRINT)

Name: USA Black

Address: 33 Beaver St

I represent: DHS

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

25

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/31/13

(PLEASE PRINT)

Name: Michele Ousey

Address: 33 Beaver St

I represent: DHS

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

27

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1-13-12

(PLEASE PRINT)

Name: COM Cary

Address: 23 Beaver St

I represent: DHS

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

28

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: STEVE POCK

Address: DHS - 33 BEAVER ST, NYC 10004

I represent: DHS

Address: DHS - 33 BEAVER ST, NYC 10004

Please complete this card and return to the Sergeant-at-Arms