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**DOI EXAMINATION FINDS COMPLIANCE AND GOVERNANCE RISKS
AT 51 CITY-FUNDED NONPROFITS THAT OPERATE NYC HOMELESS SHELTERS AND
FLAWED CITY OVERSIGHT OF DHS-FUNDED PROVIDERS
—DOI issued 32 reforms to address system-wide vulnerabilities—**

Jocelyn E. Strauber, Commissioner of the New York City Department of Investigation (“DOI”), issued a Report today memorializing the key findings from DOI’s extensive examination of compliance risks at 51 nonprofit human service providers that operate many of the homeless shelters in New York City and of the City’s oversight of the shelter system. The Report includes DOI’s 32 recommendations for reform, intended to protect the billions of dollars that the City spends annually on shelter services from corruption, waste, fraud, and abuse. A copy of the Report follows this release and can be found here: <https://www.nyc.gov/site/doi/newsroom/public-reports.page>

DOI Commissioner Jocelyn E. Strauber said, “When it comes to protecting the vast taxpayer resources that City-funded nonprofits receive, prevention is key. City-funded nonprofit service providers pose unique compliance and governance risks, and comprehensive City oversight is the best way to stop corruption, fraud, and waste before it starts. This deep dive into the City-funded homeless service provider system builds on DOI’s extensive experience investigating nonprofit fraud, and our 2021 Report concerning City-funded nonprofits. Today’s Report provides ample evidence of the risks specific to nonprofits and shortcomings in City oversight and makes 32 recommendations to strengthen controls around this essential network. I thank the DOI team that has worked tirelessly on this investigation and the many City entities that provided assistance, including the staff from the City Department of Social Services who worked closely with DOI to support this examination.”

The City, through the City Department of Social Services (“DSS”) and the City Department of Homeless Services (“DHS”), operates the largest homeless shelter system of any municipality in the United States. DHS-funded shelters currently support an average of over 86,000 people per night at a cost of approximately \$4 billion annually in FY 2024, up from \$2.7 billion annually in FY 2022, due in large part to the influx of asylum seekers over the past two years. (DOI did not review City-funded contracts involving services to the asylum seekers that were procured under emergency procedures for this Report. DOI has oversight of these expenditures through an integrity monitor that is supervised by and reports to DOI.)

The examination for this Report began in 2021, well before the influx of asylum seekers, although some of the providers DOI examined are providing asylum seeker services. DOI’s focus on this area was prompted in part by the investigation of Victor Rivera, the former CEO of nonprofit City service provider Bronx Parent Housing Network, who ultimately pled guilty to a federal bribery-and-kickback scheme involving that nonprofit. DOI investigators drew on their knowledge of financial and administrative vulnerabilities in City-funded nonprofit providers generally to examine individual shelter providers’ governance and compliance practices, and potential conflicts of interest and other potential misconduct during this examination of 51 nonprofit organizations operating shelters for DHS. DOI reviewed the

more

operations of these organizations and their responses to a detailed questionnaire; analyzed an array of materials including audit reports, financial ledgers, invoices, and disclosures to the City; and conducted dozens of interviews, including of certain providers' senior executives. DOI also evaluated the oversight of these providers by the City, including by DHS and DSS. The provider practices and City oversight reflected in the Report dates from 2018 through the present, although the majority of DOI's information-gathering was completed from 2022 through 2024.

DOI received approximately 70 responses to the questionnaire distributed to City-funded nonprofit organizations. To date, DOI has completed findings on 51 providers and issued related referral letters to DSS, each one summarizing DOI's findings as to individual shelter providers and, in total, raising hundreds of governance and compliance concerns at these providers. The findings in these referrals already have caused some providers to make improvements to their policies and procedures. The Report makes 32 recommendations to the relevant City agencies to address system-wide vulnerabilities, strengthen controls with respect to providers to protect the substantial public funds providers receive, and enhance public trust.

Aspects of this examination are still ongoing, and this Report is a summary of DOI's major findings to date.

This Report builds on the findings from the investigations DOI has conducted in recent years that have focused on the City's nonprofit vendor spending and which have resulted in criminal charges, administrative findings, integrity monitorships, and recommendations to improve City oversight of these contracts and providers. Since 2018, DOI investigations have resulted in at least 25 arrests on charges involving fraud and corruption at City-funded nonprofits, including prosecutions related to homeless service providers. Since 2018, DOI also has issued more than a dozen administrative referrals to City agencies – in addition to the administrative referrals issued as part of this examination -- reporting findings of mismanagement, noncompliance, or other non-criminal misconduct at City-funded nonprofits.

In 2021, DOI issued [*Report on Corruption Vulnerabilities in the City's Oversight and Administration of Not-for-Profit Human Services*](#), which identified gaps in the City's general oversight of its contracts with nonprofit human service providers. Many of DOI's prior findings and recommendations remain relevant to the findings of this Report, which focuses solely on the unique issues associated with the oversight of DHS-funded shelter providers.

This Report identifies a variety of compliance and governance risks at these providers, as well as in the City's overall management of the shelter system. These risks vary in their severity and include:

- **Conflicts of interest affecting City money.** DOI identified cases where insiders at the shelter provider had personal business interests involving the shelter through which they received payments outside their regular compensation. In some cases, shelter executives simultaneously held employment at a private entity, such as a security company, that was hired to provide services at City-funded shelters.
- **Poor Citywide controls over how City money is used for executive compensation.** DOI identified multiple shelter executives who received more than \$500,000 per year, and in some cases, more than \$700,000 per year, from providers and related organizations. Executive compensation in these cases is funded either largely or in part through City funds. The City lacks sufficient rules concerning how much City money can be allocated to nonprofit executives' salaries.
- **Nepotism, in violation of City contracts.** DOI found shelter providers that have employed immediate family members of senior executives and board members, in apparent violation of their City contracts. For instance, one provider that is largely funded by the City employed its CEO's children since at least 2007. This provider subsequently entered into a DOI-managed monitorship agreement.

- **Shelter providers failing to follow competitive bidding rules when procuring goods and services with public money.** DOI found numerous cases where shelter providers did not comply with the City's competitive bidding requirements or where it was unclear whether shelter providers conducted true competitive bidding processes. For example, this review identified multiple instances where shelter providers awarded multimillion-dollar building maintenance service contracts to companies affiliated with the buildings' landlords.

DOI issued 32 recommendations to address the system-wide vulnerabilities noted in this Report. Included among the key recommendations are:

- DSS should appoint a Chief Vendor Compliance Officer to provide overall leadership for DSS and DHS's compliance strategy with respect to nonprofit human service contracts, including contracts with shelter providers.
- Shelter providers should be required to regularly disclose additional information relevant to identifying compliance risks, including potential conflicts of interest for key persons.
- DSS and DHS should take steps to improve their oversight of shelter operators' expenditures, including by immediately stopping payments for costs that are not accompanied by a proper description and ensuring that relevant agency staff receive regular financial compliance training.
- The City should update its electronic procurement and invoicing systems to better enable third-party oversight and centralize key documentation.

This Report also reiterates many of the 23 recommendations that DOI issued in its November 2021 [Report on Corruption Vulnerabilities in the City's Oversight and Administration of Not-for-Profit Human Services](#). While the City has implemented some reforms since the 2021 Report and is also undertaking some work that closely tracks DOI's recommendations, many of the recommendations from 2021 have not been implemented at any substantial level. The 2021 Report recommended, among other things, that the City:

- ◇ Reform its conflict-of-interest disclosure system for the City's human service providers.
- ◇ Develop more specific guidance to agencies on executive compensation and consider setting a cap or other parameters on City-funded executive compensation.
- ◇ Conduct more robust reviews of expenses that human service providers invoice to the City, including by reviewing larger samples of supporting documentation.

New York City is currently making an unprecedented financial commitment to address homelessness. For that reason, it is more important than ever that it implement stronger risk management and compliance controls around this spending. Accepting and implementing the reforms set forth in this Report, as well as in DOI's November 2021 Report, would be critical steps in this direction.

DOI Commissioner Strauber thanks DSS Commissioner Molly Wasow Park and her staff, for their partnership on this examination and the Mayor's Office of Contracts and Mayor's Office of Risk Management and Compliance for their assistance.

DOI also received support from two private firms with experience in investigations, audits, and compliance monitoring, who provided auditing and investigative resources with respect to certain provider reviews.

At DOI, this examination was conducted by Deputy Inspector General/Special Counsel Daniel Kacinski and Confidential Investigator Rushelle Sharpe, with the assistance of Senior Investigative Auditor Olga Avram and Senior Investigative Attorney Alex Cane in DOI's Office of the Inspector General for City-Funded Nonprofits. Data Analysts Anthony McDowald and Zachary Sayle and Director of Data Analytics Shyam Prasad in DOI's Data Analytics Unit provided technical assistance. The examination was supervised

by Senior Inspector General Andrew Sein, Deputy Commissioner of Strategic Initiatives Christopher Ryan, and Deputy Commissioner/ Chief of Investigations Dominick Zarrella.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

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New York City
Department of Investigation



DOI's Examination of Compliance Risks at City-Funded Homeless Shelter Providers and the City's Oversight of Shelter Providers

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EXECUTIVE SUMMARY

The City of New York (the “City”) spends billions of dollars each year providing shelter to individuals who are experiencing homelessness. Demand for shelter is at all-time highs due to the influx of asylum seekers arriving in the City, and the homeless shelter system reached a milestone in June 2023 when it recorded a total population of 100,000 for the first time. By the end of 2023, the total shelter population increased to over 140,000. With that increased demand, the costs of operating the system have risen accordingly: spending for the New York City Department of Homeless Services (“DHS”), which oversees shelters for a majority of the shelter population, increased from approximately \$2.7 billion in fiscal year 2022 to approximately \$4 billion in fiscal year 2024. As of January 2024, the Mayor’s Office of Management and Budget projected that it will cost the City, including DHS and other agencies involved in providing shelters, approximately \$10.6 billion over three years to house and provide other services for migrants, in addition to other homeless shelter-related costs.

The majority of City shelters are operated by a large network of nonprofit organizations working under contract with, and ultimately overseen by, DHS. These nonprofit organizations partner with DHS in its mission to deliver “safe temporary shelter” to New Yorkers in need.ⁱ

Since 2021, the New York City Department of Investigation (“DOI”) has been engaged in an extensive, ongoing review of this complex system, with a focus on identifying compliance risks—including waste, fraud, abuse, or other misconduct—at 51 nonprofit organizations that operate DHS-funded homeless shelters. As part of this undertaking, DOI reviewed the operations of these organizations—many of which have annual revenue in the tens, if not hundreds, of millions of dollars. Among other things, DOI reviewed responses to a detailed questionnaire that was distributed to shelter providers;ⁱⁱ analyzed a wide variety of documents that included public filings, audit reports, financial ledgers, board minutes, invoices, internal policies, and disclosures to the City; performed extensive research; and conducted dozens of

ⁱ 87,040 of the approximately 144,154 individuals who were, as of July 2024, housed in the City’s shelter systems resided in a facility overseen by DHS. See *Local Law 79 of 2022: Temporary Housing Assistance Usage*, Mayor’s Office of Operations (last updated July 2024), available at http://www.nyc.gov/assets/operations/downloads/pdf/temporary_housing_report.pdf. A smaller, but significant, number reside in other shelters, such as emergency “Humanitarian Emergency Response and Relief Centers” (“HERRCs”) that are overseen by NYC Health + Hospitals and/or NYC Emergency Management and operated by for-profit companies. The HERRC system is designed to only house asylum seekers who need shelter. In the long term, the City is in the process of shifting management of HERRCs to the nonprofit sector.

ⁱⁱ DOI received approximately 70 responses to the questionnaire distributed to City-funded nonprofit organizations that operate, or operated, DHS-funded homeless shelters. As of the current date, DOI has completed findings on 51 of these providers. Aspects of this examination are ongoing.

interviews, including of certain providers' senior executives. DOI received assistance from staff at the Department of Social Services ("DSS"), which oversees DHS, in conducting this review (the "Review").

As a direct result of this Review, DOI has, to date, issued 51 separate referral letters to DSS summarizing its findings as to individual shelter providers. Beyond the scope of this Review, DOI has also conducted investigations concerning shelter providers that have led to significant findings—in some cases resulting in criminal charges—and other administrative referrals to DSS. DSS has started the process of responding to DOI's findings, in some cases placing providers on corrective action plans; entering "caution" notices relating to certain providers in PASSPort, the City's primary contracting system; and requiring that at least one provider enter into a DOI-managed monitorship agreement. As noted below, however, DSS's work to respond to DOI's referrals is not complete.

DOI's Review and its other recent investigations in this area have identified a variety of compliance and governance risks at individual shelter providers, as well as in the City's overall management of the shelter system. These risks vary in their severity, and include, among other things:

- **Conflicts of interest affecting City money.** DOI identified cases where insiders at the shelter provider had personal business interests involving the shelter through which they received payments outside their regular compensation. In some cases, shelter executives simultaneously held employment at a private entity, such as a security company, that was hired to provide services at City-funded shelters.
- **Poor City-wide controls over how City money is used for executive compensation.** DOI identified multiple shelter executives who received more than \$500,000 per year, and in some cases, more than \$700,000 per year, from providers and related organizations. In a number of cases, weaknesses in the City's oversight and accountability systems made it difficult to determine the amount of public money that was devoted to paying these executive salaries. The City's rules that govern how much City money can be allocated to salaries of this magnitude are also not adequate.
- **Numerous examples of nepotism, in violation of City contracts.** DOI found shelter providers that have employed immediate family members of senior executives and board members, in apparent violation of their City contracts. One provider that is heavily funded by the City, Black Veterans for Social Justice, employed its CEO's children since at least 2007. This provider subsequently entered into a DOI-managed monitorship agreement.

- **Shelter providers failing to follow competitive bidding rules when procuring goods and services with public money.** DOI found numerous cases where shelter providers did not comply with the City's competition requirements or where it was unclear whether shelter providers conducted true competitive bidding processes. For example, the Review identified multiple instances where shelter providers awarded multimillion-dollar building maintenance service contracts to companies affiliated with the buildings' landlords.

Although aspects of this Review are still ongoing, this report (the "Report") is a summary of DOI's major findings to date. The Report makes 32 recommendations to address system-wide vulnerabilities that it has identified. In these challenging fiscal times for New York City—with certain City agencies experiencing budget cuts—these recommendations will assist the City in administering this major commitment of public money in the most prudent and transparent manner possible.

Among the key recommendations in this Report are that:

- DSS should appoint a Chief Vendor Compliance Officer to provide overall leadership for DSS and DHS's compliance strategy with respect to nonprofit human service contracts, including those with shelter providers.
- Shelter providers should be required to regularly disclose additional information relevant to identifying compliance risks, including potential conflicts of interest for key persons.
- DSS and DHS should take steps to improve their oversight of shelter operators' expenditures, including by immediately stopping payments for costs that are not accompanied by a proper description and ensuring that relevant agency staff receive regular financial compliance training.
- The City should update its electronic procurement and invoicing systems to better enable third-party oversight and centralize key documentation.

DOI provided DSS, the Mayor's Office of Contract Services ("MOCS"), and the Mayor's Office of Risk Management and Compliance ("MORMC") with a draft of this Report. The three agencies were given an opportunity to respond to its findings, and this final Report accounts for those agencies' responses where appropriate.

This Report also reiterates many of the 23 recommendations that DOI issued in its November 2021 *Report on Corruption Vulnerabilities in the City's Oversight and Administration of Not-for-Profit Human Services* (the "2021 Report"). Almost all of the recommendations in the 2021 Report, which related to the oversight of all City human service contracts, are directly relevant to the issues raised here.

The 2021 Report recommended, among other things, that the City:

- Reform its conflict of interest disclosure system for the City's human service providers.
- Develop more specific guidance to agencies on executive compensation, and consider setting a cap or other parameters on City-funded executive compensation.
- Conduct more robust reviews of expenses that human service providers invoice to the City, including by reviewing larger samples of supporting documentation.

The City has implemented some reforms since the 2021 Report, which will be discussed below, and MOCS has reported to DOI that it is undertaking work that "closely track[s] DOI's recommendations." The work described to DOI, which will also be summarized below, is important and should continue. However, with a few exceptions, the policy and procedure recommendations ("PPRs") from the 2021 Report have not yet been implemented at any substantial level by MOCS, DSS, DHS, or other City human service agencies. Many of the findings in this Report will highlight the risks that the City takes on by permitting these gaps in oversight to continue.

New York City is currently making an unprecedented financial commitment to address its homelessness challenge. For that reason, it is more important than ever that it implement stronger risk management and compliance controls around this spending. Accepting and implementing the reforms set forth in this Report, as well as in DOI's November 2021 Report, would be critical steps in this direction.

BACKGROUND

I. New York City's Homeless Shelter System

The City operates the largest homeless shelter system of any municipality in the United States.¹ On average, more than 87,000 individuals have occupied over 500 shelters funded by the City's Department of Homeless Services ("DHS") each night in 2024. This represents the majority of the over 143,000 individuals housed by all City agencies as of August 2024.²

The number of shelter residents has grown dramatically since 2022. Although the total shelter population declined in 2020 and 2021,³ multiple factors, including the widely-reported influx of asylum seekers to New York City, have caused the shelter population to surge to its highest level ever,⁴ prompting Mayor Eric Adams to state that "we are past our breaking point."⁵ Accordingly, DHS's budget for shelter services grew from approximately \$2.7 billion in fiscal year 2022 to approximately \$4 billion in fiscal year 2024.⁶ In January 2024, the Mayor's Office of Management and Budget estimated that the City spent \$1.45 billion in fiscal year 2023 to provide shelter and services to migrants, and that those costs would increase to \$4.2 billion in fiscal year 2024.⁷

The enormous size and scope of the system is a function, at least in part, of a "right to shelter" unique in its breadth that has been recognized in New York City, partially as a result of the 1981 *Callahan v. Carey* consent decree.⁸ In *Callahan* and subsequent proceedings, the City agreed to provide temporary shelter and board to any eligible individual who requests it. In addition, the New York State Social Services Law and State regulations require that temporary shelter be provided to all who are eligible. On April 24, 2024, the City and the Legal Aid Society entered into a stipulation that provided, in part, that the "right to shelter" is limited in certain circumstances.⁹

DOI identified only a handful of other jurisdictions—Massachusetts, West Virginia, and Washington D.C.—that have policies guaranteeing a right to shelter in some form. However, those jurisdictions have substantially smaller sheltered homeless populations than New York City,¹⁰ and their mandates appear to apply more narrowly than the City's right to shelter.¹¹ The City also houses more people in shelters every night than other large cities: on average, the City's shelter population is approximately three times larger than the sheltered homeless population of Los Angeles and approximately twenty times larger than the sheltered homeless population of San Francisco.¹²

Delivering on these legal and legislative mandates by providing safe, reliable, temporary housing for individuals in need is a major challenge. To accomplish this mission, the City funds hundreds of facilities around the five boroughs that must

meet rigorous health and safety standards, deliver adequate meals and nutrition, provide security, and offer a variety of supportive services. Although DHS directly operates several such facilities, most shelters are operated by nonprofit organizations under contract with DHS.¹³ DHS outsources much of the day-to-day work of operating the shelter system to these organizations: at the commencement of this Review, at least 70 different nonprofit organizations provided shelter services for DHS.¹⁴ That number has since grown to more than 90. Employing thousands of people City-wide, these shelter providers vary in their size and level of experience, from large contractors managing thousands of beds or units, to small ones managing dozens.

Shelters themselves also vary in terms of facility type and services offered. Some shelters are located in facilities specifically designed to serve as shelters, while others are located in buildings temporarily or permanently converted to shelters, such as hotels. Shelters may also serve different categories of clients (certain facilities are specifically for families, others for single persons) and provide different programs (certain facilities provide general services, others specialize in residents with particular needs).

These shelter providers are all nonprofit corporations, not City-government entities. They hire and employ their own staff, and in many cases, engage third-party companies to handle other aspects of shelter operations, such as meals, facility maintenance, and security. Shelter providers are responsible for running facilities that house a pre-determined minimum number of residents, and for providing necessary support and programmatic services to those residents. They are also often themselves responsible for identifying new shelter sites around the five boroughs: since at least 2015, DHS has maintained “open-ended” requests for proposals (“RFPs”) through which providers can propose and seek approval for new shelters.¹⁵

Although the shelter providers are distinct legal entities separate from the City, some providers are funded almost entirely by the City. As of spring 2023, 22 of the shelter providers examined as part of this Review reported receiving 70% or more of their overall revenue from the City, and 10 reported that City funding made up at least 93% of revenues.¹⁶ Providers may receive funding through a variety of sources, including from the state and federal governments, program revenue, and private fundraising.

A. DHS's Oversight of the Homeless Shelter System and Contracting with Nonprofit Shelter Providers

DHS is the City agency primarily responsible for overseeing the shelter system. With almost 2,000 employees and a budget of approximately \$4 billion dollars annually,¹⁷ DHS works “to prevent homelessness when possible, address street homelessness, provide safe temporary shelter, and connect New Yorkers experiencing

homelessness to suitable housing.”¹⁸ Overseeing the day-to-day operation of the shelter system is central to DHS's functions.

DHS operates under the oversight and with the support of the Department of Social Services (“DSS”). Under this arrangement, DHS is responsible for the programmatic aspects of the shelter system, while DSS provides management and support services both to DHS and the Human Resources Administration (“HRA”). The DHS Administrator, who leads the agency, reports to the Commissioner of DSS.¹⁹

In addition to program operations, DHS is responsible for managing more than 600 shelter-related contracts that were, as of early 2024, worth more than \$21 billion over their terms.²⁰ These contracts are some of the City's largest by value: according to the City Comptroller, in fiscal year 2023, contracts with nonprofit homeless shelter providers represented three of the top ten largest City contracts overall, and nine of the top ten largest City human services contracts.²¹

DHS is also primarily responsible for monitoring fiscal and compliance aspects of its shelter contracts, including ensuring that shelter providers are spending City funds appropriately. DSS and DHS share responsibility for the entire contracting process, including soliciting proposals for new shelter facilities and negotiating contracts. DHS has sole responsibility for some aspects of contracting, such as reviewing providers' expenses. DSS is responsible for many of the technical aspects of contracting, such as managing the procurement process and approving shelter providers' use of subcontractors.

DHS typically contracts with nonprofit shelter providers on a cost-reimbursement basis. Those contracts are not unrestricted grants; rather, providers must incur the costs to run the shelter, and then can be reimbursed for those costs consistent with the terms of the contract and the City's fiscal rules. Shelter contracts establish a “not-to-exceed” spending limit reflecting the maximum value of the contract.²² The shelter contracts also specify how nonprofits should operate their facilities, covering topics such as shelter management, resident intake and assessment, occupancy rates, supervision and case management, healthcare, food services, security, and residents' personal hygiene.²³

In their contracts, shelter providers agree to comply with the City's fiscal management and governance requirements. The City's *Standard Human Services Contract* (“Standard Contract”) imposes certain baseline requirements on shelter providers, including rules on cost allocation and reimbursement, records retention, conflicts of interest, and nepotism. To receive payment, providers must produce annual budgets projecting contract spending for the year, and also submit regular invoices showing that DHS funds were spent in accordance with the contract and budget. Review and approval of the organizations' budgets, expenditures, and invoices are governed, in part, by two spending manuals: the City's *Health and*

Human Services Cost Policies and Procedures Manual (“City Cost Manual”)²⁴ and the *DHS Human Service Providers Fiscal Manual* (“DHS Fiscal Manual”).²⁵ These manuals contain more specific rules about what expenses can be reimbursed through the DHS contracts.

Shelter providers may also be subject to rules and regulations beyond those set by the City. Nonprofit organizations administering shelter programs must comply with, among others, the New York State Not-for-Profit Corporation Law, federal and state tax law applicable to charitable organizations, regulations issued by the Internal Revenue Service, and rules and regulations governing shelters promulgated by the New York State Office of Temporary and Disability Assistance.²⁶ Providers who receive governmental funding from other sources, particularly New York State or the federal government, could be subject to other rules or contractual terms, including federal contracting regulations.²⁷

B. Challenges Facing the Shelter System

The City and its partners in the nonprofit sector have long faced significant challenges in addressing homelessness. Some of these challenges will exist with respect to any effort to assist unhoused populations in any city—many factors can contribute to homelessness, ranging from financial and employment instability, mental illness, substance abuse, violence and trauma, and a lack of affordable housing.²⁸ Other challenges are unique to the New York City shelter system.

One particular challenge is the large size of the DHS shelter population. From 2013 through 2020, the nightly shelter population ranged between 50,000 and 60,000, and between 45,000 and 55,000 from 2020 through mid-2022.²⁹ Since then, the shelter population has continued to grow: on average, DHS-funded facilities sheltered more than 87,000 individuals every night in 2024.³⁰

This increase is due to multiple factors, including, and perhaps most notably, the tens of thousands of migrants who have recently come to New York City from the southern U.S. border.³¹ The demands on the system have caused DHS to look aggressively for new capacity, including asking existing providers to expand their portfolio and recruiting nonprofits that have not previously provided shelter services to enter this space.

The City could not succeed in this endeavor without its partnership with the nonprofit sector. These organizations continue to provide critical services to the City under challenging circumstances, including those posed by the City’s contracting process itself.

As the Joint Task Force to Get Nonprofits Paid On Time (the “Joint Task Force”), convened by Mayor Eric Adams and Comptroller Brad Lander in the

beginning of 2022, noted, “nonprofits face substantial financial burdens when doing business with the City,” including a “historically onerous and slow procurement process” and “considerable [contract] registration delays that hinder nonprofits’ ability to get paid on time and meet their obligations.”³² The Joint Task Force found that “over three-quarters of the City’s contracts with nonprofit organizations were registered after the start date resulting in delayed payments that represent a significant portion of nonprofits’ annual budgets.”³³ One survey found that 70% of City-funded nonprofits reported a delay in payments in 2022, with 46% of them taking a loan or drawing on a line of credit due to “withheld or delayed payments.”³⁴ These chronic delays have created unpredictability and frustration in the nonprofit sector, not to mention inefficiency and potential added costs associated with borrowing to cover expenses. As noted by the Joint Task Force, delays have “forced [nonprofits] to take out loans and incur substantial costs to keep themselves afloat.”³⁵

II. Origin of Review and Scope of the Report

In November 2021, DOI issued its *Report on Corruption Vulnerabilities in the City’s Oversight and Administration of Not-for-Profit Human Services* (the “2021 Report”). There, DOI identified a number of gaps in how the City oversees its contracts with nonprofit human service providers. The 2021 Report was not limited to shelter services, but related to all not-for-profit human service providers that contracted with and are funded by City agencies, including DHS, DSS, the Administration for Children’s Services, the Department of Youth and Community Development, the Department for the Aging, and the Department of Health and Mental Hygiene. Many of DOI’s prior findings and recommendations are relevant to this Review, and the 2021 Report is referenced throughout this Report.

Also in 2021, DOI initiated the in-depth Review of the City’s nonprofit shelter provider network that formed the basis of this Report. As part of the Review, DOI has led examinations of 51 individual shelter providers, many of whom currently hold shelter contracts with DHS.ⁱⁱⁱ These examinations have focused on individual contractors’ governance and compliance practices, as well as potential conflicts of interest or other potential misconduct. They have not considered the quality of facilities or services provided. This undertaking is complex, extensive and ongoing. However, our work to date has identified hundreds of governance and compliance concerns at individual organizations, which DOI has referred to DSS in 51 separate referral letters.

ⁱⁱⁱ DHS continued to add and remove providers during the course of this Review, particularly in recent months; as of February 27, 2024, there were over 90 shelter providers in the primary, non-asylum seeker DHS shelter system. The findings of this Report are limited to those providers that were asked to complete the Questionnaire. As a result, it does not necessarily encompass all current shelter providers, although its findings and recommendations apply to the system as a whole.

Through the Review, DOI identified various gaps in the City's oversight and management of the providers who operate the shelter system. This Report will make a series of recommendations with respect to how DSS, DHS, and the City overall can improve control over the administration of public funds and implement reforms that will promote the integrity of the providers as well as transparency with respect to their operations.

Among other investigative steps, DOI reviewed the responses to a detailed questionnaire that was distributed to shelter providers (the "Questionnaire"), collected and reviewed thousands of documents, performed significant research, analyzed data in possession of the City or available from public sources, engaged directly with a number of providers, and conducted dozens of interviews. DOI reviewed thousands of documents created and produced to the City by shelter providers themselves, including documents provided in support of their Questionnaire responses and other materials subsequently requested by DOI.

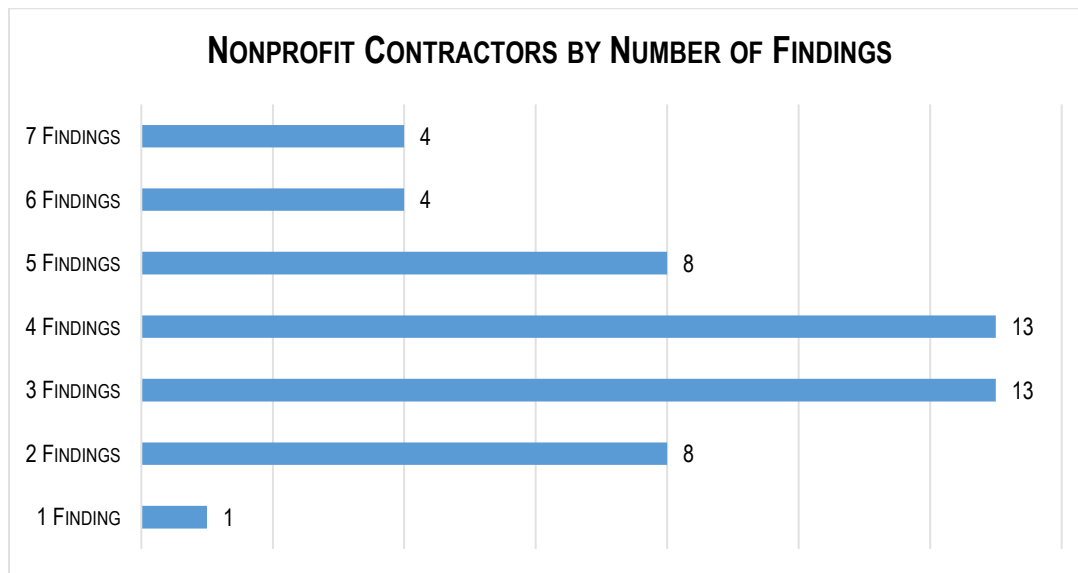
DOI also received support from three private firms—Joseph A. DeLuca Advisory & Consulting Services LLC ("DeLuca"), Eisner Advisory Group LLC ("Eisner"), and Triangle Investigations Group, Inc.—with experience in investigations, audits, and compliance monitoring, who, under DOI's supervision, took a leadership role in collecting and analyzing information with respect to certain providers. Throughout the process, DOI received assistance from DSS, particularly from the Office of the Agency Chief Contracting Officer; DHS; and the Mayor's Office of Contract Services, whose employees provided a wide variety of information to DOI in support of this project.

DOI investigations in recent years have also led to criminal charges against executives of organizations and others who were connected to major shelter providers, as well as significant administrative referrals to DHS. Although separate from this Review, those investigations are relevant to and, in some cases, are referenced in this Report.

Although aspects of the Review are ongoing, DOI is releasing this Report now to highlight the major findings of the Review to date, which are relevant to the City's active discussions concerning homelessness policy and nonprofit contracting.³⁶ Addressing the findings in this Report and implementing its major recommendations will provide the building blocks of a new, more effective compliance structure for the shelter system that will protect public funds, as well as increase public transparency and public confidence in the City's management of nonprofits that receive billions of dollars of public funding. As the numbers of people receiving shelter and related services reaches historic levels, calling for even greater expenditures than prior periods—it is now more important than ever that the City implement improved controls to safeguard these public funds.³⁷

FINDINGS: NONPROFIT SHELTER PROVIDERS

DOI identified hundreds of compliance and governance issues at the nonprofit contractors providing shelter services to DHS, referred to as “findings” in the chart below. To date, DOI has issued 51 referrals to DSS that highlight specific problems identified at individual shelter contractors and make recommendations to bring the entities into compliance. As the below chart shows, DOI identified at least one issue requiring at least some level of follow-up at every provider, and made approximately four findings per provider, on average.



The compliance and governance risks that DOI identified vary in their severity, and can generally be divided into three broad categories.

The first category consists of instances where DOI identified fiscal management or governance weaknesses at providers, or found that their internal policies did not align with DHS requirements. For example, as discussed below, DOI found that multiple providers employed immediate family members of a senior executive, in some cases without obtaining permission from DHS or DSS.³⁸ As another example, DOI identified several providers that maintained internal procurement policies that contradict the Standard Contract’s requirements, essentially setting the stage for future contract violations.³⁹ At first glance, some of these findings may seem relatively minor. However, these contractual violations can serve as early warning signs of more significant waste, fraud, or misconduct. Identifying and resolving these areas of concern is the first step in a reform process that can build a stronger culture of compliance in the system going forward.

The second category consists of instances where DOI identified more significant fiscal management or governance problems at providers, some of which

presented potential conflicts of interest, waste of funds, or broader questions about organizational management. For example, DOI identified several related party transactions where an individual with control or influence over the shelter provider appeared to receive at least some personal benefit from a transaction involving that shelter provider. In other instances, DOI found that providers' board members had business or personal interests that give at least the appearance of a conflict between their private interests and their duty of loyalty to the organization.⁴⁰ DOI also identified noncompliance with City competitive bidding requirements, including where providers may have been required by third parties, such as their landlords, to use specific vendors, increasing the risk of inflated costs. Further, DOI found cases where shelter executives received City-funded compensation that may have exceeded what could be deemed to be "reasonable," and thus that may be in violation of City policy.⁴¹ In some of these cases, the City may be entitled to claw back related funds, and at a minimum should seriously consider implementing new practices and procedures to fully address these governance concerns.

The third group includes instances where DOI identified potentially significant misuse of funds, including situations that have led, or may ultimately lead, to referrals for criminal or civil action. Some of these matters are still under investigation, and therefore are not addressed in this Report, though DOI may discuss these matters publicly at a future date.

Below, the Report will discuss three significant issues that DOI identified across the nonprofit contractors reviewed: first, conflicts of interest, related party transactions, and nepotism; second, noncompliance with competitive bidding requirements; and third, potentially excessive executive compensation. As noted above, DOI's findings with respect to each of these issues vary in their severity, from more serious concerns of self-dealing to more minor violations of policies or best practices.

I. Conflicts of Interest, Related Party Transactions and Nepotism

The City has a clear interest in preventing conflicts of interest and nepotism among entities and individuals working on its human service contracts, including shelter contractors and their employees. At a minimum, potential conflicts of interest affecting public money—such as those present in certain related party transactions and the employment of immediate family members—can serve as indicators of more significant waste, fraud, or misconduct at an organization. Preventing conflicts and nepotism are basic best practices for administering public funds and a means of ensuring the City gets the most value for its money.⁴²

For these and other reasons, the City prohibits conflicts of interest that affect the performance of its human services contracts.⁴³ It also imposes a variety of related rules, including prohibitions on "improper" related party transactions, restrictions on

the supervision of “immediate family members,”⁴⁴ and minimum requirements for organizations’ conflict of interest policies.⁴⁵

During the course of the Review and through other investigative work, DOI identified a number of issues concerning shelter providers’ compliance with the City’s conflict of interest and anti-nepotism requirements.

- First, DOI identified multiple providers engaging in related party transactions—specifically, buying goods and services from companies or persons closely linked to the shelter providers—at least some of which were not clearly fair, reasonable, or in the provider’s best interests. Such transactions, at minimum, raise questions about whether the City obtained fair value for the goods or services and, in some cases, could constitute improper related party transactions prohibited by New York law and the City contract.
- Second, DOI found numerous instances where providers employed immediate family members of senior executives or board members, apparently in violation of the City contract’s limitations on such arrangements.^{iv}
- Third, DOI identified relationships between providers’ employees and board members that, while not necessarily prohibited, nevertheless raise actual or potential conflicts of interest.
- Fourth, DOI found many providers either lacked legally-required conflict of interest policies or maintained policies that did not otherwise comply with State law or City requirements. Multiple providers did not comply with requirements to collect annual conflict of interest disclosures from members of the organization’s board of directors, although some providers reported that they came into compliance with those requirements after the organization was contacted as part of this Review.

A. Numerous Related Party Transactions Across Shelter System

In this context, related party transactions refer to agreements or purchases between the City-funded nonprofit and certain persons or entities associated with the nonprofit’s officers or insiders. In such transactions, insiders at the nonprofit potentially have split loyalties—both to the nonprofit organization and to the related party, be it themselves or another entity.

^{iv} As discussed below, in April 2024—following recommendations from DOI—MOCS issued “Anti-Nepotism Policy and Procedures” for human services providers that offer much-needed guidance to agencies in this area.

Because related party transactions create risks of abuse, they are subject to specific legal restrictions. Section 715 of the New York State Not for Profit Corporation Law (“N-PCL”) prohibits nonprofits from entering into related party transactions “unless the transaction is determined by the board, or an authorized committee thereof, to be fair, reasonable and in the corporation’s best interest at the time of such determination.”⁴⁶ Where these conditions are not met, New York’s Attorney General is authorized to “bring an action to enjoin, void or rescind” such improper related party transactions.⁴⁷

The City’s Standard Contract also prohibits “improper” related party transactions. As defined by the Standard Contract, an “improper related party transaction” is one that violates Section 715 of the N-PCL “and is not fair, reasonable, and in the [nonprofit]’s best interest at the time [the nonprofit]’s Board approved the transaction.”⁴⁸ According to the Standard Contract, any cost relating to an “improper” related party transaction is “improperly incurred” and “shall be subject to reimbursement to the City.”⁴⁹

During the Review and in connection with other work, DOI identified instances where shelter providers entered into related party transactions with closely related persons and companies. In a number of instances, DOI found that individuals with control or influence over shelter providers appeared to personally benefit from transactions. For example, DOI found:

- A nonprofit shelter provider, SEBCO Development Inc. (“SEBCO”), purchased security services from a for-profit security company that the nonprofit wholly owned. The nonprofit selected the company through a non-competitive process. Senior executives at the nonprofit received hundreds of thousands of dollars in salary payments from the for-profit security company, whose revenue originated in significant part from SEBCO’s City-funded shelter contracts.
- Four companies affiliated with the husband of a top SEBCO executive were hired to perform extermination, maintenance, and cleaning services at DHS-funded shelters.
- A former nonprofit shelter provider, CORE Services Group (“CORE”), established for-profit security, food services, and maintenance companies that it hired to provide services at DHS-funded shelters. The executive director of the nonprofit received significant compensation from each of the for-profit companies in addition to his salary from the nonprofit.
- Several organizations made purchases from companies affiliated with their board members. This included Samaritan Daytop Village (“SDV”),

which paid for legal and insurance brokerage services from entities affiliated with board members.^v

The City also sets additional limits on how providers may be reimbursed for related party transactions involving the rental of property. For example, the City restricts costs relating to “sale and leaseback” and “less-than-arm’s length” agreements and transactions. A “sale and leaseback” agreement exists where a provider sells a property to a third party, then rents that property back from the third party. Similarly, a transaction may be “less-than-arm’s-length” when it involves one party that owns, controls, or can influence the other.⁵⁰ While potentially legitimate,⁵¹ these transactions are restricted because of the risk of misuse. Such transactions can, for example, be used to artificially inflate rental costs ultimately paid by the City or otherwise unduly benefit the controlling party.⁵²

The Review found a number of transactions involving the lease of shelter property or office space that were not clearly arms-length, or that otherwise presented risks of conflicts of interest or waste. Instances identified include:

- The executive director of CORE held a personal financial interest in the leases associated with two buildings that the nonprofit leased to operate DHS-funded shelters.
- DOI’s investigation relating to shelter provider Bronx Parent Housing Network (“BPHN”)—which was conducted separately from this Review—found that the organization’s former CEO received kickback payments from a company that served as BPHN’s landlord at a shelter building. In that case, the former CEO was prosecuted criminally and sentenced to 27 months’ imprisonment.^{vi}
- DOI found multiple examples where a City-funded shelter provider leased shelter space from an affiliated entity. These cases require close and careful scrutiny by DSS and DHS to ensure that the costs passed

^v In a letter to DOI, SDV stated, among other things, that its selection of legal services followed a review of proposals and that the board member “made the appropriate disclosure to the board of directors.” SDV also stated that the insurance broker it used “disclos[ed] what their commission was and if they had any conflicts of interest.” Nevertheless, SDV committed that it would, among other things, review its conflict of interest policy, “ensure that accurate records are kept of all evaluations of conflicts of interests . . . or related party transactions,” and “bid its health brokerage services for calendar year 2025.”

^{vi} In March 2021, BPHN’s former Chief Executive Officer was arrested on charges of honest services fraud and money laundering in connection with an investigation by DOI and the U.S. Attorney’s Office for the Southern District of New York. BPHN operated under a DOI monitorship agreement from April 2021 to April 2024.

on to the City are reasonable and that the lease arrangement is in the City's best interest.

- Another provider, Black Veterans for Social Justice, Inc. ("BVSJ"), billed the City for office space it rented from another nonprofit that the provider controlled. The provider did not disclose this affiliation on PASSPort or in response to the Questionnaire. Documents from the provider showed rent payments from the provider to the affiliated nonprofit.^{vii} BVSJ is now operating under a DOI monitorship agreement, and DSS informed DOI that it implemented "enhanced" invoice review procedures for the organization.
- In one instance, DOI found that a shelter provider, Bronx Family Network ("BFN"), rented space at multiple buildings from a landlord who had engaged in separate business dealings with two of the nonprofit's executives and one of its board members.^{viii}
- DOI found multiple examples where the nonprofit's landlord was not the actual owner of the shelter building: instead, the landlord existed as a "middleman," leasing the property from the actual owner and subleasing it to the nonprofit shelter. This arrangement is not necessarily improper, although the presence of such a "middleman" between the shelter provider and building landlord raises questions about whether the City is paying unnecessary costs.

In February 2024, DOI recommended that DSS "conduct a review of all DHS-funded shelter buildings to identify whether the shelter operator's landlord is in fact the actual owner of the building," and that, in "cases where the operator's landlord is not the actual building owner, DSS [] obtain specific and detailed information about what services, if any, are provided by the landlord and whether fees collected by the landlord in connection with the leasing arrangement are reasonable." The purpose of DOI's recommendation is to ensure that DSS has complete information about all parties it is doing business with—both directly and indirectly—and to help it make

^{vii} In response to this finding, BVSJ stated that as of April 2024, neither its CEO nor any current BVSJ employee was on the board of the other nonprofit. However, BVSJ also acknowledged that its CEO was "listed [] as the person who holds the books and records for" the other nonprofit "which are physically available at BVSJ's headquarters."

^{viii} BFN has represented to DOI that one of the executives referenced above no longer has any direct business with the landlord and that the board member plans to resign after BFN finds a suitable replacement. BFN further represented to DOI that it "seldom, if ever, has any participation in the rent negotiations" because the leases at issue had been negotiated between DHS and the landlord. However, given these findings, controls should be implemented proactively to ensure that any rent negotiations that do take place, now or in the future, are at arms-length.

informed decisions about rental costs at individual shelter buildings. DSS has since commenced a review of this issue and, in June 2024, reported its initial findings to DOI.

Not all related party transactions are illegal or violate the Standard Contract. At minimum, however, these building lease transactions—which are among the most significant costs that the City pays to operate its shelter system—should be proactively evaluated to determine whether they are fair, reasonable, or in the nonprofit provider's best interest. DOI identified and referred these transactions to DSS and DHS to determine whether they violated the Standard Contract and if the costs should be retroactively disallowed under the terms of that agreement.⁵³

* * *

DSS has informed DOI that MOCS, MORMC, and DSS have participated in a “Related Party Transactions Working Group” in conjunction with the Vendor Compliance Cabinet in order to “determine an appropriate citywide standard policy and procedure to address risks associated with related party transactions.”

DOI encourages the Vendor Compliance Cabinet to continue this work. An effective policy that helps to identify and deter improper related party transactions will protect public funds and promote confidence in the shelter system.

B. Repeated Examples of Nepotism at Shelter Providers

As noted in the 2021 Report, DOI has repeatedly identified familial relationships between employees of human service providers.⁵⁴ Although employing family members can be innocuous where no improper favoritism is shown, the practice can also serve as an indicator of fraud, waste, or misconduct, and at a minimum creates greater risk.⁵⁵ In more serious cases, nepotism—“showing favoritism to political allies or steering business to relatives”⁵⁶—can open the door to more serious compliance issues, and even fraud, such as family members serving in “no-show” or “low-show” jobs.⁵⁷

For these reasons, the City limits—but does not entirely prohibit—familial relationships among employees and/or board members at human service providers. The City's Standard Contract allows nonprofits to seek “prior written consent” from the contracting agency for “immediate family” members to supervise another family member in a paid role.⁵⁸ Family members can also work in “wholly voluntary and unpaid” positions without prior approval. However, absent prior approval, contractors may be responsible for reimbursing the City for any costs related to the paid employment of a family member.⁵⁹ With respect to City shelters, a shelter employee can supervise an immediate family member only with DHS's permission, unless that immediate family member serves in an unpaid capacity.

This Review identified multiple providers that employed at least one “immediate family member” of a senior executive or board member without first receiving approval from the City. Examples include:

- In response to the Questionnaire, shelter provider BVSJ reported to DOI that it did *not* employ any immediate family members of its senior employees or board members. However, DOI found that two adult children of BVSJ's President and CEO had been employed there since 2007. In fact, one of the children was simultaneously employed at BVSJ and at DHS.^{ix}
- Another provider, South Bronx Overall Economic Development Corporation (“SoBro”),^x employed at least five relatives of senior employees without seeking or obtaining prior approval from the City, including the child and niece of its Executive Director, and the children and cousin of its Chief Administrative Officer.⁶⁰

These instances of unreported nepotism likely violate the Standard Contract. Also, to the extent hiring decisions were made on the basis of familial connections, rather than merit, there are questions as to whether the City received the most value for its money.⁶¹

DOI first made recommendations to the Department of Youth & Community Development (“DYCD”), the Department for the Aging (“DFTA”), the Administration for Children’s Services (“ACS”), and DSS in 2019 intended to address this issue, specifically recommending that those agencies “identify and implement a clear method by which City-funded not-for-profit organizations can disclose potential conflicts of interest affecting their City contracts, including familial relationships with other officers and staff or ‘related party transactions’ in which they are involved.”

DOI highlighted these recommendations again in the 2021 Report, proposing a disclosure form requiring human service providers “to disclose any employees of the organization who supervise members of their own family with respect to work on the City contract.”

DOI was informed that on April 26, 2024, MOCS issued the “Anti-Nepotism Policy and Procedures” for human service providers, which reiterates contractors’ obligations under the Standard Contract and establishes a clear set of directions

^{ix} Subsequent to DOI’s referral, in February 2024, BVSJ sought DSS approval to employ a relative of its CEO.

^x Following DOI’s referral in September 2022, DSS and other agencies amended an existing corrective action plan with SoBro in order to address these findings. In an October 1, 2024 letter to DOI, DSS stated that it had “completely ceased” doing business with SoBro.

about how they should comply with these obligations. Assuming it is effectively implemented by each contracting agency, this new policy will represent a major step forward toward transparency and compliance in this area.

C. Board Members with Conflicting Personal or Business Interests

Members of a nonprofit's board of directors have a duty of loyalty to their organization. To the extent a board member's private interests conflict with that duty, there is a risk that the board member will take actions that are not in the nonprofit's best interest.⁶²

Thus, shelter providers agree in their contracts that none of their "directors, officers, members, partners, or employees" has or will have any interest that directly or indirectly conflicts with their City contracts.⁶³ State law and the Standard Contract further require that nonprofits maintain policies to ensure that conflicted board members disclose conflicts to the board and do not participate in related decisions.⁶⁴

Providers were requested to disclose information relating to board conflicts in their Questionnaire responses. From these, DOI identified a number of organizations where a board member had personal business interests that had at least the potential to conflict with those of the organization. In such situations, there are questions as to whether the board member can operate impartially. For example, DOI found the following:

- At provider Women in Need, Inc. ("WIN"), a board member worked for the President and CEO as a paid consultant, receiving at least \$80,000 in payments from the President and CEO's political action committees while serving on the board. This relationship could conflict with the board member's ability to oversee the work of the CEO consistent with the board member's duty of loyalty to the organization.^{xi}
- A board member at another provider, Westhab, Inc. ("Westhab"), also acted as the broker for the provider's employee benefit plans, and received commissions from employee benefit providers for deals brokered at the provider.^{xii}

^{xi} In response to DOI's specific findings that it had not received evidence that this board member recused themselves from compensation decisions, WIN wrote, in part, that there was no "conflict in terms of compensation decisions," because the board member at issue "never served on WIN's Human Capital and Compensation Committee and has had no role in determining compensation matters, including those of the CEO."

^{xii} Westhab disclosed this relationship in response to the Questionnaire, stating in part that "this conflict is duly disclosed in Westhab's conflict of interest forms and the board member recuses himself and exits the meeting during any discussion of employee benefit renewals." However, DOI reviewed

Although board members are required to complete annual conflict disclosures and to submit them to the secretary of the nonprofit's board, there is currently no requirement or established process for transmitting these to DSS or DHS for review.⁶⁵ And while the City collects certain additional conflict information through its Procurement and Sourcing Solutions Portal, better known as "PASSPort," the questions should be broader to collect more information relevant to the variety of conflicts that providers' board members and senior executives may have.⁶⁶ This recommendation is discussed further below.

D. Some Providers' Conflict Policies and Practices Are Inconsistent with State Law

As noted by the State Attorney General's Charities Bureau, "[a]n effective conflict of interest policy allows a nonprofit entity to benefit from engaged and sophisticated board members, and to manage conflict of interest issues in ways that provide reassurance that the mission of the entity remains paramount."⁶⁷ For this reason, both the State Not-For-Profit Corporation Law ("N-PCL") and the Standard Contract require that nonprofit contractors maintain written conflict of interest policies that must address, at a minimum, among other items: what constitutes a conflict; how conflicts should be reported, documented, and addressed; and who needs to disclose conflicts of interest.⁶⁸

Although the majority of organizations reviewed by DOI had a written conflict of interest policy, a number of those policies did not meet the minimum requirements of the Standard Contract or New York State law. For example, the conflict of interest policy for one provider, Comunilife, Inc. ("Comunilife"), did not require annual disclosures by directors, did not require that the resolution of conflicts be documented, and did not specify that conflicted directors should be excluded from relevant board deliberations.^{xiii}

DOI also identified providers that failed to collect board member conflict of interest disclosures as required by the N-PCL and Standard Contract. The CEO of one provider, Children's Rescue Fund ("CRF"), stated to DOI that the provider did not collect written disclosures before 2021. Another provider, Tolentine Zeiser Community Life Center ("TZCLC"), informed DOI that it had never requested that its board members sign individual conflict of interest disclosures, despite having a conflict of interest policy that explicitly required such disclosures.^{xiv}

two sets of board minutes and found that the board member participated in what appear to be discussions of employee benefits after relevant decisions had already been made.

^{xiii} Comunilife has represented to DOI that its conflict of interest policy has now been amended.

^{xiv} In a letter to DOI, TZCLC stated that it has now "begun to collect signed conflicts of interest every year."

II. Compliance with Competitive Bidding Requirements

Human service providers administering programs under contract with the City—including DHS-funded shelter providers—must meet minimum standards for competition in connection with their purchases of goods or services.⁶⁹ These rules help to ensure that the City pays fair prices and receives quality services. They also minimize the risks of waste and abusive or corrupt behavior, such as funneling business to insiders affiliated with the nonprofit.⁷⁰

Among other minimum requirements, the City requires shelter providers to conduct competitive procurements for most purchases of goods and services, or at least engage in a measure of market research for certain smaller acquisitions.⁷¹ In most cases, providers must “solicit and document at least three . . . written estimates for any payment made or obligation undertaken in connection with [their City contracts] for any purchase of goods, supplies, or services . . . for amounts in excess of \$25,000.”⁷² For purchases between \$5,000 and \$25,000, Contractors must “conduct sufficient market research and/or competition” to determine that the price of the goods or services purchased is “reasonable.”⁷³

Shelter providers’ use of vendors or subcontractors is an area that involves significant corruption risks. For example, in October 2023, following an investigation by DOI and the U.S. Attorney’s Office for the Southern District of New York, the former CEO of Childrens Community Services, Inc. (“CCS”) and his business partner were charged in connection with a scheme to allegedly defraud the City by directing business from the nonprofit to various companies that were controlled by one of the defendants. As alleged in the indictment, the scheme caused the City to pay “inflated prices” and “objectively unreasonable markups” for goods and services related to the operation of CCS’s shelters. CCS once held more than \$900 million in City contracts, and no longer does business with DHS.⁷⁴

In 2020, DSS implemented a new subcontractor approval process, which requires shelter providers to affirmatively report the names of subcontractors, describe the work they will be doing, and submit copies of bids. This information is collected on what are known as “65A” forms, which are reviewed and approved by DSS’s ACCO’s Office. This process has improved transparency and reduced risk around subcontracting, although there are remaining vulnerabilities in the process.

Indeed, during the Review, DOI found a number of examples where providers did not comply with the City’s competition requirements. These problems were identified in various contexts, including:

- Numerous cases where nonprofits engaged a building maintenance company that was affiliated with the building’s landlord, raising questions about whether the maintenance services were procured in a

genuinely competitive manner. In several of these cases, DOI identified evidence that the landlord had *required* the nonprofit to engage their affiliated maintenance company.

- Instances where shelter providers made purchases from a for-profit company closely affiliated with the nonprofit or its senior employees. In some of these cases, the nonprofit's senior employees received payments from the for-profit company.

DOI found other instances where shelter providers made "sole source" purchases, particularly in emergency situations and when the entity was purchasing specialized items or services. Such purchases are not allowed under the terms of the Standard Contract, which contains no exceptions to the competition rules. However, DOI found that such purchases were often made under circumstances where competitive procurement would be impossible or problematic, potentially warranting narrow exceptions to the relevant contractual provisions.

Furthermore, DOI identified concerns with multiple providers' procurement policies. In several instances, providers had no procurement policy in place, or only created one in response to the Review. Where providers had procurement policies, they in many cases diverged from City requirements.

A. Non-Competitive Procurements: Maintenance and Security Service Purchases

During the Review, DOI identified a number of instances where shelter providers engaged maintenance companies that were affiliated with the building's landlord or made purchases from for-profit companies that appeared closely affiliated with the nonprofit or its senior officials. These findings have been referred to DSS as part of DOI's more than 50 individual referrals.

1. Use of Specific Maintenance Service Vendors

Building maintenance services reflect a significant cost to shelter providers. From fiscal years 2019 through 2022, nonprofit contractors sought reimbursement for approximately \$40 million in shelter maintenance-related costs each year, on average. The term "maintenance" covers a broad variety of work: some providers may include major building repairs under "maintenance," while others may only claim "maintenance" costs for basic cleaning and building upkeep. In many cases, providers outsource maintenance services to third-party for-profit vendors, and procurement of such services must comply with the City's competition rules.⁷⁵

DOI found multiple instances where providers' purchases of maintenance services did not comply with the City's competitive bidding requirements. For example, DOI identified evidence indicating that several shelter providers were

required, or their employees believed that they were required, to use maintenance companies affiliated with one particular landlord (“Landlord 1”). DOI did not conduct an analysis of whether these costs were higher than they would have been if provided by another company; this task should be performed by DSS, which is responsible for ensuring that the City pays reasonable prices for these services. Nevertheless, this arrangement squarely conflicts with the explicit terms of the Standard Contract and is contrary to the purposes of the City’s competitive bidding rules.

- DOI identified evidence that companies controlled by Landlord 1 required a shelter provider, BronxWorks, Inc. (“BronxWorks”), to use an affiliated maintenance provider at two buildings. A representative of the shelter provider told DOI that “the landlord made it clear to [the nonprofit] that this was a condition of the lease.” DOI further identified a lease which specifically stated that the shelter “is required to engage [Landlord 1] to perform” maintenance at one facility.^{xv}
- During the Review, DOI received a bid sheet from provider Westhab stating, in part: “[b]ecasue [sic] [Landlord 1-affiliated maintenance provider] owns the building, we must contract with them.” Although a senior Westhab employee subsequently told DOI that this statement was a “mistake,” the statement at minimum appears to reflect at least one employee’s belief that the shelter provider had no option but to hire this maintenance provider.^{xvi}

DOI also identified other maintenance procurements that raised questions about whether the soliciting provider conducted a genuinely competitive process or whether the results were pre-determined. For example, another provider, Lantern Community Services (“LCS”), began leasing a building from a Landlord 1-affiliated company in 2019. Attached to the lease was a signed service agreement for maintenance from a subsidiary of Landlord 1, executed on the same day as the lease. The provider’s executive director, who executed the lease, stated that while using the Landlord 1 subsidiary for maintenance was not required, the maintenance services were offered as a “packaged deal” with the lease. The provider’s Chief Financial

^{xv} BronxWorks also told DOI that it was “the NYC Department of Homeless Services, not BronxWorks, that negotiated this arrangement with the landlord, prior to BronxWorks becoming involved,” although, in a letter to DOI, BronxWorks’ counsel also recognized that a DHS representative notified the organization in December 2015 that it was required it to obtain bids for maintenance services.

^{xvi} In response to DOI’s finding, Westhab reiterated its prior claims that there was “no requirement” to use a specific provider and that the statement indicating that they were, in fact, required to do so was due to an “honest [] clerical error.” Again, however, the written statement reflects at least one employee’ belief that use of Landlord-1’s maintenance company was required.

Officer, in contrast, stated that he understood the maintenance service agreement was a condition of the lease.^{xvii}

DOI did not examine each and every cost relating to these maintenance contracts. As noted above, DSS should conduct a review of its expenses in this area to ensure that it is getting appropriate value for its expenditures. This Report is highlighting this issue because multiple DSS and DHS officials informed DOI that landlords have never been allowed to require shelter providers to use specific contractors or waive competitive bidding requirements.

DSS's implementation of the "65A" approval process has been a significant step toward promoting compliance in this area, although, as recommended below, these disclosures can be strengthened by including direct questions about conflicts of interest relating to those transactions.

2. *Nonprofits Buying Security Services from Affiliated For-Profit Companies*

Security services are another major cost for shelter providers and, thus, the City. From fiscal year 2019 through 2022, all shelter providers sought reimbursement for a combined amount of over \$96 million in security services-related costs each year, on average. Nonprofits typically purchase these services from third party providers, and must do so in a manner that complies with the City's competition rules.

DOI identified several instances where nonprofits purchased security services from for-profit companies affiliated with the nonprofit or its senior executives. In these cases, the provider often appeared to at least partially engage in a competitive bidding process by, for example, soliciting bids from other companies. However, in all of these cases, the selection of the related company once again raises questions of whether these services were procured in a genuinely competitive fashion. Instances identified include:

- One provider, SEBCO, hired its wholly-owned, for-profit company to provide security services at City shelter sites without apparently conducting a regular competitive bidding process, and invoiced the City more than \$11.6 million for those services over a four-year period. The for-profit company also paid salaries to the provider's top executives. In 2020, for example, the for-profit paid the nonprofit's chief operating officer over \$194,000 and the nonprofit's Vice President for Operations over \$183,000.

^{xvii} In response to this finding, LCS claimed that it entered into this particular agreement "upon guidance from DHS representatives" because the City was seeking to open the site "expeditiously."

- Another provider, CORE, also purchased security services from a for-profit company it owned and controlled. The for-profit company paid a salary to CORE's Chief Executive Officer.

In addition to the questions about competition that these purchases raise, such dealings between closely affiliated for-profit and nonprofit companies may be improper related party transactions that are themselves prohibited by the Standard Contract and State law to the extent those transactions are not fair, reasonable, and in the nonprofit's best interest.⁷⁶

B. Some Providers Made Sole Source Purchases Not Allowed by the Standard Contract

DOI also found that shelter providers sometimes purchased goods or services from a single vendor without seeking bids. Such "sole source" purchases are not currently allowable under the Standard Contract,⁷⁷ which requires the solicitation and documentation of at least three written bids for any purchase over \$25,000 without exception.⁷⁸

Shelter providers proffered various reasons for making sole source purchases. These included:

- Specialized Services and Unique Goods: Providers reported sole source procurements where they contended that no other seller existed, or where the good or service could only be obtained from one vendor. The procurement policy of Homes for the Homeless permitted sole source procurements for "unique items." BronxWorks reported making purchases "particularly relating to the provision of medical and mental health services to clients" from "the only providers [BronxWorks is] aware of who are willing and able to provide the contractually required services."
- Emergencies and Time-Sensitive Needs: Others identified the need to make purchases without competition in emergencies or when other time-sensitive needs arose. Harlem United Community AIDS Center Inc. ("Harlem United"), for example, made sole source purchases for emergency repairs of their boilers or HVAC systems. Another provider, HeartShare St. Vincent's Services ("HSVS"), had a procurement policy that allowed sole source purchases "where time constraints exist."^{xviii}
- Continuity: Several shelter providers justified sole source purchases based on pre-existing relationships or agreements. For example, BronxWorks said it

^{xviii} In a letter to the Administration for Children's Services dated April 14, 2023, HSVS stated, among other things, that HSVS would "update its Purchasing Policies to specifically include reference to Section 4.05 of the City's Human Services Standard Contract effective the beginning of the new HSVS fiscal year (beginning July 1, 2023)."

made sole-source purchases from certain long-time vendors.^{xix}

There may very well be situations where it is impossible or impracticable for a shelter provider to conduct a competitive procurement process. Indeed, the City's Procurement Policy Board Rules appear to recognize this, given they provide for sole source purchasing and other forms of "special case" procurements in certain cases, including where only one source exists.⁷⁹ However, as noted, no such exception exists in the Standard Contract.

As recommended below, the City should evaluate whether it is appropriate to amend the Standard Contract to allow some specific and narrow exceptions to the competition requirements, such as in the case of a genuine emergency. The Standard Contract's competition rules may be undermined if providers simply ignore them in the rare situations where compliance is impossible.

C. Providers' Procurement Policies, Where They Exist, Often Conflict With City Procurement Requirements

DOI recommended in the 2021 Report that agencies "evaluate whether . . . contractor[s] procurement policies are subject to appropriate internal controls and that competitive bidding is employed as required."⁸⁰ Proactively ensuring that organizations maintain internal procurement policies that align with the Standard Contract would reduce the risk that providers will procure goods and services in a noncompliant manner.

As part of the Review, DOI examined shelter providers' internal procurement policies to determine whether they were aligned with the City's requirements as set forth in the Standard Contract. The review identified two common weaknesses in providers' procurement policies:

- **No Procurement Policy**: Several providers had no written internal procurement policy at all. While such a written internal policy is not required, it will be challenging for an organization to comply with City procurement rules without one.⁸¹ One provider without a written procurement policy was responsible for long-term City contracts worth hundreds of millions of dollars, although it did develop a formal policy after it was contacted by a monitoring firm assisting DOI with this Review.

^{xix} In response to these findings, BronxWorks stated, in part, that it had taken steps to "come into full compliance with the bidding requirements in areas where BronxWorks realized it was out of compliance or at risk of being out of compliance," although it "has not always been able to obtain three bids in each category, as many vendors decline to bid."

- Noncompliant Policies: Where providers did have policies, they often deviated from the City's requirements. DOI found that policies frequently did not align with the City's competitive bidding rules, documentation requirements, or both.

DSS and DHS should implement DOI's prior recommendation and proactively evaluate providers' policies to ensure they are compliant with City procurement requirements.

III. Executive Compensation at Nonprofit Shelter Contractors

Excessive compensation, particularly when paid to top executives, can also be an indicator of fraud, waste, or misconduct. According to the Internal Revenue Service, "payment of unreasonable compensation to an insider" constitutes "prohibited inurement" and "may be grounds for loss of tax-exempt status."⁸² And at a minimum, "excessive compensation . . . paid to senior executives of [nonprofit] organizations" can "divert[] resources from" their nonprofit purpose.⁸³

For these reasons, the 2021 Report highlighted executive compensation at nonprofit contractors as "an area that requires close and continuous scrutiny."⁸⁴ However, as DOI noted in the 2021 Report, "the City's systems for monitoring public funds directed to the highest salaries at its contractors and subcontractors—to the extent those systems existed at all—are undermined by significant loopholes."⁸⁵ In the 2021 Report, DOI identified multiple compensation-related weaknesses, including that the City: had "no standard mechanism for the City to collect basic information about the amounts paid to [nonprofit] executives," despite contractual terms requiring disclosure; had no way to determine "the extent to which City money is funding those salaries;" and had "no clear guidelines limiting executive compensation paid to its not-for-profit social service contractors."⁸⁶ For those reasons, DOI recommended that the City convene a group of stakeholders to evaluate, among other things, whether it would be appropriate to set a "cap or other parameters on City-funded executive compensation."⁸⁷

At least some stakeholders have begun to act in this area. Mayoral offices, including MORMC and MOCS, have previously communicated to DOI that they are analyzing executive compensation in response to the 2021 Report and expect to develop proposals for future guidelines. Furthermore, noting that City efforts "to prevent corruption" by putting controls on executive compensation "are extremely limited in scope and inconsistently applied," New York City Comptroller Brad Lander recommended that "[t]he City . . . pursue and implement a clear and easily enforceable cap on executive compensation for all nonprofit contractors delivering public services to New Yorkers."⁸⁸

While these are promising developments, DOI nonetheless found that many, if not all, of the concerns relating to executive compensation identified in the 2021 Report still exist. There are no clear limitations from the City on the use of its funds for executive compensation at nonprofit shelter contractors.⁸⁹ Other than a handful of limitations on certain forms of bonus and incentive payments, the City Cost Manual rule limiting reimbursement to costs “reasonable for the services rendered” is currently the only substantive restriction on executive compensation at shelter providers. However, there is no clear City guidance as to what is “reasonable” executive compensation.⁹⁰ DOI further found that DSS and DHS do not routinely or proactively examine City-funded executive compensation costs to ensure they are reasonable, as there is no City-wide policy requiring them to do so. Without such involvement by the City, decision-making on how much public money will be used for executive compensation is effectively wholly controlled by the nonprofit organizations themselves.

There are also ongoing transparency concerns relating to human service contractors' use of City funds for executive compensation costs, an issue that DOI also raised in the 2021 Report. DHS collects only some of the executive compensation information to which it is entitled under the Standard Contract, and there is no centralized information on executive compensation across the shelter system. Multiple providers were unable to give DOI a clear accounting of how much of their executive compensation was funded by the City, or even if any City funds were used towards their executives' pay.

DOI's review included an examination of executive compensation at City nonprofit shelter providers. Thirteen City-funded shelter providers reported that their highest compensated employee, generally the president or chief executive officer, received total compensation in excess of half a million dollars annually from the provider and related organizations between 2019 and 2022.⁹¹ Of these, DOI identified five instances where providers reported at least one employee receiving total compensation from the provider and related organizations exceeding \$700,000 in at least one of those years.

This Report expresses no view on how private not-for-profit organizations should compensate their employees, *except* to the extent those payments are funded by the City. That said, the need for City-wide guidance on executive compensation is clear. DOI strongly encourages all relevant stakeholders to promptly convene and develop such guidance, addressing the weaknesses DOI identified in this and the 2021 Report, and provide that guidance to DSS, DHS, and other agencies contracting with human service providers as soon as possible.⁹²

A. The City Has Not Set Clear Limitations on Public Funding of Executive Compensation at Nonprofit Contractors

The Review found that there are no clear, specific limitations on the use of City funds for executive compensation at nonprofit human service providers. The City Cost Manual requires that executive compensation, like other costs, be “reasonable for the services rendered and conform[ing] to the established written policy of the Provider . . . or established standard operating procedures.”⁹³ Other than a handful of limitations on certain forms of bonus and incentive payments set by the City Cost Manual, the City does not provide additional substantive limitations on executive compensation beyond reasonableness.⁹⁴

In the absence of clear City-wide guidance on pay, neither DSS nor DHS have effective limitations on executive compensation. The agencies do maintain some policies on compensation that are stricter than those set forth in the City Cost Manual: the DHS Fiscal Manual, for example, establishes that bonuses are “non-allowable expenses” that should not be charged to contracts.⁹⁵ However, DSS and DHS are not in a position to independently set standards in this complex area, which will require consistency with those standards for other City human service agencies.

B. Lack of Transparency Surrounding Use of City Money for Executive Compensation

Providers are required by contract to provide the City with certain information about executive compensation. Section 6.02(A) of the Standard Contract requires providers to disclose compensation of their “Executive Director, Chief Financial Officer, Chief Operating Officer, and/or the functional equivalent of such positions, and key employees,” as well as the source of funding used to pay those salaries.⁹⁶ These disclosures must be made at contract execution, and then upon request.⁹⁷

DOI found during the Review that many nonprofits have not provided this information to DHS, and could not provide specific information about their sources of executive compensation when requested. In responding to the Questionnaire, providers were required to identify the funding sources for their executives’ compensation, consistent with the Standard Contract’s disclosure requirements. However, at least thirteen providers did not provide the required funding source information or clearly indicate whether their executive compensation was funded by the City.⁹⁸

In a number of these and other cases, the Review confirmed that City funds were used, at least in part, to fund providers’ executive compensation. Multiple organizations, however, could not provide a specific accounting of how much public money was used for their executives’ compensation. This highlights a need for DSS to improve providers’ compliance with Section 4.02(A) of the Standard Contract, which requires contractors to “establish and maintain one or more separate accounts

for the funds obtained from or through the City of New York related to this and all other agreements with the City” and “maintain records for such account to track and clearly identify the funds obligated through [the Standard Contract].”

For example, one provider, Breaking Ground, initially claimed that it did not use City funds for executive compensation. However, a review by DeLuca found that the provider paid a portion of its executive compensation and bonus costs from an “overhead” bank account fully funded by the City.^{xx} Although it is ordinarily appropriate to fund reasonable executive salaries (as opposed to bonuses) with overhead funds from the City, the challenges around obtaining this information again underscores the need for increased transparency in this area. Another provider, SEBCO, reported on Internal Revenue Service forms that its top executive earned no salary from the nonprofit. However, further inquiry found that a related for-profit entity was billing the nonprofit for costs relating to this executive’s salary—meaning that SEBCO was, in fact, incurring significant salary expenses.

C. The Compensation for Certain Shelter Executives Appears Potentially Unreasonable, to the Extent it is Funded by Public Money

During the Review and other work, DOI identified instances where executive compensation paid by shelter providers and related organizations^{xxi} appeared unusually high, calling for further analysis of whether the publicly-funded portions would be considered “reasonable” under the City Cost Manual and underscoring the need for the City to be proactive in controlling expenditures in this area. Specific examples include:

- One former provider, CORE, reported on public forms that its Chief Executive Officer received total compensation of more than \$860,000 from the provider and related organizations in one year. DOI’s investigation indicated that this individual actually received more than \$1 million in total compensation during that year from CORE and other closely associated organizations. According to public filings, CORE was almost entirely funded by the City.

^{xx} In letters to DOI and DSS, Breaking Ground stated that it had adequate private sources of funding to pay for its executive compensation costs, but that it had “revised its executive compensation policy to make it easier to identify the source of funds used to pay bonuses in the future.” Following DOI’s referral, DSS entered into a certification agreement with Breaking Ground that required that Breaking Ground, among other things, document “the funding sources of all executive compensation, including all bonuses paid during the past three (3) fiscal years.”

^{xxi} As defined by the IRS, a “related organization” is one that “controls the filing organization” (a “Parent”), is “controlled by the filing organization” (a “Subsidiary”), or is “controlled by the same person or persons that control the filing organization” (a “Brother/Sister”). Internal Revenue Service *2023 Instructions for Form 990* 71 (2023), <https://www.irs.gov/pub/irs-pdf/i990.pdf> (last accessed Sept. 11, 2024).

- According to filings with the Internal Revenue Service, the President and CEO of another shelter provider, CAMBA, Inc. (“CAMBA”), received total executive compensation of over \$700,000 from CAMBA and related organizations in multiple years: \$777,452 in fiscal year 2019, \$756,337 in fiscal year 2020, and \$704,895 in fiscal year 2021. CAMBA and its related organizations also paid several Executive Vice Presidents over \$500,000 each year. A review by DeLuca found that at least some of this compensation was paid from an account that received City funding intended to pay overhead costs.
- According to its own filings with the Internal Revenue Service, the President and Chief Executive Officer of another provider, Acacia Network Housing, Inc. (“ANHI”), received annual compensation from ANHI's parent organization, Acacia Network, Inc., of \$916,359 in 2021, \$911,751 in 2020, and \$862,705 in 2019. Although most of these costs were funded by non-City sources, an analysis by Eisner found that a portion of that CEO's compensation was derived from City funds.^{xxii}

High compensation rates were not limited to these examples. Between 2019 and 2022, thirteen providers had at least one employee who received more than \$500,000 in total compensation from the provider itself and related organizations. Five of these providers, together with their related entities, paid at least one employee more than \$700,000.

Concerns about overspending in this area are mitigated in cases where the organization primarily funds its executive compensation through non-City sources of revenue, such as private donations or fees collected from other business. However, because shelter providers are not required to consistently report how much of their executives' total compensation is funded by the City, it often was not clear what percentage of these compensation packages have been publicly-funded and what percentage have been funded by other sources. This fact only underscores the need clear rules and transparent reporting in this area.

^{xxii} In response to this finding, Acacia noted that its executive salaries are based on the “combined revenue, budget, and assets” of it and its related organizations. Acacia further noted that a third-party consultant had conducted studies of its executive compensation in 2018 and 2020 and the studies show the salary “meets the standard of reasonableness” set forth in “the Internal Revenue Code and the safe harbor provisions promulgated under EO38.” It further characterized the total amount of “executive salary allocation to the ANHI budget,” in context of the entire budget of Acacia Network, Inc., as “miniscule.”

D. Risk of City Funds Being Used to Pay Bonuses or to Otherwise Compensate Executives in a Manner that May Be Unreasonable or Impermissible Under the City Cost Manual

1. Improved Controls Needed Relating to Bonus Costs

The DHS Fiscal Manual describes bonuses as “non-allowable expenses that should not be included” in providers’ costs.⁹⁹ However, the City’s controls are not currently adequate to protect against public money being used to subsidize the costs of bonuses and other additional, non-salary compensation.

Providers frequently use City funds that are earmarked for administrative costs to pay for executive compensation. Expenditures made using these administrative funds are not necessarily tied to invoices for particular contracts, meaning the provider need not affirmatively disclose to DHS how they are used. Moreover, as noted above, the City also does not routinely collect disclosures about the sources of executive compensation. As a result, a provider could potentially pay bonus costs from a City-funded “overhead” account without ever being required to, or having an opportunity to, disclose those payments to DHS. As referenced above, an analysis by DeLuca found that bonus costs at Breaking Ground were funded by a City-funded “overhead” account. Through its referral letters, DOI referred several other cases involving bonus payments to DSS for further review as to whether the expenses were funded by DSS/DHS.

This Report’s recommendation to collect additional disclosures concerning executive compensation will assist in identifying noncompliance with this prohibition in the DHS Fiscal Manual.

2. Potentially Excessive Payments in Connection with an Employee’s Departure

Although DHS rules state that severance payments are “generally not allowable” except if permitted by the contracting agency “in extenuating circumstances,”¹⁰⁰ DOI also identified one instance where a provider made significant payments to an executive upon their departure from the organization.

In connection with another investigation that was not part of this Review, DOI found that a nonprofit shelter provider, Urban Strategies, Inc. (“Urban Strategies”), paid a former executive more than \$84,000 for over 1,000 hours of accrued vacation time in connection with the conclusion of their employment at the organization. Although not specifically characterized as “severance,” a payment of this magnitude highlights the need for transparency and disclosure around the use of City funds for significant payments to departing and former employees.

In this case, DOI recommended that the MOCS evaluate whether the payments were “reasonable” under the Cost Manual and that MOCS develop a policy on human service contractors’ “payout of unused vacation days upon [an] employee’s separation from employment.” MOCS reported that it has accepted DOI’s recommendation to develop a policy on payout of unused vacation days, and that it “will work” with human service agencies serving in the Vendor Compliance Cabinet to “update policies in line with [this recommendation].”

E. The City Should Provide Clear Guidelines on Executive Compensation

This wide variability in City-funded executive compensation packages is due at least in part to the absence of City rules or guidelines on reasonableness of executive compensation. DSS has confirmed to DOI that it has not set limits on executive compensation because of the lack of City-wide guidance.

For these reasons, DOI reiterates its recommendation that the City implement guidelines as to the amount of City money that can be allocated to executive compensation at City-funded nonprofit human service providers. In the 2021 Report, DOI recommended that MOCS and other stakeholders “develop appropriate guidance to agencies in making determinations as to the appropriateness of executive compensation for contractors and first-tier subcontractors,” and “consider setting a cap or other parameters on City-funded executive compensation.”¹⁰¹

DOI also recommends City stakeholders take the following steps with respect to limitations and guidance on executive compensation:

- **Enforce Existing Disclosure Requirements:** The City should ensure that it is collecting the executive compensation information to which it is entitled, including disclosures about what portions of the executive compensation are funded by City money.
- **Utilize Relevant Comparisons:** To the extent that the City seeks to set compensation limits based on pay at other nonprofits, it should compare compensation at nonprofits whose revenues, sizes, and functions are similar to City shelter providers.¹⁰²
- **Consider Funding Sources:** When determining limits on executive compensation and their application, the City should consider the extent to which shelter providers are City-funded.
- **Compare to Other Jurisdictions:** The City should review other jurisdictions with existing executive compensation rules to determine whether to impose comparable rules on the use of City contract funds for executive compensation. The federal government, for example,

requires that contractors report the names and total compensation of their five most highly compensated officers, and imposes caps on executive compensation with limited exceptions and adjustments.¹⁰³ Other jurisdictions also link the maximum value of reimbursement for contractors' executive compensation to the salaries paid to high-level government officials.¹⁰⁴ New York State, until recently, was one such jurisdiction: from 2012 to 2021, the State prohibited its nonprofit contractors from paying executives more than \$199,000 with State funds.¹⁰⁵

FINDINGS: DSS, DHS, AND THE CITY

In addition to examining individual nonprofit shelter providers, DOI also examined the City's oversight and management of the shelter system as part of this Review. This aspect of the Review focused on DHS and DSS because they are the agencies primarily responsible for ensuring that the City's nonprofit shelter providers use public funds appropriately and in compliance with their contracts.¹⁰⁶

Overseeing the fiscal and programmatic operations of this system is, by any measure, a huge undertaking. That said, the Review identified multiple areas where the City, DSS, and DHS more broadly have fallen short in managing and overseeing the contractors that operate the shelter system. Although DSS and MOCS have taken several significant steps in recent years to improve oversight and compliance, the remaining weaknesses will continue to open the door to instances of noncompliance or misconduct, or otherwise allow such issues to go undetected for longer than necessary.

First, the Review found multiple gaps in the City's compliance-related disclosure systems. These gaps were identified in the 2021 Report and the City still has not rectified them. As DOI noted in the 2021 Report, the City does not require shelter providers or other nonprofits to regularly submit disclosures that are likely to uncover all relevant conflicts of interest and other compliance concerns. DOI also reviewed numerous existing disclosures from the PASSPort system and found that they frequently contain incomplete or inaccurate information. City personnel already responsible for examining invoices and vetting contractors would have been better-positioned to proactively flag the compliance concerns identified by DOI during this Review if recommended improvements to the disclosure system had been in place. A redesigned, more comprehensive disclosure system addressing these issues should be implemented without further delay.

Second, the Review identified vulnerabilities in DHS and DSS' handling of the invoicing, review, and reimbursement of nonprofit contractors' costs. For example, DHS approved invoices worth millions of dollars for claimed purchases where no vendor was listed in HHS Accelerator, which was the City's main system for collecting invoicing information from human service providers until this year. Providers labeled these costs with vague placeholders such as "To be Determined" or "TBD." Separately, audits conducted by the Office of the State Comptroller have found that invoice reviews by DHS and DSS have failed to protect against waste and loss in particular cases. Further, although outside the scope of this Review, the Report notes the risks to the shelter system posed by DHS's frequent payment delays.

Third, the City's dependence on larger shelter providers poses a risk to the shelter system as a whole. DOI identified seventeen nonprofit contractors who, as of early 2024, each provided more than 1,000 beds or units. All together, these providers

accounted for 65% of the City's total shelter capacity. The City's ability to house those who are in need could be at risk if one of the organizations failed or if the City was forced to terminate one of these organizations' contracts. To mitigate this risk and detect potential issues earlier, DOI recommends that DSS and DHS conduct regular reviews of these "systemically important" shelter providers.

Fourth, DOI identified several broader, management-related factors that pose challenges to oversight of the shelter system. These include structural and organizational challenges at DSS and DHS with respect to oversight and compliance functions, as well as limitations in the City's electronic contracting system, PASSPort.

DOI recognizes that the City has made some effort since the 2021 Report to address compliance and integrity issues in the shelter system, including in several areas that overlap with the findings of this Report.^{xxiii} In a December 2022 letter to DOI, MOCS—the agency with primary oversight of City contracting—and MORMC wrote that the 2021 Report's "findings and recommendations are a significant focus of work . . ." and that the agencies were "pursuing . . . five topics, which closely track DOI's recommendations in the [2021] Report:" (1) executive compensation; (2) self-dealing controls; (3) contract invoicing; (4) creation of a Vendor Integrity Unit at MOCS; and (5) audit reform.

This Vendor Integrity Unit was subsequently created within MOCS, and DOI understands that this group will serve as the "central authority to issue and ensure compliance with uniform policies" that was recommended in the 2021 Report. The City also recently formed what is called the "Vendor Compliance Cabinet," which consists of representatives of ten City agencies that hold contracts with human service providers, and which was reportedly involved in implementing the City-wide anti-nepotism policy in April 2024.

I. Required Compliance-Related Disclosures Remain Insufficient

Like all City-funded nonprofits, shelter providers and their principals are required to provide the City with certain compliance-related information by completing "questionnaires" in the PASSPort system. The existing PASSPort questionnaires do require organizations to disclose information such as the names of related entities and the existence of government investigations,¹⁰⁷ but do not include direct questions about most types of conflicts of interest or related party transactions.

^{xxiii} DSS, ACS, DFTA, MOCS, and DYCD all indicated that the PPRs from the 2021 Report issued to them were pending action by another government agency, reflected policies already in place, or were not applicable. DOHMH accepted eleven PPRs, rejected six PPRs, and stated that five policies were already in place. See DOI PPR Portal, (last updated June 26, 2024).

DOI's first recommendation in the 2021 Report was that "[a]gencies should require human service contractors to complete a standard disclosure and certification form that will assist in identifying potential conflicts of interest and noncompliance with the City's competitive bidding requirements."¹⁰⁸ DOI made further recommendations about reporting for related entities, related party transactions, executive compensation, cost allocation, and audit certifications. The 2021 Report attached draft disclosure forms to assist in the implementation of these recommendations.¹⁰⁹ As of the date of this Report, these recommendations have not been implemented.

In the interim, the City continues to rely upon the existing disclosure system, namely the questionnaires required by PASSPort, as well as information required by the Standard Contract, the City Cost Manual, and the DHS Fiscal Manual.^{xxiv} Although the existing disclosure system does collect some critical information, other aspects remain inadequate:

- PASSPort Questionnaires Do Not Contain Direct Questions About Key Information: PASSPort questionnaires ask direct questions about some, but not all, potentially relevant types of conflicts of interest or related party transactions.¹¹⁰ The absence of such questions represents a major missed opportunity. The Questionnaire used in this Review asked such direct questions and, as a result, uncovered a number of potential compliance concerns that warranted further evaluation.
- Some Existing Questions are Too Limited: In some other cases, the questions asked by the City are too narrow and may not capture relevant information. For example, PASSPort asks providers to disclose whether any audits "revealed material weaknesses" in the past three years.¹¹¹ During the Review, DOI observed that providers generally answered this specific question accurately.¹¹² However, DOI identified audit findings other than "material weaknesses" that were potentially concerning, including "significant deficiencies," "qualified opinions," and "disclaimers of opinion." None of these findings, however, are covered by the City's existing questions,¹¹³ and therefore would not necessarily be disclosed. For example, DOI found that one provider, BVSJ, received a "qualified" opinion of its financial statements because the auditor could not obtain "sufficient" evidence concerning, among other things, payments reported as due from affiliates. The provider was not required to, and did not, disclose this qualified opinion to the City, even though it would have been relevant to the City's oversight of its contracts.

^{xxiv} Until this year, providers also had to submit information using HHS Accelerator. That system was phased out and its functionality has been moved to PASSPort.

Many of the compliance concerns raised throughout this Report are more likely to be proactively identified with adjustments to the City's contractor disclosure system that are consistent with DOI's prior recommendations. In response to a draft of this Report, MOCS, DSS, and MORMC responded that the City is "still working on implementing changes to nonprofit disclosures" and that it "is planning to implement such disclosures in the nonprofit HHS Prequalification Application" These changes should be implemented without further delay.

This Review also identified several additional categories of relevant compliance information that the City should require providers to disclose. The categories include:

- Beneficial Ownership of Vendors and Landlords: One of the most significant expenses that the City pays in connection with its shelter contracts is the cost of renting the physical space where the shelter operates. These costs could be inflated if they are not the product of true arm's-length negotiation between the nonprofit and the landlord, such as in cases where the entities have some sort of affiliation. However, relationships between nonprofits and landlords may not be evident when the landlord's owners are masked behind a limited liability company (an "LLC") or a complex corporate structure. In some cases, DOI found that the "landlord" disclosed for a given shelter is essentially a holding company affiliated with the true beneficial owner of the property.

Transparency around the relationships between shelter operators and their landlords can reduce the risk of inflated costs due to relationships between the parties. It is also important that the City knows who it is doing business with, even indirectly. However, DHS does not routinely collect information sufficient to identify the true owners of the buildings where it operates shelters. Although DHS obtains "site control" documents demonstrating that the nonprofit holds the lease for use of the property, landlords may be identified in those documents only with the name of an anonymous LLC, leaving it unclear who actually owns the building. With this limited information about the landlord, DSS cannot identify affiliations between the nonprofit and the landlord.

- Conflicted Employees Other than Directors and "Principal" Owners and Officers: The Standard Contract only requires "directors" to disclose conflicts annually in documents to be collected and maintained by the organization itself.¹¹⁴ Company executives and other key persons do not have an equivalent conflict disclosure requirement.¹¹⁵ As previously discussed in this Report, DOI found senior nonprofit executives who received supplemental payments from for-profit companies that were affiliated with the nonprofit.¹¹⁶ Without a similar internal disclosure

system for executives and other key persons, such potentially conflicted interests may not be reported to the City.

In addition to the recommendations here and in the 2021 Report, the City should thoroughly consider what information it does and does not require nonprofit contractors to provide as it develops a new, strengthened disclosure system. At a minimum, the City should collect key information related to potential conflicts of interest, City-funded executive compensation, and compliance with competitive bidding requirements.

As a final note, this Review found a number of examples where providers submitted incorrect or incomplete information in response to required disclosures. For example, DOI identified multiple nonprofit contractors that provided inaccurate information about related companies on required PASSPort disclosures. One provider, BVSJ, stated in its PASSPort disclosure that it did not control any other entities; however, research by DOI found that the provider controls as many as eighteen other entities. BVSJ's PASSPort disclosure still did not list ten of these eighteen entities as of the date that this Report was released. DOI referred a number of these findings to DSS for further action.

II. Weaknesses Remain in the Invoicing, Cost Review, and Payment Process

As discussed, most shelter providers provide services to DHS on a cost-reimbursement basis.¹¹⁷ Under this model, nonprofit contractors are generally paid for their work after they demonstrate that it has been completed.¹¹⁸ To be paid, providers must submit invoices requesting reimbursement for those costs, which DHS may then review before approving or rejecting payment.¹¹⁹

This agency review process is critical to effective oversight. DOI reiterates its statement from the 2021 Report that an agency's review of invoices "provide[s] perhaps the City's most significant opportunity to prevent payment of public money for 'unallowable' expenses that are outside the scope of the contract, wasteful, or fraudulent."¹²⁰

Not all expenses are reimbursable under the providers' City contracts.¹²¹ As a general rule, only "reasonable" and "allowable" costs may be reimbursed, based on the provisions and rules set by the Standard Contract, City Cost Manual, and DHS Fiscal Manual.¹²² Those materials also identify categories of costs that are always "unallowable," including bad debts, public relations costs, fines, penalties, damages, and settlements.¹²³ Providers must submit invoices with enough information so that DHS can determine the purpose of the expenditure, whether the amount spent was reasonable, whether it was consistent with the program budget, and whether it is permissible under the above-referenced rules.¹²⁴ If a cost is insufficiently

documented, it is an unallowable cost that cannot be charged to a City contract—and subject to reimbursement to the City if already paid out.¹²⁵

The 2021 Report contained several findings about invoicing and reimbursement, and made multiple recommendations to strengthen the process.¹²⁶ There, DOI found that the policies in place for City human services agencies' review of claimed expenses were inadequate. DOI also identified several significant vulnerabilities in the invoicing and reimbursement process, including that: (1) providers' invoices frequently lacked sufficient information for agencies to evaluate the legitimacy of claimed expenses; (2) agencies failed to collect or sufficiently review supporting documentation for claimed expenses; and (3) most human service agencies did not have a practice of conducting pre-payment reviews required by the City Comptroller.¹²⁷ DOI further noted that providers frequently endured long delays before receiving payments for expensed costs, and that these delays were a "real and serious problem that can put contractors in a precarious financial position."¹²⁸

This Review found that substantial weaknesses remain in DHS's processes of reviewing invoices and reimbursing shelter providers. First, DOI identified repeated instances where providers submitted, and DHS approved, invoices that were facially insufficient. More than \$117 million of line items on invoices were approved for payment by DHS, even though the line items failed to identify a vendor as required; in those cases, the nonprofits frequently described the vendors using placeholder terms such as "various," "to be determined," or "TBD."

According to reports by the New York State Comptroller, significant weaknesses in cost review also remain. That office found that DHS missed millions in unallowed or otherwise prohibited costs claimed by shelter providers. The State Comptroller attributed these losses to DHS's failure to identify unallowable costs during required invoice reviews, either because it was not conducting those required reviews or was doing so inadequately.

And according to shelter providers themselves, the reimbursement process remains plagued with delays. Providers reported that DHS frequently made late payments, which DOI found can have significant negative impacts on shelters' abilities to provide services. This is a long-standing problem that has been widely reported, and is beyond the scope of this Review. Although DOI received information from both providers and from DSS as to potential causes of these delays, this Report notes that late payments pose an ongoing risk that can lead to unnecessary costs to the City and jeopardize nonprofits' ability to provide shelter.

A. DHS Reimbursed Providers for Costs Described with Minimal Information

As part of the Review, DOI examined DHS invoicing data from fiscal years 2017 through 2023.¹²⁹ This data is comprised of invoices that providers submitted to

DHS through HHS Accelerator, which was until recently the online portal for City human services contracting.¹³⁰ HHS Accelerator generally required contractors to list the type of cost and amount spent, and to describe the good or service purchased.¹³¹ Providers did so by filling in fields with details about the nature of the expense, such as the payee name and the expense category (e.g., “rent” or “equipment”).

DOI found that DHS frequently approved invoices submitted by shelter providers that contain minimal information or explanation of claimed costs. These fell into two categories: invoices lacking key cost information for unknown reasons, and invoices missing cost information apparently due to limitations in HHS Accelerator.

In the first category, DOI identified invoices from 2017 to 2023 containing line items worth over \$117 million that DHS approved for reimbursement even though no vendor was named on the line item. While many vaguely described the purpose of the cost, in all cases DOI found that the purported vendor was listed only as “To Be Determined,” “TBD,” “Various,” or some similar vague term. Among other examples, DOI found that:

- DHS approved dozens of line items on invoices worth more \$30 million from one provider, purportedly for security, food services, and maintenance. On each invoice, the vendor is listed as “TBD.”
- From 2017 through 2022, DHS approved over \$5.6 million in line items on invoices from one provider, described as being for security, fire detection, and maintenance, but where the vendor name was listed as “TBA.”
- DHS approved at least fourteen line items on invoices valued at more than \$523,000 submitted by another provider, identifying the vendor as either “TBD” or “Various.”

DSS and DHS officials have confirmed to DOI that invoices with placeholders such as “TBD” should not have been approved. Invoices relying on terms such as “TBD” are inadequate because they do not “accurately reflect expenses in accordance with [providers’] actual budget[s]” as DHS policy requires.¹³² Although HHS Accelerator allowed providers to upload documentation supporting each line item—theoretically even for those expenses described simply as “TBD”—the process of locating and manually reviewing such documentation would have been cumbersome and a poor substitute for requiring the provider to describe the expense adequately on the invoice itself.

The absence of information for the second group of provider invoices was due to the design of HHS Accelerator itself. DOI found, and MOCS confirmed, that HHS

Accelerator did not permit providers to fully explain certain claimed expenses on the face of submitted invoices, limiting transparency and effective contract oversight.^{xxv} For example, DOI found that HHS Accelerator did not include a field that would allow providers to provide key details, such as the vendor name, for other than personal services (“OTPS”) line item costs categorized as “Operations and Support” and “Professional Services.” Identified examples include:

- Over \$292,000 in line item costs categorized as “Prepared Meals,” “Equipment,” and “Legal Costs” invoiced by one provider under the “OTPS – Operations and Support” or “OTPS – Professional Services” lines did not include information about the vendor for those purchases, because there was apparently no field for this information on the HHS Accelerator invoice.
- Over 140 line items on invoices submitted by another provider described as “Client Supplies & Activities,” “Prepared Meals,” and “Other” submitted under the “OTPS – Operations” and “Support or OTPS – Professional Services” lines did not include the name of the vendor relating to those costs. Again, there was apparently no field on the HHS Accelerator invoice for vendor information relating to these costs.

MOCS, MORMC, and DSS responded that a field for this information was not included in HHS Accelerator due to “[e]fficiency choices [that] were made by the HHS Accelerator Director in the design of HHS Accelerator.” However, such line-item vendor information was collected for a wide variety of other OTPS costs, making it unclear how or why there was efficiency in excluding this information here.

Since this Review began, invoicing for human services contracts has been migrated to PASSPort. DOI asked MOCS whether PASSPort allows for providers to input the key details identified above as missing from HHS Accelerator, that is, whether a field is provided for those details. MOCS stated in response that “PASSPort similarly does not limit what documents an agency might need to review to approve an invoice. Invoices in PASSPort can be set up by the agency to have any specified lines and required documents.”

MOCS’s response is correct in that agencies are able to choose what information must be included, or may be excluded, from given line items. However, the response does not address DOI’s central concern: basic information, such as the vendor for a given line item, should be required by the system itself, and not subject

^{xxv} MOCS, MORMC, and DSS stated “HHS Accelerator does permit providers to fully explain claimed costs through attachments.” As noted above, including real expense information on the invoice itself is critical for oversight; for example, including this information would allow agencies to track spending at specific vendors across individual providers.

to agency or vendor choice. In order to effectively oversee their contracts, agencies need such information to determine whether a given invoice is, or is not, adequately supported. However, agencies (including DSS and DHS) effectively have the option to exclude such information. MOCS should mandate that vendors are identified in the line items for every invoice. Moving forward, the City should take the necessary steps to ensure that inadequately supported invoices, such as those using placeholder descriptions, are not approved for reimbursement, and that providers are able to provide such necessary information for all invoiced costs. The City has a responsibility to ensure that public monies are not paid out unless the agencies receive an explanation of the nature of the cost and the entity or vendor providing the good or service.

B. State Comptroller Audits Found Certain DHS Expense Reviews to be Incomplete or Inadequate

The DHS Fiscal Manual states that the agency must conduct several levels of review of provider invoices. Specifically, the manual states that DHS should conduct both “initial” reviews of all invoices, as well as “Line Item Sample Reviews” of reimbursed costs “selected at random, on the value of the budget line, or . . . based on perceived risk.”¹³³

The Office of the New York State Comptroller (the “OSC”) released several audit reports in recent years highlighting instances where DHS Fiscal Manual-required reviews are not being conducted properly. In audit reports issued in 2021 and 2022, OSC concluded that DHS “did not complete required expenditure reviews” for two providers, Institute for Community Living and Bowery Residents Committee.^{134,xxvi} The OSC audits found that DHS was, at best, partially complying with the review requirements of the DHS Fiscal Manual. In one of the audits, OSC determined that DHS “did not review any line items for . . . 22%” of the invoices submitted by the provider, and that the agency only reviewed one-quarter of the OTPS costs it was required to examine.¹³⁵ In the other audit, OSC found that DHS had reviewed even less: only 3% of OTPS costs in one fiscal year, and only 12% in another.¹³⁶ The deficient reviews had a clear fiscal impact: OSC concluded that DHS failed to find more than \$3.2 million in non-competitive purchases by one provider,¹³⁷ and more than \$1.2 million in misallocated or misreported costs by the other.¹³⁸

C. Late Reimbursements from DHS to Providers

It has been widely reported that City human service agencies like DHS are regularly late in reimbursing providers for their expenses. As the 2021 Report noted,

^{xxvi} In 2019 and 2022, respectively, BRC and ICL entered into corrective action plans with DSS relating to the Comptroller’s findings. DSS has informed DOI that providers on corrective action plans are also placed on “enhanced invoice review,” which requires them to submit documentation for claimed expenses over and above what is normally required.

these delays “present a real and serious problem that can put contractors in a precarious financial position.”¹³⁹

During the course of this Review, a number of providers reported to DOI that they had received late payments from DHS. These providers further reported that these late payments had impacted their ability to pay other obligations, such as shelter rent expenses, risking their ability to provide services, and ultimately to the City's ability to house those needing shelter. Examples include:

- One provider, BronxWorks, reported that it did not remit rent “in instances where the City has failed to timely register contracts and or pay amounts owed . . . on our City [c]ontracts.” DOI examined financial records for this provider and confirmed that, in mid-2021, that provider owed debts to landlords worth over \$780,000 that were 61 to 90 days old. According to the lease for one affected property, the landlord could declare the provider in default after 120 days of non-payment, even if due to DHS's delays in payment.^{xxvii}
- Another provider, Care for the Homeless, reported that it had “not been able to pay all lease and rent obligations in a timely manner” because “the timely payment of [its] lease and rent obligations are tied directly to when we receive payment of our invoices from DHS.”

DSS and DHS officials told DOI that several factors may contribute to late payments. DSS, MOCS, and MORMC identified factors including “routinely late submission of invoices by providers, providers submitting many months of invoices at one time (requiring time for review by DHS), and errors in invoices submitted by providers that require provider resubmission.” Because an examination of the late payment issue was outside the scope of this Review, DOI did not conduct an independent evaluation of these claims. Nonetheless, DOI observed two factors that may be of particular relevance to efforts to develop a policy to address the late payments issue:

- Invoicing Issues: Multiple DHS and DSS officials noted that invoice processing is most commonly delayed due to the need for invoice revisions; in such cases, DHS must go back to the provider to request that errors be corrected. Agency officials also noted that providers often submit several months of invoices at the same time, despite rules requiring monthly submission. DHS and DSS officials expressed to DOI that they lack the

^{xxvii} In a letter to DOI, counsel for BronxWorks wrote that BronxWorks “did not refuse to pay rent, but rather waited for the corresponding funds on its City contracts to be released.” The letter also stated: “To date, BronxWorks has never been issued a notice of event of default by any landlord due to late payment of rent on a shelter lease.”

capacity to rapidly process multiple months of invoices submitted simultaneously.

- **Shelter Budget Funding:** Multiple DHS and DSS officials noted that the shelter budget is “structurally underfunded” and, as a result, there are times when the agencies simply lack the funds to pay providers. According to these officials, this problem is particularly acute towards the end of the fiscal year.

The City reports that it has recently made efforts to address the late payment issue. Among other things, the Joint Task Force to Get Nonprofits Paid on Time recommended that the City make multiple reforms to streamline the procurement process and establish accountability for timely procurements and payments.¹⁴⁰ Since the Joint Task Force’s report was issued, the City reports progress has been made, including the clearing of “over 4,000 backlogged contracts” and “record” speed in contract registration.¹⁴¹ Again, because late payments are outside the scope of the Review, DOI did not evaluate these claims.

III. **Heavy Reliance on Larger Shelter Providers May Pose Systemic Risks**

Finding shelter for those who need it is an immense task, requiring DSS and DHS to identify and contract with enough providers to meet increasing needs. DSS and DHS must address the already significant existing shelter need, as well as sudden spikes in demand, and other exigent circumstances such as when providers shut down or are terminated.¹⁴² In short, the City is constantly in need of beds and of providers to supply them.

Certain nonprofit contractors are responsible for a particularly large proportion of the City’s shelter capacity. According to DSS data from February 2024, seventeen nonprofit providers operated shelters with a total number of 1,000 or more units or beds. Those seventeen organizations accounted for 65% of the City’s total non-migrant shelter capacity.¹⁴³

Provider	# of Shelters	# of Beds/Units	% of System Capacity
Acacia Network Housing, Inc.	53	5417	10.36%
Samaritan Daytop Village, Inc.	43	4097	7.84%
Neighborhood Association for Inter-Cultural Affairs	22	2687	5.14%
Bowery Residents Committee, Inc.	17	2429	4.65%
Westhab, Inc	20	2401	4.59%
HELP USA	21	2270	4.34%
Women In Need, Inc	22	1986	3.80%
Children’s Rescue Fund, LLC	16	1741	3.33%

Provider	# of Shelters	# of Beds/Units	% of System Capacity
Home/Life Services, Inc.	18	1673	3.20%
CAMBA, Inc.	20	1508	2.88%
Highland Park Development Corp.	11	1307	2.50%
Volunteers of America	12	1254	2.40%
Bronx Parent Housing Network	20	1251	2.39%
African American Planning Commission	10	1164	2.23%
Black Veterans for Social Justice	11	1110	2.12%
VIP Community Services	9	1072	2.05%
Institute for Community Living	8	1064	2.04%
Total	333	34,431	65.87%

Organizations shouldering contracts of this magnitude are systemically important, in that the City relies on them heavily to meet its shelter needs. These providers are not irreplaceable—to the contrary, DSS and DHS made clear to DOI that any provider can be terminated and replaced if necessary, and that they have done so in the past. However, DSS and DHS officials noted the critical nature of these large providers to the overall shelter system. In particular, DSS and DHS representatives noted that is substantially more difficult to replace providers that represent a large share of overall shelter capacity.

Recognizing the reliance on these providers and the difficulties in replacing them, compliance issues at large operators pose unique risks to the shelter system. At minimum, DHS and DSS need sufficient warning of potential compliance risks at larger providers so they can be resolved promptly without impacting overall system capacity. DOI therefore recommends that the City establish routine and regular reviews of these and any other “systemically important” shelter providers to minimize the risk that City will be surprised by a major financial or compliance concern that will jeopardize the organization’s ability to provide capacity. This review should be conducted by the Vendor Integrity Unit that was established at MOCS in response to the 2021 Report.

IV. Challenges to Management and Oversight of the Shelter System

Beyond the specific issues discussed above, DOI identified two broader factors that pose challenges to the overall management and supervision of the shelter system: (1) organizational and structural issues at DHS and DSS impacting contract management, and (2) weaknesses in the City’s human service and procurement systems that impact oversight.

A. Structural and Organizational Factors at DSS and DHS Contribute to Contract Oversight and Management Issues Identified by this Review

This Review revealed structural and organizational changes at DSS and DHS that can make the agencies more effective at identifying and addressing waste, fraud, abuse, and other compliance concerns.

First, compliance and oversight functions at DSS are diffuse; they are not the responsibility of a well-defined officer or unit. Major compliance responsibilities are currently split between two offices.

The Office of the Agency Chief Contracting Officer (“ACCO”) currently plays the most significant role in addressing non-programmatic compliance matters among shelter providers. Although the ACCO’s Office is principally responsible for agency procurement, it also conducts subcontractor reviews through the “65A” process and develops corrective action plans. By law, the ACCO’s Office must perform what is known as a “responsibility determination,” finding whether each shelter contractor “has the capability . . . and the business integrity to justify the award of public tax dollars.”¹⁴⁴ In connection with those assessments, staff within the ACCO’s Office conduct their own fact-finding and research on matters related to vendor integrity.

The DSS Office of Accountability manages internal and external audits, develops programmatic corrective action plans, and monitors those corrective action plans more generally. The Office of Accountability also operates an agency “Vendor Management Committee.” The Accountability Office also focuses on various compliance matters concerning DSS funding and programs that are not related to the shelter system.

Further, day-to-day programmatic and fiscal issues involving these contracts are handled by at least five offices across three agencies (DSS, DHS, and the Office of Management and Budget), each of which has separate responsibilities.¹⁴⁵

As noted below, DOI recommends that DSS appoint a Chief Vendor Compliance Officer who will provide overall leadership with respect to the agency’s efforts to promote compliance in the shelter system. This individual will be responsible for, among other things, identifying oversight gaps and coordinating the compliance-related work that is being performed in various work units.

Second, professionals in DHS’s program division (*i.e.*, the employees responsible for ensuring that services are delivered appropriately) are also the employees primarily responsible for reviewing provider invoices to ensure that claimed expenses are appropriate. These employees, however, receive only limited on-the-job training with respect to invoice review and may have limited capacity to review invoices given the demands of their other responsibilities to ensure that

services and programs are being delivered adequately.¹⁴⁶ Although other DHS staff are involved in the invoice review process, they are not taking steps to verify that costs are allowable or reasonable.¹⁴⁷

DOI recommends that DSS and DHS take steps to ensure that its staff are properly equipped—both in terms of capacity and training—to effectively review provider invoices.

B. Limitations of Certain City Contracting Systems Hinder Oversight

In recent years, the City has sought to streamline procurement and contracting by digitizing more aspects of the process. As part of these efforts, the City launched two online portals: HHS Accelerator and PASSPort.¹⁴⁸ HHS Accelerator has since been phased out, but PASSPort remains in use. There is reportedly broad agreement among the nonprofit community that these systems have sped up the contracting and procurement process, reducing key steps from months to days.¹⁴⁹

However, during this Review, DOI found that design limitations of the PASSPort and HHS Accelerator systems created unnecessary obstacles to oversight. Even where certain information has been collected from shelter providers, systemic difficulties in accessing and reviewing that information limits its value. Some examples include:

- Availability of Contract Documents Prior to 2020: Many contracts on PASSPort, particularly those executed prior to 2020, do not include basic documentation such as the contract itself or contract registration materials. As a result, a user may not be able to review the terms of an existing agreement unless that user seeks the information out from other systems or paper records.
- Availability of Historical Information: While historical information is preserved, neither PASSPort nor HHS Accelerator allow City agencies to easily view historical data, such as earlier versions of contractors' submissions. For example, PASSPort only shows a contractor's most recently-submitted disclosures, not previously-submitted versions. In the event that a user wishes to compare different versions of the disclosures, such information can be obtained only through a cumbersome process of accessing "backend" data. MOCS has informed DOI that it is working to expand DOI's access to earlier versions.
- Supporting Documentation Difficult to Find: Providers upload supporting documentation relating to their contracts in PASSPort, and until recently, in HHS Accelerator, which has since been phased out. However, due to limited search capabilities in both systems, it is difficult

and labor-intensive to identify and access this supporting documentation. This problem was most acute in HHS Accelerator, but is also present in PASSPort.^{xxviii}

The City should take steps to ensure that oversight needs are considered when upgrading or modifying PASSPort, or when developing other procurement and contracting systems. As the City has phased out HHS Accelerator and now uses PASSPort as the sole system for human services contracting, DOI recommends that the City take steps to address these oversight-related issues in PASSPort moving forward.

^{xxviii} MOCS, MORMC, and DSS have represented to DOI that “MOCS has developed a new version of PASSPort to provider better document management functionality, including searches, that is expected to be released this calendar year.” DOI has not had an opportunity to examine this new version and is therefore unable to determine whether its concerns have been addressed.

CONCLUSION AND RECOMMENDATIONS

New York City must strengthen the compliance guardrails around its multibillion-dollar annual commitment to housing the homeless, both to protect taxpayer money and to maintain public confidence in the system. These guardrails, as they currently exist, are inadequate to protect public money against corruption, fraud, waste, and abuse. Taking action to address these gaps is particularly pressing as the City faces major budget deficits that threaten government services.

To that end, DOI first reiterates its prior recommendations from the 2021 Report, which are attached. Based on the findings of this review, it appears that most of those policy and procedure recommendations (“PPRs”) have not been implemented at any substantial level at DSS or MOCS. Since many of these PPRs require action by the City at large, an agency such as MOCS should respond on behalf of the City and clarify whether it accepts the recommendations that have not yet been addressed.¹⁵⁰

In light of the findings of this Report, DOI now issues the following additional policy and procedure recommendations. Although primarily designed to address the issues concerning shelter providers that are identified within this Report, some of these recommendations are applicable to the oversight of other City-funded nonprofit human service contracts, including those held by DYCD, DFTA, ACS, HRA and DOHMH.

Many of the findings identified in this Review are also at least partially related to the absence of strong City-wide guidance in key areas. For example, as discussed above, DSS and DHS representatives informed DOI that those agencies have not regulated the amount of City funding that can be used for executive compensation because of the absence of such guidance.¹⁵¹ As a result, several of DOI's recommendations involve the creation or development of such guidance across City human service contracting agencies.

Given that MOCS issued a City-wide anti-nepotism policy in April 2024 (following previous recommendations from DOI), this Report does not issue further recommendations intended to address the findings of nepotism at City-funded shelter providers.

I. Centralization of Compliance Oversight

- 1. DSS should develop a written plan for addressing all 210 findings and 255 recommendations that DOI has issued to DSS about specific providers during the course of this Review, as well as the PPRs issued in this Report.** This written plan should be provided to DOI within the next ninety days.

2. **The City should centralize oversight of compliance, fiscal, and governance matters involving nonprofit human service providers, including DHS shelter providers, within a single City-wide compliance entity such as the Vendor Integrity Unit that is being established at MOCS.**

Consistent with DOI's recommendations from the 2021 Report, this entity should, among other things: (a) set and enforce uniform, City-wide policies with respect to nonprofit human service contracting; and (b) provide support to City agencies that oversee compliance and management issues involving nonprofit human service contracts.

3. **DSS should appoint a Chief Vendor Compliance Officer to provide overall leadership for DSS and DHS's compliance strategy with respect to nonprofit human service contracts, including those with shelter providers.**

As noted above, compliance and oversight functions at DSS relating to shelter providers are not concentrated within one well-defined officer or unit. Without centralization of these functions under one leader, it is more challenging to develop a single, defined strategy that will identify risks, enforce rules, and communicate with providers in a consistent manner.

Responsibilities of a Chief Vendor Compliance Officer should include, among other things: (a) ensuring shelter providers' compliance with the fiscal and contractual requirements of DSS, DHS, and the City; (b) providing compliance training to staff at DSS and DHS, as well as staff at the contracted nonprofit providers; (c) evaluating the agency's process for reviewing/approving shelter provider invoices and implementing any necessary modifications; and (d) coordinating with DOI and the City-wide compliance entity described in PPR #2.

II. **Disclosure & Reporting**

4. In its 2021 Report, DOI recommended that agencies "require human services contractors to complete a standard disclosure and certification form that will assist in identifying potential conflicts of interest and noncompliance with the City's competitive bidding requirements."¹⁵²

DOI reiterates the recommendation that the City adopt a new disclosure process for nonprofit human service providers as outlined in the 2021 Report, and now further recommends that MOCS and MORMC convene with any other relevant stakeholders to address this issue as soon as possible. These disclosure forms should be required prior to

registration of contracts and amendments, and thereafter on at least an annual basis. They should also be promptly amended upon the identification of a new potential or actual conflict of interest by a nonprofit contractor. DSS and DHS, along with the City-wide compliance entity described in PPR #2, should review all disclosures submitted by shelter providers.

DSS, MOCS, and MORMC have responded to DOI that “The City has a plan to implement this recommendation through an updated pre-qualification (PQL) [a]pplication.”

5. **DSS should amend its “65A” subcontractor approval form to include questions relating to potential conflicts of interest in the procurement of subcontractor services.**
6. **As part of the disclosure process described above, the City should require contractors to report all potentially adverse audit findings (such as qualified opinions, disclaimers of opinion, material findings, significant deficiencies, or similar audit findings), and update any such disclosures within thirty days of learning of any material changes.** This is in addition to the current PASSPort questionnaire requirement that providers disclose whether “any audits of the submitting vendor [have] revealed material weaknesses in its system of internal controls, its compliance with contractual agreements, and/or its compliance with laws and/or regulations.”
7. **As part of the disclosure process described above, the City should require executives and key persons to report information relevant to potential conflicts of interest that may impact City contracts or the administration of City-funded programs. These disclosures should be signed and submitted by the individual executive or key person to whom the questionnaire relates, not other employees or designees submitting on behalf of the individual.**

DOI recommended in December 2023 that the existing PASSPort principal questionnaires be “signed and submitted by the individual employee to whom the questions relate,” but MOCS responded that it was “unable” to implement the change to the principal questionnaire for technical and logistical reasons. MOCS did indicate that the proposed change could be implemented as part of a new “updated pre-qualification (PQL) [a]pplication” that is being contemplated. Accordingly, DOI recommends that the signed disclosures recommended in this PPR be implemented through the PQL application update.

8. **DSS and DHS should require shelter contractors to provide the City with copies of the board member conflict of interest disclosure forms they are required to collect pursuant to Section 6.05 of the Standard Contract.** These forms should be submitted to the City at least on an annual basis. DSS, DHS, and the City-wide compliance entity described in PPR #2 should review these forms to identify conflicts that might affect City contracts.
9. **The City should require nonprofits' chief executives or equivalents to certify as part of the new disclosure process that the provider is in compliance with all obligations under the Standard Contract, City Cost Manual, and DHS Fiscal Manual.**
10. **To the extent possible, the City should consolidate disclosures already required by the Standard Contract, City Cost Manual, DHS Fiscal Manual, PASSPort, and HHS Accelerator into one new disclosure process described above in PPR #4.**

III. **Third Party Procurement**

11. **DSS and DHS should require shelter providers to disclose the true beneficial ownership of any privately-held subcontractors and vendors to shelter providers (*i.e.*, vendors that do not directly contract with the City and receive City funds indirectly through shelter reimbursement, including landlords, maintenance providers, food vendors, and other major suppliers) for purchases exceeding \$100,000 prior to submitting any related reimbursement costs.¹⁵³ Such submissions should be made as part of the aforementioned 65A review process.**
12. **DSS and DHS should require shelter landlords to certify whether they actually own the building, or whether they are themselves leasing the building from the true owner and subleasing to the property to the nonprofit. In cases where the shelter landlord is actually subleasing the property to the shelter provider, the landlord should be required to disclose the identity of the property's true owner.**

Such disclosures will: (1) lead to increased transparency with respect to the parties with whom the City is indirectly doing business, and (2) help to identify any interests that related parties hold in the lease or building itself. Obtaining information about building ownership may also assist DSS and DHS in identifying any risks to the landlord's continued control over the shelter property. The disclosures should be submitted to the contracting agency for review and to the City-wide compliance entity discussed in PPR #2 for examination.

13. **The City should explicitly provide for limited reasonable exceptions to the competition requirements of the Standard Contract, City Cost Manual, and DHS Fiscal Manual, such as in true emergency situations or where selection of a specific provider is pre-approved by the agency and clearly in the best interest of the City.** Any exceptions to the competition requirements should be narrowly tailored and subject to strictly-defined criteria. Furthermore, any procurements conducted pursuant to such an exception should be reviewed by the contracting agency (*e.g.*, DSS) and subject to audits by the City-wide compliance entity described in PPR #2 to ensure that these criteria are applied by agencies in a consistent manner.

IV. Invoice Review, Contract Management, & Cost Allowability

14. In the 2021 Report, DOI recommended that “[a]gencies should review a more significant sample of supporting documentation prior to approving payment, and should provide more specific guidance to agency staff as to what factors in a payment request warrant further review.”¹⁵⁴ As the 2021 Report noted, the City’s current guidance that agencies review one or two invoice lines is “too limited for the review to be meaningful.”

DOI reiterates that recommendation, and now further recommends that DSS and DHS begin reviewing a larger sample of provider-submitted invoices than they do currently. DOI recommends that DSS and DHS coordinate with MOCS to identify a sample size larger than the existing City Cost Manual recommendation that will more appropriately balance the need to promptly deliver payments with the need to exercise oversight of City funding.

15. **DHS and DSS should take steps to provide regular financial management and compliance training to agency staff responsible for approving and reviewing invoices.** The training curriculum should include, but not be limited to, instruction about the appropriate level of detail necessary for invoices to be approved. Although this program should be managed by compliance leaders at DSS and/or DHS, DOI is prepared to support the agencies in developing and delivering any such trainings.
16. **DHS and DSS should consider dividing contract oversight responsibilities between employees who specialize in fiscal management (*e.g.*, cost and fiscal manual compliance, reimbursements, invoice review, and payments) and employees who specialize in program management (*e.g.*, implementation of programs, day-to-day operation of shelters, emergency response).** As discussed, responsibilities for review of providers’ expenses are currently assigned to program staff who, at current, generally have limited training or capacity for

fiscal management duties. An alternative structure would split these responsibilities between subject-area experts: program management would remain with program staff, while devoted staff with financial oversight training would be responsible for fiscal management.

17. **DHS and DSS should immediately stop approving payments for costs where the vendor is not identified by name, or that are described as “to be determined” or in similarly indefinite terms. DSS should further advise shelter providers that invoices containing inadequate detail about expenses will not be approved.**
18. In its 2021 Report, DOI recommended: “MOCS should convene a group of representatives from City agencies to develop a mechanism for disclosing information relating to executive compensation and . . . develop appropriate guidance to agencies in making determinations as to the reasonableness of executive compensation for contractors and first-tier subcontractors, including obtaining additional documentation regarding board oversight and approval if the salary is potentially excessive[, and] consider setting a cap or other parameters on City-funded executive compensation.”¹⁵⁵

DOI reiterates that recommendation, and now further recommends that as part of this process, the City establish limits on the total amount of City funds that may be used by nonprofit contractors for executive compensation. As noted in Section III of the shelter findings, such limits should be determined based on relevant comparisons, funding sources, and executive compensation rules in other jurisdictions.

In response to this recommendation, DSS/DHS, MOCS, and MORMC stated that “[t]he City researched this issue extensively and has a framework to implement a policy on executive compensation allowability” and “intends to finalize a policy and develop procedures for implementation.” DOI looks forward to reviewing these policies and procedures.

19. **DSS should take steps to improve providers’ compliance with Section 4.02 of the Standard Contract, including any requirements that they establish and maintain separate accounts for the funds obtained through contracts with the City, as well as maintain records sufficient to adequately track and identify the funds obligated through those agreements.**
20. **As part of their ongoing work to address late payment issues, DHS, DSS, and relevant stakeholders (including MOCS, the Office of the Comptroller, and the Joint Task Force to Get Nonprofits Paid On**

Time) should review and consider the invoicing and budgeting matters identified in this Report as contributing to late payments.

V. Audits & Other Reviews

21. In its 2021 Report, DOI made multiple recommendations concerning audits and reviews by human service contracting agencies, including DSS, DHS, and MOCS. Among others, these recommendations included revising “[t]he City-wide audit policy . . . to provide guidance for agencies as to when a contract presents a higher risk and is therefore appropriate to undergo a more rigorous audit”¹⁵⁶

DOI reiterates those recommendations, and now further recommends that the City include the following contracts among those that are deemed to pose a “higher risk” warranting “a more rigorous audit”: (a) contracts with “systemically important” shelter providers, meaning those which represent a substantial portion of the City’s shelter capacity or that otherwise could not be easily replaced or substituted, and (b) contracts with providers who receive a “substantial” proportion of revenue from the City, meaning those for whom City funds represent approximately 75% or more of overall annual revenues.

22. DSS and DHS, in consultation with MOCS and/or the City-wide compliance entity described in PPR #2, should develop a practice for identifying shelter providers that are “systemically important” to the City’s shelter system and any providers that present higher levels of risk. These entities should be subject to enhanced reviews designed to flag compliance concerns at their early stages.
23. DHS and DSS, in consultation with MOCS and/or the City-wide compliance entity described in PPR #2, should review shelter providers’ internal procurement policies to determine whether they meet or exceed the competition requirements of the Standard Contract, City Cost Manual, and DHS Fiscal Manual. Nonprofit contractors should be explicitly informed that costs that do not comply with the City’s requirements will not be reimbursed by the City.

VI. Capacity Building & Training

24. All City agencies contracting with human services providers, in coordination with MOCS and the City-wide compliance entity described in PPR #2, should evaluate the fiscal management and compliance capacity of new nonprofit contractors, provide additional

capacity building and training where necessary, and conduct enhanced reviews of those not-for-profits where issues are identified. For new providers, fiscal management and compliance capacity should be evaluated prior to contracting. All new contractors should be subject to enhanced reviews for at least an initial probationary period.

25. **The City should develop and distribute a concise reference sheet listing key compliance requirements for nonprofit contractors performing work on City contracts.** This document should list key requirements relating to, among other things, conflicts of interest, nepotism, required competition for subcontracts, and allowable/disallowable costs. The document should be distributed to all potential, new, and existing contractors on a regular basis.

VII. Systems & Data Management

26. **The City should ensure that key documents relating to existing and future contracts are maintained in PASSPort or an equivalent system, including those registered under emergency procurement rules or prior to 2020.**

In response to DOI's findings, MOCS noted that the City Comptroller maintains another system, the Omnibus Automated Image Storage and Information System ("OAISIS"), as the "system of record" for City contracts. MOCS further stated that "[i]t is not possible to include contract documents in PASSPort if the contracts did not originate in PASSPort."

DSS and DHS personnel who are involved in contract oversight rely on PASSPort (and previously HHS Accelerator, which has now been phased out). DOI's own oversight efforts rely on PASSPort and HHS Accelerator as well. DOI recommends that, at a minimum, PASSPort be configured to include these missing documents going forward.

27. **MOCS should evaluate whether it is practicable to remove functionality in PASSPort and any other system used for invoicing that allows City employees to approve expenses submitted without a specified vendor, subcontractor, or purpose.**
28. **MOCS should ensure that, for all potential costs providers may invoice (including, for example, "OTPS – Operations and Support" and "OTPS – Professional Services"), PASSPort and any other system used for invoicing includes fields in which nonprofit contractors can supply adequate detail about the identity of the third-party vendor and the nature of the goods or services purchased.**

29. To the extent that vendors may submit a “Certificate of No Change” to update their vendor enrollment packages, MOCS should require that: (a) nonprofit contractors include a digital copy of the information that they are certifying as true and correct, such as a PDF or other static record; and (b) nonprofit contractors’ principals certify that they have personally reviewed the entire package, and that all of the information contained therein is full, complete, and accurate.
30. MOCS should update PASSPort to add functionality that will better enable third-party oversight, including broader search functionality, affirmations of accuracy, and preservation of historical changes.
31. MOCS (or when established, the City-wide compliance entity described in PPR #2) should regularly review publicly available information relating to the governance and fiscal condition of City nonprofit contractors (*i.e.*, IRS Forms 990) to proactively flag potential compliance issues requiring attention (*e.g.*, high compensation, transactions with related entities, etc.).¹⁵⁷
32. As part of its mission, the City-wide compliance entity described in PPR #2 should be charged with advising systems development staff to ensure that any future procurement or contracting systems include appropriate functions to enable oversight by contracting agencies and DOI (*e.g.*, affirmations of accuracy, historical change preservation, keyword searching, etc.).

APPENDICES

Appendix 1: Endnotes

¹ Thomas Main, *Homelessness in New York City: Policymaking from Koch to de Blasio 2* (2016) (“Main”) (“No other American city spends nearly as much on the homeless as New York or has close to as large a shelter system.”).

² *DHS Daily Report*, DHS <https://data.cityofnewyork.us/Social-Services/DHS-Daily-Report/k46n-sa2m> (last accessed Oct. 15, 2024) (“DHS Daily Report”); see *Local Law 79 of 2022: Temporary Housing Assistance Usage*, Mayor’s Office of Operations (last updated July 2024), https://www.nyc.gov/assets/operations/downloads/pdf/temporary_housing_report.pdf. For multiple reasons outside the scope of this Report, including how DHS and other City agencies report shelter statistics, only approximate figures can be provided.

³ Gwynne Hogan, *Number of people in NYC shelters hits highest number in decades*, Gothamist (Oct. 11, 2022), <https://gothamist.com/news/number-of-people-in-nyc-shelters-hits-highest-number-in-decades>.

⁴ DHS data on shelter population is available from 2013 through 2024. See DHS Daily Report, *supra* note 2. Records from the Coalition for the Homeless date from January 1983 through November 2023. See *New York City Homeless Municipal Shelter Population, 1983 - Present*, Coalition for the Homeless, <https://www.coalitionforthehomeless.org/wp-content/uploads/2024/08/NYC-Homeless-Shelter-Population-Worksheet-1983-Present.pdf> (last accessed Sept. 25, 2024).

⁵ *Transcript: Mayor Adams Delivers Address on Asylum Seeker Humanitarian Crisis and Takes Q&A*, Office of the Mayor (Aug. 9, 2023), [https://www.nyc.gov/office-of-the-mayor/news/585-23/transcript-mayor-adams-delivers-address-asylum-seeker-humanitarian-crisis-takes-q-a-#/#/](https://www.nyc.gov/office-of-the-mayor/news/585-23/transcript-mayor-adams-delivers-address-asylum-seeker-humanitarian-crisis-takes-q-a-#/). See also Juan Manuel Benitez, *Shelter system at ‘breaking point,’ Adams says*, Spectrum News NY1 (Sept. 14, 2022, 7:00 PM), <https://www.ny1.com/nyc/all-boroughs/politics/2022/09/14/city-is-struggling-with-migrant-crisis>. The current increase has been driven, in significant part, by migrants who have arrived in New York City in recent years. See Andy Newman, *A Record 100,000 People in New York Homeless Shelters*, N.Y. Times (June 28, 2023), <https://www.nytimes.com/2023/06/28/nyregion/nyc-homeless-shelter-population.html> (noting migrants in City shelters exceeded 50,000 and made up majority of shelter system population as of June 2023).

⁶ Julia K. Haramis, New York City Council Finance Division, *Report on the Fiscal 2024 Preliminary Plan and the Fiscal 2023 Mayor’s Management Report for the Department of Homeless Services 13* (May 8, 2023) (“Fiscal 2024 Report”), available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2023/05/DHS.pdf>.

⁷ In January 2024, OMB projected that the City would spend approximately \$10.6 billion through fiscal year 2025 to house and provide other services for migrants--\$1.45 billion in fiscal year 2023, \$4.2 billion in fiscal year 2024, and \$4.9 billion in fiscal year 2025. *Financial Plan Summary* at 13, Mayor’s Office of Management and Budget (released Jan. 16, 2024), <https://www.nyc.gov/assets/omb/downloads/pdf/sum1-24.pdf>.

⁸ Although no court has explicitly ruled on a “right” to shelter, such a right was effectively created by the 1981 consent decree, as well as subsequent cases, agreements, and New York State regulations that codify rules governing the shelter system. See Main, *supra* note 1. Under this de facto right, the City is legally required to provide shelter to each homeless person who applies if “by reason [of]

physical, mental or social or social dysfunction [they are] in need of temporary shelter.” Final Judgment by Consent, *Callahan v. Carey*, No. 42582/79 (Sup. Ct. N.Y. Cty. 1981); *see also, e.g., Callahan v. Carey*, 307 A.D.2d 150, 151-52 (1st Dept. 2003) (summarizing history of *Callahan* consent decree, which provides: “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.”), 18 N.Y.C.R.R. § 352.35 (State regulation setting “eligibility for temporary housing assistance for homeless persons”); *see also Eldredge v. Koch*, 469 N.Y.S.2d 744 (1st Dept. 1983) (expanding *Callahan* consent decree to homeless women); *Matter of Gonzalez v. Annucci*, 32 N.Y.3d 461, 489 (2018) (Court of Appeals decision stating that “the City guarantees (and indeed must guarantee) housing for every homeless person who requests it,” citing *Callahan* and 18 N.Y.C.R.R. Part 352).

⁹ This description summarizes the state of the right to shelter during the majority of this Review. DOI notes, however, that the City has taken steps to modify the right to shelter in recent years. In May of 2023, the City sought permission from Supreme Court, Civil Term, “to move for relief from, and modification of” the *Callahan* consent decree. Letter from Asst. Corp. Counsel Jonathan Pines to Dep. Chief Admin. Judge Deborah Kaplan dated May 23, 2023, <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2023/city-application-to-justice-kaplan-callahan-v-carey-5-23-23.pdf>. In sum and substance, the City sought to amend the *Callahan* consent decree so that the obligation to provide shelter to homeless adults and families “shall be stayed when the City of New York, acting through the New York City Department of Homeless Services (“DHS”), lacks the resources and capacity to establish and maintain sufficient shelter sites, staffing and security to provide safe and appropriate shelter.” *Id.* at 3. Counsel for the *Callahan* plaintiffs opposed the City’s request, claiming that the City’s request could lead to an indefinite suspension of the right to shelter. Letter from Joshua Goldstein and Steven Banks to Justice Gerald Lebovits dated Oct. 11, 2023 at 2, <https://legalaidnyc.org/wp-content/uploads/2023/10/Plaintiffs-October-11-2023-Response-to-the-City-Defendants-October-3-2023-Letter.pdf>.

On March 15, 2024, the parties entered into a stipulation temporarily modifying the consent decree as it applied to adult migrants. *See* Stipulation (Dkt. 35), *Callahan v. Carey*, No. 42582/1979 (Sup. Ct. N.Y. Cty., Mar. 15, 2024), *available at* https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=mMvltZFjq_PLUS_X/RU7jGZrf4Q==&system=prod. As summarized by the Mayor’s Office, the stipulation allowed the City to “provide adult migrants 30 days of shelter without the ability to re-apply for shelter unless the individual has demonstrated they have some sort of extenuating circumstance necessitating a short additional amount of time in shelter, or have received a reasonable accommodation due to a disability.” Press Release, *Mayor Adams Announces Agreement With The Legal Aid Society In Callahan ‘Right To Shelter’ Mediation, Granting City Additional Flexibility During Migrant Humanitarian Crisis*, Office of the Mayor (Mar. 15, 2024), <https://www.nyc.gov/office-of-the-mayor/news/200-24/mayor-adams-agreement-the-legal-aid-society-callahan-right-shelter->. Shelter for persons under 23 years old was also limited to 60 days. *Id.*

¹⁰ *The 2022 Annual Homelessness Assessment Report (AHAR) to Congress*, U.S. Department of Housing and Urban Development Office of Community Planning and Development (December 2022), *available at* <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>. According to the Department of Housing and Urban Development, the number of sheltered homeless individuals was 14,372 out of 15,507 total homeless persons in Massachusetts, 976 out of 1,375 total homeless individuals in West Virginia, and 3,720 out of 4,410 total homeless persons in Washington, D.C. *Id.*

¹¹ Ben A. McJunkin, *The Negative Right to Shelter*, 111 Cal. L. Rev. 127 (2023). In Massachusetts, the right to shelter is available to families with children and pregnant women. In order to qualify for a right for shelter, the individual must prove that their homelessness is due to a preapproved reason and to meet strict eligibility criteria, such as income limits. In West Virginia, the mandate to provide

shelter is limited to emergency situations for individuals who meet a specific definition of homelessness and who lack sufficient resources to obtain shelter. In Washington, D.C., the right to shelter exists only during severe weather conditions. *Id.* at 151-57.

¹² Los Angeles houses, on average, approximately 19,000 homeless individuals out of a total homeless population of over 71,000. *Los Angeles County Homelessness & Housing Map*, County of Los Angeles (Mar. 7, 2024), available at <https://storymaps.arcgis.com/stories/400d7b75f18747c4ae1ad22d662781a3>. San Francisco houses, on average, 3,968 unsheltered individuals out of a total population of 8,323. *Point-in-Time Housing Inventory Counts*, San Francisco Department of Homelessness and Supportive Housing (Jan. 30, 2024), <https://hsh.sfgov.org/about/research-and-reports/pit/>. Chicago houses, on average, 17,202 people out of a total homeless population of 18,836. *2024 Point-in-Time Count & Survey Report of People Experiencing Homelessness*, City of Chicago (Jan. 25, 2024), https://www.chicago.gov/content/dam/city/depts/fss/supp_info/Homeless/2024PITCOUNT/FINAL_2024%20Point-in-Time%20PIT%20Count.pdf.

¹³ Main, *supra* note 1, at 110. Other agencies operate specialized shelters, including Department of Youth and Community Development, the Human Resources Administration, the HIV/AIDS Services Administration, and the Department of Housing Preservation and Development. DHS nonprofit contractors, however, are responsible for operating the vast majority of the City's shelters.

¹⁴ Other large cities also contract with nonprofits for the provision of shelter services. The Los Angeles Homeless Services Authority manages over 1,000 contracts with more than 100 not-for-profit agencies each year. Ashwin Adarkar et al., *Homelessness in Los Angeles: A unique crisis demanding new solutions*, McKinsey & Co. (Mar. 24, 2023), available at <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/homelessness-in-los-angeles-a-unique-crisis-demanding-new-solutions> (last accessed Sept. 10, 2024). San Francisco maintains 53 shelter sites that are operated by not-for-profit organizations with a capacity of nearly 3,635. *Shelter Inventory Dashboard*, San Francisco Department of Homelessness and Supportive Housing, <https://hsh.sfgov.org/services/the-homelessness-response-system/shelter/> (last accessed Sept. 10, 2024). Chicago also funds and oversees its network of overnight and interim housing shelter programs through contracts with 29 different delegate agencies. *Family & Support Services, Homeless Shelters*, City of Chicago, https://www.chicago.gov/city/en/depts/fss/provdrs/emerg/svcs/shelter_system.html (last accessed July 16, 2024).

¹⁵ The open-ended RFPs include: Safe Havens Open-Ended (EPIN: 07116I0014, Released Nov. 18, 2015), Shelter Facilities for Homeless Single Adults (EPIN: 07119I0001, Released Oct. 30, 2018); Drop-In Facilities for Homeless Adults (EPIN: 07119I0004, Released Oct. 30, 2018); Shelter and Overnight Facilities for Homeless Families with Children (EPIN: 07119I0003, Released Oct. 30, 2018), and Shelter and Overnight Facilities for Homeless Adult Families (EPIN: 07119I0002, Released Oct. 30, 2018). *See also* Department of Homeless Services, *Shelter Facilities for Homeless Single Adults EPIN: 07122P0012*, https://passport.cityofnewyork.us/bare.aspx/en/fil/download_public/6F2E599C-278B-4BC0-A4AA-C7C3A7FF78A5 (last accessed Sept. 10, 2024) (publicly available posting of Single Adult RFP).

¹⁶ DOI derived this information from public IRS Form 990s, New York State CHAR 500s, and financial statements available at the time of the Review. An exact number could not be determined from this information because not all providers specify all sources of government funding. DOI confirmed that neither DHS nor DSS track providers' non-City funding sources.

¹⁷ Fiscal 2024 Report, *supra* note 6.

¹⁸ *Inside DHS*, DHS, <https://www.nyc.gov/site/dhs/about/inside-dhs.page> (last accessed Sept. 10, 2024).

¹⁹ DSS is responsible for overseeing DHS and HRA, and for providing support and logistical services to both agencies. As such, there is significant overlap between the agencies' operations, particularly between DSS and DHS. Relevant to this report, DSS is directly involved in the contracting process at multiple levels, particularly in connection with the selection and evaluation of potential nonprofit providers, and for oversight of third-party procurements. This report focuses on DHS given that it is the primary agency for the vast majority of shelter contracts. However, because of the interrelation between DSS, DHS, and HRA, the findings and recommendations in this Report generally apply to all three agencies.

²⁰ This amount is the total contract amount, over the term of each such contract, of registered contracts in PASSPort with an end date on or after February 23, 2024 and listed as for the following programs: Adult Family Shelter, Adult Shelter (Assessment), Adult Shelter (Employment), Adult Shelter (General), Adult Shelter (Mental Health), Assessment & Transitional Housing for Single Adults, Emergency Shelter Social Services in Commercial Hotels for Homeless Families and Adults, Family Services, Family Shelter (Tier II), Family Shelter-Tier II, Stand Alone Transitional Residence for Adult Families, Stand Alone Transitional Residence for Families with Children, Stand Alone Transitional Residence for Families with Single Adults, and Alone Transitional Residence for Single Adults.

The City has also created temporary emergency shelters in connection with the recent influx of migrants and asylum seekers. Some of these facilities are not under the aegis of DHS, and instead are operated by other City agencies such as the Health and Hospitals Corporation ("H+H") or New York City Emergency Management ("NYCEM"). See Memorandum of Understanding between the City and H+H dated Oct. 13, 2022, available at <https://www.nyc.gov/assets/counseltothemayor/downloads/HERRC-MOU.pdf>; Emergency Executive Order 224, Office of the Mayor (Oct 7, 2022), available at <https://www.nyc.gov/assets/home/downloads/pdf/executive-orders/2022/eeo-224.pdf>. DOI has not reviewed operational, governance, or compliance issues at H+H, NYCEM, or their emergency shelters, and any associated costs are not included in the above-discussed spending totals.

²¹ Dan Roboff et al., Bureau of Contracts Administration, *Annual Summary Contracts Report for the City of New York: Fiscal Year 2023*, Office of the New York City Comptroller (Jan. 30, 2024), available at https://comptroller.nyc.gov/wp-content/uploads/documents/FY23_Annual-Summary-Contracts-Report.pdf.

²² See, e.g., Article III (Scope of Work and Budget), Human Services Standard Contract between the City of New York and Westhab, Inc. (EPIN: 07119P0001054) (September 2022) at 3-7.

²³ These terms and conditions are usually established in a "Scope of Work" that is part of the contract. Providers agree as a contractual term that they "shall provide the services and activities in program areas or programs listed and described in the scope of work."

²⁴ *City of New York Health and Human Services Cost Policies and Procedures Manual* (revised Dec. 22, 2022), available at https://www.nyc.gov/assets/nonprofits/downloads/pdf/NYC%20HHS%20Cost%20Policies%20and%20Procedures%20Manual_12.22.2022.pdf ("City Cost Manual").

After this Report was substantially completed and sent to City agencies for comment, the City issued a new version of the City Cost Manual. City Cost Manual (revised July 28, 2024), available at <https://www.nyc.gov/assets/mocs/downloads/Opportunities/icr/HHSCostPoliciesProceduresManual.pdf>. According to MOCS, this new version added provisions concerning conflicts of interest and less-than-arm's length leases, which are issues previously raised by DOI in its 2021 Report and referrals to DSS.

²⁵ *DHS Human Service Providers Fiscal Manual (February 2023)*, DSS, available at <https://www.nyc.gov/assets/dhs/downloads/pdf/dhs-dss-fiscal-manual-2022.pdf> (“DHS Fiscal Manual”).

²⁶ See generally, e.g., 26 U.S.C. § 6033 (Internal Revenue Code provisions for “Returns by exempt organizations”); New York State Not-for-Profit Corporation Law § 101 *et seq.* (“N-PCL”), 13 N.Y.C.R.R. § 90.1, *et seq.* (“Rules and Regulations for Registration of Charitable Organizations, Trusts, and Estates with Charitable Interests and Fund Raising Professionals.”); 18 N.Y.C.R.R., Chapter II (“Rules and Regulations of the Department of Social Services”).

²⁷ See, e.g., 2 C.F.R. § 200 *et seq.* (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) (“Uniform Guidance”).

²⁸ See generally *Homelessness*, The Bowery Mission, <https://www.bowery.org/homelessness/> at (last accessed Sept. 10, 2024); *Basic Facts About Homelessness: New York City*, Coalition for the Homeless (June 2024), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/>.

²⁹ *DHS Homeless Shelter Census*, NYC OpenData, <https://data.cityofnewyork.us/Social-Services/DHS-Homeless-Shelter-Census/3pjj-ncn9/data> (last accessed Oct. 10, 2024).

³⁰ *Id.* These shelter population numbers only include DHS-funded facilities, based on DHS-published data. Other shelters, including those operated for asylum seekers by NYCEM, H+H, HPD, and DYCD, are not reflected in these counts. As of May 2024, the “[t]otal number of persons utilizing all-city administered [shelter] facilities” was 143,650. *Local Law 79 of 2022: Temporary Housing Assistance Usage*, *supra* note 2.

³¹ See Jeanmarie Evely, *NYC's Homeless Shelter Population Ballooned in 2022. How Will Leaders Address the Crisis This Year?*, City Limits (Jan. 17, 2023), <https://citylimits.org/2023/01/17/nycs-homeless-shelter-population-ballooned-in-2022-how-will-leaders-address-the-crisis-this-year/> (noting causes of spike include “ongoing financial impact of the pandemic, the end of statewide eviction protections last year, rising rents, understaffed government agencies, a shortage of truly affordable housing and the arrival since last spring of more than 40,000 asylum seekers from the southern border that lawmakers say has strained the city's resources.”).

³² *Action Memo: A Better Contract for New York: A Joint Task Force to Get Nonprofits Paid on Time* at 7 (February 2022), https://comptroller.nyc.gov/wp-content/uploads/documents/A-Better-Contract-for-New-York_Joint-Task-Force-Action-Memo-update.pdf (“Task Force Memo”).

³³ Task Force Memo, *supra* note 32, at 6.

³⁴ Human Services Recovery Taskforce, *Essential or Expendable? How Human Services Supported Communities Through COVID-19 and Recommendations to Support an Equitable Recovery*, Human Services Council at 4, 23, 25 (June 2021), available at <https://www.humanservicescouncil.org/wp-content/uploads/2021/06/HSC-Taskforce-Report-Essential-or-Expendable-How-Human-Services-Support-Communities-Through-COVID-19.pdf>. See also Michelle Jackson, *Opinion: Go the distance to fix nonprofit contracting in NYC*, N.Y. Daily News (Aug. 2, 2022), <https://www.nydailynews.com/opinion/ny-oped-nonprofit-contracts-nyc-20220802-xt3sq52qx5gwhddn66qphdp2qq-story.html>.

³⁵ Task Force Memo, *supra* note 32, at 7.

³⁶ For examples of the City's active discussions concerning homelessness policy and nonprofit contracting, see generally Task Force Memo, *supra* note 32; Testimony of New York City Comptroller Brad Lander Before the New York City Council Committees on Aging, Contracts and Youth Nonprofit Contracting and the Joint Task Force to Get Nonprofits Paid on Time, Office of the Comptroller (Jan. 30, 2023), <https://comptroller.nyc.gov/newsroom/testimony-of-new-york-city-comptroller-brad-lander-before-the-new-york-city-council-committees-on-aging-contracts-and-youth-nonprofit-contracting-and-the-joint-task-force-to-get-nonprofits-paid-on-ti/> ("Comptroller Testimony"); Transcript, *Oversight - Nonprofit Contracting and the Joint Task Force to Get Nonprofits Paid on Time: Hearing before the City Council Committees on Youth Services, Aging, and Contracts*, File No. T2023-2830 (Jan. 30, 2023), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5990772&GUID=83CA325B-30E2-4145-AAAF-58C94B5D2E5B&Options=&Search=> ("NFP Council Hearing"); Letter from Lisa Flores and Marjorie Landa to Commissioner Jocelyn Strauber dated Dec. 19, 2022 ("MOCS Update"); Letter from Comptroller Brad Lander to Mayor Eric Adams dated Oct. 19, 2022, available at https://comptroller.nyc.gov/wp-content/uploads/2022/11/10.19.22_Mayor-Eric-Adams_Request-to-convene-New-York-Citys-Procurement-Policy-Board-to-consider-changes-to-PPB-rules-to-strengthen-New-York-City-procurement-policy.pdf ("Comptroller PPB Request").

³⁷ Much of this additional spending relates to shelter for asylum seekers. As of May 1, 2024, the most recent date for which data is available, the Comptroller identified 351 contracts with City agencies (other than H+H) "to provide shelter and services to tens of thousands of asylum seekers" valued at more than \$6.34 billion. *Accounting for Asylum Seeker Services: Contracting for Shelter and Services*, Office of the Comptroller (last accessed Sept. 10, 2024), <https://comptroller.nyc.gov/services/for-the-public/accounting-for-asylum-seeker-services/contracts/>. 227 of these contracts, worth over \$4.42 billion, are with DHS. The Comptroller also identified an additional 48 contracts totaling more than \$2.14 billion with H+H based on "what has been reported to the Comptroller's Office by the Mayoral Administration." As to the H+H contracts, the Comptroller noted that "On April 8th, 2024, City Hall provided the Comptroller's Office with a new list of H+H asylum related emergency contracts which includes different records (fewer in number – some new and some duplicative)."

³⁸ See Findings: Nonprofit Shelter Providers, Part I.B, *infra*.

³⁹ See *id.* at Part III.B, III.C, *infra*.

⁴⁰ See *id.* at Part I.C, *infra*.

⁴¹ See *id.* at Part II, III.A *infra*.

⁴² See generally Suzanne Mulcahy, *Regulating Nepotism: Approaches and Best Practices*, Transparency International (Oct. 15, 2015), https://knowledgehub.transparency.org/assets/uploads/helpdesk/Regulating_Nepotism_2015.pdf; *The Fraud Corner, The Impact of Nepotism*, HHS Office of Inspector Gen. (Dec. 19, 2019), https://www.oig.lsc.gov/images/pdfs/invest_results/Fraud_Corner_Nepotism_12-20-19_Final.pdf; *Competition and Procurement: Key Findings 2011*, Organization for Economic Cooperation and Development (2011), https://www.oecd.org/en/publications/2011/11/competition-and-procurement-key-findings_48813c6d.html.

⁴³ 2021 Report at 5; see also Standard Contract §§ 6.05, 6.06; Standard Contract, App'x. A, § 2.02.

⁴⁴ Standard Contract § 6.05B.

⁴⁵ See *id.*, §§ 4.06, 6.05, 6.06; N-PCL §§ 715, 715-a.

⁴⁶ N-PCL § 715(a).

⁴⁷ *Id.*, § 715(f).

⁴⁸ Standard Contract § 1.01(G).

⁴⁹ *Id.* §§ 1.01(G), 4.06(C); N-PCL § 715.

⁵⁰ City Cost Manual at 50-51; *see also* 2 C.F.R. § 200.465. Restrictions on “less-than-arm’s-length” leases derive from the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. § 200, et seq. (“Uniform Guidance”), which the City Cost Manual incorporates by reference into federally funded City contracts. City Cost Manual at 5-6, 14.

⁵¹ Such arrangements can be legitimate, such as where they are used to obtain financing that may be more fiscally advantageous than other loans. *See, e.g.*, Robert Singer et al., *Accounting for sale and leaseback transactions*, J. Accountancy (July 1, 2020), <https://www.journalofaccountancy.com/issues/2020/jul/accounting-for-sale-and-leaseback-transactions.html>.

⁵² For these reasons, the City establishes limits on costs relating to “sale and leaseback” agreements and “less-than-arm’s length” leases, and entirely prohibits reimbursing rental or lease costs where the property is “owned by the Provider” or by “holding companies established by the Provider for the purpose of renting real estate previously owned by the Provider.” City Cost Manual at 14 § II (cost reasonableness), 50 § III(W). Rentals from “holding companies established by the Provider for the purpose of renting real estate previously owned by the provider” are a form of sale and leaseback arrangements where the provider is on both sides of the transaction. *Id.*

⁵³ Standard Contract §§ 4.05(B), 4.06(C).

⁵⁴ 2021 Report at 7 (“DOI has repeatedly identified instances of employees providing services on City contracts who are supervised by family members apparently without the knowledge and authorization of the funding City agency, in violation of the Standard Contract. DOI has identified such instances at vendors funded by ACS, DFTA, DYCD, DOHMH, and DSS.”).

⁵⁵ Steven J. Hancox, *Red Flags for Fraud*, New York State Office of the State Comptroller, https://www.osc.state.ny.us/files/local-government/publications/pdf/red_flags_fraud.pdf (last accessed Feb. 26, 2024); Kathy Cox, *Guide 2: Grant Fraud Indicators*, Georgia Department of Education (May 2009), https://www.aasdweb.com/cms/lib/GA02223860/Centricity/Domain/51/Grant_Fraud_Indicators.pdf; *Reducing Grant Fraud Risk: A Framework for Grant Training*, Financial Fraud Enforcement Task Force (Mar. 2012), available at <https://oig.justice.gov/reports/2012/Grant-Fraud-Training-Framework.pdf>.

Nepotism by City employees and officials is strictly prohibited by the City Charter. *See* Charter § 2604(b)(2)-(3); *see also* DOI, Report on the New York City Board of Elections’ Employment Practices, Operations, and Election Administration 6 (Dec. 2013) (“Nepotism poses a conflict of interest and threatens to undermine the fairness of personnel decisions insofar as determinations about employment, promotions, assignments, or discipline are made, in however small a measure, based upon family connection rather than merit. Nepotism is therefore prohibited under New York City’s Conflicts of Interest Law. . . . Under Section 2604(b)(2) and (b)(3), a public servant may not misuse his or her position to benefit a relative. This means, among other things, that a public servant cannot recommend a family member for appointment as a City employee or otherwise use his or her position to facilitate the hiring or promotion of a family member.”).

⁵⁶ Quinn Haisley, Conflicts of Interest Board, *It's All in the Family*, 17 Ethical Times 1 (Jan. 2015), https://www.nyc.gov/html/conflicts/downloads/pdf2/ethical_times/ET_01_15.pdf.

⁵⁷ *The Impact of Nepotism*, *supra* note 42.

⁵⁸ Standard Contract § 6.05(C). The Standard Contract states: “a member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person’s relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner.” *Id.* Board members are “deemed to exercise authority over all employees of Contractor.” *Id.*

⁵⁹ Standard Contract § 4.06(C) (permitting reimbursement for “[a]ny cost found . . . to be improperly incurred . . .”).

⁶⁰ DOI identified a familial relationship between one of the provider’s board members and the Chief of Staff to a City Council Member whose office awarded the provider \$60,000 in discretionary awards during a two-year period.

⁶¹ *See cf.* Susan Tsui Grundmann et al., Preventing Nepotism in the Federal Civil Service: A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board 2 (June 2016) (“The law prohibiting the hiring of relatives was enacted to protect organizations and the public from the risk that less-qualified individuals would be given positions of responsibility merely because an official wanted to help them get a job. The nepotism law is also intended to instill confidence in the American people that their civil service is not corrupt.”). *See also generally* *Regulating Nepotism*, *supra* note 42, *The Impact of Nepotism*, *supra* note 42.

⁶² Restatement of Law of Charitable Nonprofit Organizations. § 2.02; *see also, e.g.*, Elizabeth Dunshee et al., *Overcoming the Challenge of Director Misconduct*, Am. Bar Ass’n. (July 16, 2015), https://www.americanbar.org/groups/business_law/resources/business-law-today/2015-july/overcoming-the-challenge-of-director-misconduct/.

⁶³ Standard Contract, App’x A, Section 2.02.

⁶⁴ *See* N-PCL § 715-a; Standard Contract § 6.06. *See also Form 1023: Purpose of Conflict of Interest Policy*, Internal Revenue Serv., <https://www.irs.gov/charities-non-profits/form-1023-purpose-of-conflict-of-interest-policy> (last accessed June 6, 2023); *Right From The Start: Responsibilities of Directors of Not-For-Profit Corporations*, Office of the New York State Attorney General (May 2015), available at <https://pl.ag.ny.gov/sites/default/files/regulatory-documents/Right-From-the-Start.pdf>; Restatement of Law of Charitable Nonprofit Orgs. § 2.02.

⁶⁵ Standard Contract § 5.01. For discussion of disclosure issues, *see infra*, City Findings, Part II.

⁶⁶ *See, e.g.*, PASSPort Principal Disclosure; PASSPort vendor questionnaire.

⁶⁷ Charities Bureau, *Conflicts of Interest Policies Under the Not-for-Profit Corporation Law*, Office of the New York State Attorney General (Sept. 2018), available at https://ag.ny.gov/sites/default/files/regulatory-documents/Charities_Conflict_of_Interest.pdf.

⁶⁸ Standard Contract § 6.06; N-PCL § 715-a.

⁶⁹ See Standard Contract § 4.05; DHS Fiscal Manual at 54. See also *Report: Probe of Department of Homeless Service's Shelters for Families with Children Finds Serious Deficiencies*, N.Y. City Dept. of Investigation (Mar. 2015) at 5 (discussing competitive bidding requirement).

⁷⁰ See, e.g., Introduction, Procurement Policy Board Rules (Sept. 2024), <https://www.nyc.gov/assets/mocs/downloads/Regulations/PPB/PPBRules.pdf> ("PPB Rules") ("The underlying purposes of these Rules are to . . . to provide for increased public confidence in New York City's public procurement procedures . . . to foster effective broad-based competition from all segments of the vendor community; including small businesses, minority and women-owned and operated enterprises; to safeguard the integrity of the procurement system and protect against corruption, waste, fraud, and abuse . . .").

⁷¹ Standard Contract § 4.05(B).

⁷² *Id.*, § 4.05(B)(1). In the case of federally-funded contracts, the limit is \$3,500. *Id.*

⁷³ *Id.*, § 4.05 (B)(2).

⁷⁴ See Indictment, *U.S. v. Weiser et al.*, No. 23-cr-514 (S.D.N.Y. Oct 11. 2023).

⁷⁵ Standard Contract § 4.05.

⁷⁶ *Id.*, § 4.06(C).

⁷⁷ For example, the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. § 200 *et seq* ("Uniform Guidance"), allows "noncompetitive procurement," meaning purchases from only one vendor without competition, under limited circumstances, such as where the item is only available from one source or where an emergency exists. See 2 C.F.R. § 200.320(c).

⁷⁸ This differs from the federal Uniform Guidance, which permits for sole source purchasing under limited circumstances, and subject to additional safeguards. See 2 C.F.R. § 200.320(c).

⁷⁹ PPB Rules § 3-01(d) (discussing "Special Case" procurement).

⁸⁰ 2021 Report at 32.

⁸¹ In contrast, the Uniform Guidance does require providers to "have and use documented procurement procedures." 2 CFR § 200.318(a).

⁸² IRS, *Publication 4221: Compliance Guide for 501(c)(3) Tax-Exempt Organizations* 1 (2018), available at <https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>.

⁸³ IRS, Tax on Excess Tax-Exempt Organization Executive Compensation, 85 Fed. Reg. 35746, 35751 (proposed June 11, 2020); see also IRS, Tax on Excess Tax-Exempt Organization Executive Compensation, 86 Fed. Reg. 6196, 6243 (2021) (final regulations).

⁸⁴ 2021 Report at 13.

⁸⁵ *Id.* at 12-13

⁸⁶ *Id.* at 13

⁸⁷ *Id.* at 19-20.

⁸⁸ Comptroller PPB Request, *supra* note 36, at 4.

⁸⁹ This report expresses no view on how private nonprofit organizations should compensate their employees—decisions that are governed by IRS regulations and the New York State Not-for-Profit Corporation Law—except to the extent executive compensation at City nonprofit contractors is funded by the City, in whole or in part.

⁹⁰ City Cost Manual at 29 (Part III.E); 2021 Report at 15.

⁹¹ A “related organization,” as defined by the Internal Revenue Service, is any organization that “controls the filing organization” (a “Parent”), is “controlled by the filing organization” (a “Subsidiary”), or is “controlled by the same person or persons that control the filing organization” (a “Brother/Sister”). IRS, *2023 Instructions for Form 990* at 71 (2023), <https://www.irs.gov/pub/irs-pdf/i990.pdf> (last accessed Sept. 10, 2024).

The IRS has noted that “excessive compensation (including excessive severance packages) paid to senior executives of such organizations diverts resources from” their non-profit purpose. IRS, *Tax on Excess Tax-Exempt Organization Executive Compensation*, 85 Fed. Reg. 35746, 35751 (proposed June 11, 2020). As such, the IRS imposes an excise tax “to deter excessive compensation” at nonprofits, including where executive compensation is paid from related organizations. IRS, *Tax on Excess Tax-Exempt Organization Executive Compensation*, 2021 IRB LEXIS 19, *40 (Jan. 9, 2021); *see also* 26 U.S.C. § 4960 (tax on excess compensation at tax-exempt organizations). The IRS also requires the disclosure of executive compensation paid through other entities, at least in part, to prevent nonprofits from avoiding disclosure requirements. *See, e.g.*, IRS, Announcement 2021-18, 2021 IRB LEXIS 547, *2 (Dec. 31, 2021).

⁹² *See* Conclusion and Recommendations, *infra*.

⁹³ City Cost Manual at 29. According to the City Cost Manual, a given cost is reasonable “if, in its nature and amount, it does not exceed the amount that would be incurred by a prudent Provider under the circumstances prevailing at the time the decision was made to incur the Cost.” Factors that “must be” considered in determining reasonableness include, among others: “[w]hether the Cost is of a type generally recognized as ordinary and necessary for the operation of similar providers and the proper and efficient performance of services under the Contract,” “[t]he restraints or requirements imposed by factors including sound business practices, arm’s-length bargaining, Law, and terms and conditions of the Contract,” and “[m]arket prices for comparable goods or services for the geographic area.” *Id.* at 14. The City Cost Manual states that “‘market price’ is defined in the New York City Procurement Policy Board Rules as, “prices commonly paid by the public either through a standard price list or catalogue.” *Id.* The actual defined term in the PPB Rules, however, is “Prevailing Market Price.” *See* PPB Rules at 20. In the context of compensation, therefore, a more apt comparison may be prevailing market wage, meaning the average wage paid to persons with similar positions.

⁹⁴ City Cost Manual 29. Non-City sources provide some additional, if limited, guidance at determining reasonableness. While the IRS states that charities “may not pay more than reasonable compensation for services rendered,” it also notes that “compensation payments are presumed to be reasonable if the compensation arrangement is approved in advance by an authorized body composed entirely of individuals who do not have a conflict of interest with respect to the arrangement, the authorized body obtained and relied upon appropriate data as to comparability prior to making its determination, and the authorized body adequately documented the basis for its determination concurrently with making the determination.” *Governance and Related Topics – 501(c)(3) Organizations*, Int. Revenue Serv. (Feb. 4, 2008) at 4, *available at* https://www.irs.gov/pub/irs-tege/governance_practices.pdf.

The New York State Attorney General's Office, which regulates not-for-profit organizations in the State, states that charities are "authorized to pay reasonable compensation commensurate with the services performed," but notes that there is "no set process" for determining pay. *Governance frequently asked questions (FAQs)*, Office of the New York State Attorney General, available at <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/governance> (last accessed July 11, 2023). That said, the Attorney General also states that compensation best practices include, among others, "obtain[ing] and rely[ing] on information as to comparability of the officer's salary to salaries paid to officers in similar positions at comparable charities." *Id.*

⁹⁵ DHS Fiscal Manual at 82.

⁹⁶ Standard Contract § 6.02.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ DHS Fiscal Manual at 82. Although the City Cost Manual's provisions are controlling, DOI understands that the DHS Fiscal Manual's prohibition on bonuses means that DHS will not give prior approval for bonus or incentive costs.

¹⁰⁰ City Cost Manual at 31.

¹⁰¹ 2021 Report at PPR #6.

¹⁰² Some proposals have been made concerning limitations on executive compensation. For example, the Comptroller proposed that the City "pursue a clear and easily enforceable cap on executive compensation for all nonprofit contractors delivering public services to New Yorkers." See Comptroller PPB Request, *supra* note 36, at 4. The proposal states "that cap should be tied to the compensation of the highest paid public sector worker in the previous year, who could be reasonably be described as in a 'similar circumstance' as the nonprofit sector executives," noting that in fiscal year 2022, "the highest paid worker according to publicly available records was . . . [the] President of [the New York City Health + Hospitals Corporation] at a total salary of \$699,081." *Id.* at 5.

DOI takes no position on what constitutes a reasonable maximum City-funded salary, and acknowledges that this is a complex issue that will likely require input from multiple stakeholders, and consideration of multiple factors. DOI does note that there are significant differences between H+H and City-funded shelter providers that may limit their comparability. Scale is a particular difference: one of the largest shelter providers has average annual revenues of \$260 million and over 4,100 employees, while H+H reports annual revenues exceeding \$11 billion and has more than 45,000 employees. Compare SCO Family of Services, Return of Organization Exempt from Income Tax, Part V (Fiscal Year 2021) with New York City Health and Hospitals Corporation, Financial Statements and Supplemental Schedules and Report of Independent Certified Public Accountants (Fiscal Year 2021); see also *About NYC Health + Hospitals*, NYC Health + Hospitals (2023), <https://www.nychealthandhospitals.org/about-nyc-health-hospitals/>.

¹⁰³ 2 C.F.R. § 200.430(b); see also 41 U.S.C. § 4304(a)(16) (general compensation cap). The general compensation cap is set in statute at \$487,000, but is annually adjusted; For calendar year 2024, the cap has been adjusted to \$646,000. See *Contractor Compensation Cap for Contracts Awarded on or after June 24, 2014*, The White House, available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/ContractorCompensationCapContractsAwardedafterJune24-UPDATE-NOV-2023.pdf> (last viewed Sept. 10, 2024). Some agencies implement a substantially lower cap: the Department of Health and Human Services, for example, limits salaries based on the federal executive schedule, currently

capping compensation at \$221,900. *See* 48 C.F.R. § 352.231-70 (HHS “Salary Rate Limitation” setting cap on salaries based on “the Federal Executive Schedule Level II”); Salary Table No. 2024-EX: Rates of Basic Pay for the Executive Schedule (EX), U.S. Office of Personnel Management (Jan. 2024), *available at* <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/EX.pdf> (last viewed Sept. 10, 2024).

¹⁰⁴ For example, the Florida Department of Children and Families limits salaries at contractors to 150 percent of the annual salary paid to the secretary of that agency. *See* Fla. Stat. § 409.992(3).

¹⁰⁵ Exec. Order 38 (Jan. 18, 2012), *available at* https://wayback.archive-it.org/8438/20210926222632/https://gov56.ny.gov/sites/default/files/atoms/files/EO38_0.pdf (last viewed Sept. 10, 2024).

¹⁰⁶ 2021 Report at 1.

¹⁰⁷ *See* Standard Contract §§ 5.01-5.06; 6.02.

¹⁰⁸ 2021 Report at 18-19, PPR #1.

¹⁰⁹ *Id.* at 19-20, PPRs #3, 6, 7; *id.* at 46, PPR #20. The 2021 Report attached a draft annual conflicts of interest disclosure form as Appendix 1. *Id.* at 49-57. It further included a draft supplemental disclosure for related party leases as Appendix 3. *Id.* at 62-64. It also attached a draft audit compliance certification form as Appendix 5. *Id.* at 70-71.

¹¹⁰ At current, PASSPort asks providers to disclose whether they have parent, subsidiary, or affiliate companies, and whether they employ certain City-affiliated individuals. *See* PASSPort Vendor Questionnaire § 2 (“Business Relationships / Related Entities), § 6 (“Employment of City-Affiliated Individuals.”). However, PASSPort does not ask providers to disclose conflicts of interest possessed by board members or key employees, or whether the provider has engaged in related party transactions.

¹¹¹ PASSPort, Vendor Financial History § 4, Question 2 (“Adverse Audits”) (emphasis added).

¹¹² DOI identified only one provider that failed to disclose a material weakness finding on PASSPort.

¹¹³ For example, a “significant deficiency” in internal controls is one that, “while less severe than a material weakness, [is] important enough to merit attention by those responsible for oversight of the company’s financial reporting.” Public Company Accounting Oversight Board, Auditing Standards of the Public Company Accounting Oversight Board 87 (effective Dec. 15, 2020), https://assets.pcaobus.org/pcaob-dev/docs/default-source/standards/auditing/documents/auditing_standards_audits_after_december_15_2020.pdf?sfvrsn=5862544e_4. Auditors can also refuse to issue an opinion where unable to obtain or verify information key to the audit, either in whole or in part. Such a “qualified opinion” or “disclaimer of opinion” is nonetheless not a “material weakness.” *Id.* 423-424

¹¹⁴ Standard Contract § 6.06.

¹¹⁵ N-PCL § 715-a. The N-PCL provisions on conflicts are focused on ensuring that nonprofits act in their best interest, and only reflect a minimum baseline for providers’ conflict policies.

¹¹⁶ *See* Findings: Nonprofit Shelter Providers, *supra* Part III.A.

¹¹⁷ 2021 Report at 4. For purposes of brevity, this report does not provide significant detail about the invoicing and reimbursement system. For an in-depth discussion of the process and the issues

identified therein, *see* 2021 Report.

¹¹⁸ *Id.* In some cases providers receive advances of payments for work not yet completed. However, nonprofits must still demonstrate that they provided the contracted-for services consistent with their City contract and applicable rules, including the City Cost Manual and DHS Fiscal Manual.

¹¹⁹ Providers must also maintain supporting documentation for their expenses and submit it for review as required. Standard Contract §§ 4.05(A), 5.01; DHS Fiscal Manual at 40, 58-61, 81-82.

¹²⁰ 2021 Report at 21.

¹²¹ *Directive #2: Cost Reimbursable Contract Payment Request Audits*, Office of the Comptroller (Apr. 25, 2013), <https://comptroller.nyc.gov/wp-content/uploads/documents/Directive-2-Cost-Reimbursable-Contract-Payment-Request-Audits-Reformatted-7-30-18.pdf> (“Directive 2”)

¹²² To be allowable, costs must generally be “necessary and reasonable for the performance of the Contract,” conform to the specific providers’ contract terms, be “adequately documented,” and not be claimed as a cost under a different contract. A cost is reasonable “reasonable,” if “in its nature and amount, it does not exceed the amount that would be incurred by a prudent Provider under the circumstances prevailing at the time the decision was made to incur the Cost.” City Cost Manual at 14.

¹²³ *Id.* at 15, *see also id.* at 22-52; DHS Fiscal Manual at 82.

¹²⁴ DHS Fiscal Manual at 58 (for expense-based contracts, “Invoices must accurately reflect expenses in accordance with the approved budget, which were actually paid for by the Provider during the month covered by the invoice.”). DHS makes clear that “[I]nvoices must accurately reflect expenses in accordance with the actual budget,” and that providers must upload “back-up documentation . . . into [HHS] Accelerator.” DHS, *DSS and DHS Workshop on Contracts and Budgets- Frequently Asked Questions (FAQs)* (“Workshop FAQs”) at 5, <https://www.nyc.gov/assets/dhs/downloads/pdf/DHS-provider-workshop-FAQs.pdf> (last accessed Feb. 26, 2024).

¹²⁵ City Cost Manual at 14, 16; Standard Contract § 4.06(C)

¹²⁶ 2021 Report at 21-33.

¹²⁷ *Id.*; *see also* Directive 2, *supra* note 121.

¹²⁸ 2021 Report at 31.

¹²⁹ DOI accessed invoicing data stored in the Citywide Performance Reporting (“CPR”) system at multiple points from 2021 through 2023. The Mayor’s Office of Contract Services (“MOCS”) has confirmed that the invoicing data in this system matches and corresponds with providers’ invoice data submissions in HHS Accelerator. DOI notes that it is possible that information available in CPR may not correspond with invoicing data currently in HHS Accelerator. Such discrepancies are possible due to a variety of reasons, including without limitation: changes in the data since collected by DOI, revised invoice submissions, data or query errors, typographical mistakes, and human error.

¹³⁰ According to MOCS, HHS Accelerator has been phased out. Functions currently on HHS Accelerator have been, or will eventually be, migrated to PASSPort. However, MOCS has informed

DOI that only data relating to existing active contracts will be migrated from HHS Accelerator to PASSPort.

¹³¹ DHS Fiscal Manual at 58; *see also* Workshop FAQs, *supra* note 124, at 2.

¹³² DHS requires that invoices must “accurately reflect expenses in accordance with the actual budget.” Workshop FAQs, *supra* note 124, at 4.

¹³³ DHS Fiscal Manual at 60-61. The DHS Fiscal Manual also states that DSS conducts audits of every provider once every three years using a “risk based model.” *Id.* at 81.

¹³⁴ *New York City Department of Social Services – Oversight of Contract Expenditures of Bowery Residents’ Committee*, Office of the New York State Comptroller (Report 2019-N-8, December 2021), <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2022-19n8.pdf> (“BRC Audit”); *New York City Department of Social Services – New York City Department of Homeless Services Oversight of Contract Expenditures of Institute for Community Living, Inc.*, Office of the New York State Comptroller (Report 2020-N-4, September 2022), <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2022-20n4.pdf> (“ICL Audit”).

¹³⁵ ICL Audit, *supra* note 134, at 14.

¹³⁶ BRC Audit, *supra* note 134, at 18.

¹³⁷ ICL Audit, *supra* note 134, at 14. OSC made nine recommendations in the ICL audit, with all of which DSS either agreed or partially agreed. In response to a recommendation that DHS “comply with existing internal policies and complete monthly expenditure reviews,” DSS claimed that “invoices are subject to post-payment review, and DHS follows that policy.” *Id.* at 22. OSC described this response as “misleading,” noting that the “audit determined that DHS did not always conduct the required review process.” *Id.* at 27.

¹³⁸ BRC Audit, *supra* note 134, at 19. OSC made 12 recommendations in the BRC audit. DSS agreed or partially agreed with 10 and disagreed with 2. In relevant part, DSS claimed that the OSC audit only took issue with allocation between programs, and did “not question whether these costs were incurred.” *Id.* at 25. OSC disagreed, noting that the audit “details numerous instances of expenses that were not supported or were ineligible for reimbursement.” *Id.* at 35. DHS also noted that that the “audit primarily occurred during the COVID-19 pandemic, a time when both DHS and BRC . . . were working rapidly to respond to the needs of our City and its most vulnerable inhabitants.” *Id.* at 25.

¹³⁹ 2021 Report at 31.

¹⁴⁰ Task Force Memo, *supra* note 32.

¹⁴¹ Comptroller Testimony, *supra* note 36.

¹⁴² *Oversight - DHS Homeless Service Provider Contracts: Hearing before the New York Council Committees on Contracts and General Welfare*, T2019-5477 (Dec. 16, 2019) (testimony of Catherine Trapani, Executive Director, Homeless Services United), *available at* <https://legistar.council.nyc.gov/View.ashx?M=F&ID=7977417&GUID=50E05E96-22B1-4A3F-BBE3-2A98A8E2EB50> (“During times of increased demand, it is not unusual for a nonprofit leader to get a last minute call from a DHS official asking them to open a planned facility early, procure a few hotel rooms or otherwise make space available for new families and individuals.”).

¹⁴³ Because the composition of the shelter system is constantly in flux, DOI selected a specific point in time to conduct its analysis. Given the rapid increase in shelter capacity in the interim, the providers and values listed herein do not represent the current status of the shelter system. DSS data refers to units and beds together; units generally refer to family shelters where multiple family members are housed together, while beds generally refer to single adults.

¹⁴⁴ 9 R.C.N.Y. § 2-08(b).

¹⁴⁵ DSS and DHS officials informed DOI that the following offices are involved in different phases of the shelter contracting process. Providers' initial applications are reviewed by the Office of the DSS Agency Chief Contracting Officer ("ACCO"), which also oversees the "rating process" by which providers are selected. City Hall and the relevant City Councilpersons must also approve the siting of a proposed shelter. Once a provider is selected for a given contract award, the DHS Office of Capacity Planning & Development ("CPD"), the DHS Commercial Law Unit, and ACCO are involved in negotiating contract terms, and the DHS Budget Office and the Mayor's Office of Management and Budget ("OMB") are involved in the negotiation and development of the shelter budget. CPD is also concurrently operating as a "project manager" working with DSS, DHS, and the provider to open the physical shelter site. DHS Program Offices (either Adult Services or Family Services, depending on the type of shelter) are then responsible for the administration of the contract and the management of the shelter program itself. Other parts of City government, including OMB, are also involved at different stages.

¹⁴⁶ Program Analysts are primarily responsible for "oversee[ing] the shelter operations and social service provisions within [their] assigned portfolio . . . of . . . shelter sites." *Job Details: Program Analyst*, DHS (Job ID 619281), available at <https://cityjobs.nyc.gov/job/program-analyst-in-nyc-all-boros-jid-18402> (last accessed Sept. 10, 2024).

¹⁴⁷ DSS and DHS representatives told DOI that the agencies conduct a four-level invoice review process: invoices are first examined by DSS Finance, then by DHS Program Analysts, then DHS Program Administrators, and finally by the DHS Budget Office. However, the other parts of the invoice review process are limited. DSS Finance, for example, only looks to verify that there are funds encumbered for the relevant cost. The role of the Program Administrators and DHS Budget Office is limited to double-checking the work of the Program Analysts.

¹⁴⁸ HHS Accelerator was designed "to establish a centralized, digital system for human services solicitations, prequalification, document storage and financial management." *About / Go to HHS Accelerator*, MOCS, <https://www.nyc.gov/site/mocs/hhsa/about-hhs-accelerator.page>, available at [http://web.archive.org/web/20240525094934/https://www.nyc.gov/site/mocs/hhsa/about-hhs-accelerator.p](http://web.archive.org/web/20240525094934/https://www.nyc.gov/site/mocs/hhsa/about-hhs-accelerator.page) age (archived May 25, 2024). See also Charlotte Crowe, Ben Rosenn, *Strengthening NYC's Nonprofits By Reducing Administrative Burdens*, Center for an Urban Future (Jan. 2023), <https://nycfuture.org/research/reducing-administrative-burdens-on-nonprofits>. PASSPort is designed to "make the contracting process easier and more transparent" and "facilitate[] every step of the procurement process — from identifying vendors to contract solicitation and response evaluation, award to contract, and invoicing to payment." Procurement and Sourcing Solutions Portal (PASSPort), NYC Health, <https://www.nyc.gov/site/doh/business/opportunities/vendor-exchange-system.page> (last accessed Sept. 10, 2024).

¹⁴⁹ *MOCS Innovation & Impact*, MOCS, <https://www.nyc.gov/site/mocs/reporting/reporting.page>, available at [https://web.archive.org/web/20230204183340/https://www.nyc.gov/site/mocs/reporting/re](https://web.archive.org/web/20230204183340/https://www.nyc.gov/site/mocs/reporting/reporting.page) porting.page (archived Feb. 4, 2023). One third party research group noted that while issues with PASSPort and HHS Accelerator remain, "[t]here is broad agreement among nonprofit leaders that these digital portals have been hugely important steps forward for modernizing archaic, paper-based

procurement processes and standardizing practices across agencies, from issuing requests for proposals . . . to registering contracts.” Crowe et al., *supra* note 149.

¹⁵⁰ *DOI PPR Portal: PPRs Issued by DOI 2014 to Present*, DOI (last updated June 26, 2024), <https://www.nyc.gov/site/doi/about/ppr-portal-report.page>.

¹⁵¹ See Findings: Nonprofit Shelter Providers, *supra* Part II.B; Findings: DSS, DHS, and the City, *supra* Part II. A senior DSS official stated that it would be inappropriate for DSS to set limits on executive compensation considering many nonprofits contract with other City agencies, and that any such limits should be set at a Citywide level.

¹⁵² 2021 Report at 18, PPR #1; see also *id.* at 49, App’x. 1.

¹⁵³ DOI notes that certain companies will be required to disclose beneficial ownership information to the federal government beginning in January 2024. See *Beneficial Ownership Information Reporting*, FinCEN, <https://www.fincen.gov/boi> (last accessed Sept. 10, 2024); see also *Corporate Transparency Act*, H.R. 3089, 115th Cong. (Jan 1, 2021).

¹⁵⁴ 2021 Report at 32, PPR #9.

¹⁵⁵ *Id.* at PPR #6.

¹⁵⁶ *Id.* at 45, PPR #14.

¹⁵⁷ *Form 990 Series Downloads*, IRS (last updated Jul. 17, 2024), <https://www.irs.gov/charities-non-profits/form-990-series-downloads>.

Appendix 2: Responses to Policy and Procedure Recommendations

On October 2, 2024, DSS/DHS, MORMC, and MOCS provided DOI with a combined response to the 32 Policy and Procedure Recommendations (“PPRs”) in this Report. Those agencies’ combined responses are reprinted in full below. DOI is including the agencies’ responses in the interest of transparency, and is not necessarily endorsing those responses by reprinting them here.

DOI tracks agencies’ responses to its PPRs, as well as the status and implementation of those PPRs after issuance. All PPRs issued since 2014 are available on the DOI Policy and Procedure Recommendations Portal, <https://www.nyc.gov/site/doi/about/ppr-portal.page>.

For each response, DOI evaluates the status as one of the following: Accepted, Rejected, Practice Already in Place, DOI Withdrawn/Suspended, Not Applicable, or Pending. DOI may also find that a PPR has been “Partially Accepted.” In those cases, that fact is noted in the “Additional Agency Comment” column in the PPR Portal.

It should be noted that based on the response provided, DOI and the responding agency may not agree on the status of a PPR.

I. Centralization of Compliance Oversight

DOI PPR #1:

DSS should develop a written plan for addressing all 210 findings and 255 recommendations that DOI has issued to DSS about specific providers during the course of this Review, as well as the PPRs issued in this Report. This written plan should be provided to DOI within the next ninety days.

DSS/DHS, MORMC, and MOCS Response to PPR #1:

Agree. DSS will develop a written plan to address all findings and recommendations within 90 days of the report.

Based on this response, DOI will record PPR #1 as “Accepted.”

DOI PPR #2:

The City should centralize oversight of compliance, fiscal, and governance matters involving nonprofit human service providers, including DHS shelter providers, within a single City-wide compliance entity such as the Vendor Integrity Unit that is being established at MOCS.

Consistent with DOI's recommendations from the 2021 Report, this entity should, among other things: (a) set and enforce uniform, City-wide policies with respect to nonprofit human service contracting; and (b) provide support to City agencies that oversee compliance and management issues involving nonprofit human service contracts.

DSS/DHS, MORMC, and MOCS Response to PPR #2:

Agree: MOCS, Mayor's Office for Nonprofit Services (MONS), and the Mayor's Office of Risk Management and Compliance (MORMC) announced the Vendor Compliance Cabinet was convened in May 2023, which is a body responsible for identifying gaps in policies and procedures that make it difficult for agencies to enforce compliance. Ultimately, through monthly meetings, it aims to increase the transparency and standardization of vendor compliance and accountability, reduce risks and costs by closing policy gaps, strengthen contract oversight and management practices, and gain contracting efficiencies through strategic risk management. The Vendor Compliance Cabinet is supported by the MOCS Vendor Integrity Unit. The VCC is responsible for setting uniform, City-wide policies with respect to nonprofit human service contracting, and with the VIU, provides support to City agencies that oversee compliance and management issues involving nonprofit human service contracts.

The VIU is not currently resourced to be able to enforce Citywide policies, but MOCS welcomes DOI's support for VIU and the proposed growth in functions.

Based on this response, DOI will record PPR #2 as "Accepted."

DOI PPR #3:

DSS should appoint a Chief Vendor Compliance Officer to provide overall leadership for DSS and DHS's compliance strategy with respect to nonprofit human service contracts, including those with shelter providers.

As noted above, compliance and oversight functions at DSS relating to shelter providers are not concentrated within one well-defined officer or unit. Without centralization of these functions under one leader, it is more challenging to develop a single, defined strategy that will identify risks, enforce rules, and communicate with providers in a consistent manner.

Responsibilities of a CCO should include, among other things: (a) ensuring shelter providers' compliance with the fiscal requirements of DSS, DHS, and the City; (b) providing compliance training to staff at DSS and DHS, as well as staff at the contracted nonprofit providers; (c) evaluating the agency's process for reviewing/approving shelter provider invoices and implementing any

necessary modifications; and (d) coordinating with DOI and the City-wide compliance entity described in PPR #2.

DSS/DHS, MORMC, and MOCS Response to PPR #3:

Partially Agree. DSS/DHS takes compliance very seriously and has a well-developed, multi-faceted compliance framework which we apply to our shelter oversight. DSS maintains that the report failed to adequately capture the full scope of the existing DSS vendor compliance work. The DSS Accountability Office (DSS-AO) works with DHS to ensure that shelter providers complete the state certification process, that all annual state shelter inspections are completed and followed-up on, and that providers comply with incident reporting regulations. Additionally, DSS-AO identifies potential repeat and complex provider issues, investigates specific provider matters, provides annual training directly to shelter provider staff covering a wide variety of topics, provides contracting guidance to shelter providers and DSS contract staff, drafts or updates critical policies or procedures, and oversees multiple meeting series that cover topics included in the DOI review.

DSS will be consolidating certain vendor oversight and compliance functions under a single, unified area within the DSS Accountability Office. The new office will include additional contract monitoring and invoice review functions.

Based on this response, DOI will record PPR #3 as “Partially Accepted.”

II. **Disclosure & Reporting**

DOI PPR #4:

In its 2021 Report, DOI recommended that agencies “require human services contractors to complete a standard disclosure and certification form that will assist in identifying potential conflicts of interest and noncompliance with the City’s competitive bidding requirements.”

DOI reiterates the recommendation that the City adopt a new disclosure process for nonprofit human service providers as outlined in the 2021 Report, and now further recommends that MOCS and MORMC convene with any other relevant stakeholders to address this issue as soon as possible. These disclosure forms should be required prior to registration of contracts and amendments, and thereafter on at least an annual basis. They should also be promptly amended upon the identification of a new potential or actual conflict of interest by a nonprofit contractor. DSS and DHS, along with the City-wide compliance entity described in PPR #2, should review all disclosures submitted by shelter providers.

DSS, MOCS, and MORMC have responded to DOI that “The City has a plan to implement this recommendation through an updated pre-qualification (PQL) [a]pplication.”

DSS/DHS, MORMC, and MOCS Response to PPR #4:

Agree: Draft disclosure questions have been developed by the Related Party Transaction Working Group and presented to the VCC for feedback. These questions will support compliance with the related party transaction policy and procedure to standardize disclosure and review of related party transactions and conflicts of interest in human services contracts citywide. MOCS plans to implement these disclosures through an updated Prequalification Application in 2025.

Based on this response, DOI will record PPR #4 as “Accepted.”

DOI PPR #5:

DSS should amend its “65A” subcontractor approval form to include questions relating to potential conflicts of interest in the procurement of subcontractor services.

DSS/DHS, MORMC, and MOCS Response to PPR #5:

Partially Agree. DSS agrees that it is critical to identify potential conflicts of interest during procurement of subcontractor services. However, the 65A process has been replaced with the subcontracting modules within PASSPort. Adding conflicts-related questions would be duplicative with the proposed questions with regard to related party transactions and conflicts within the Human Services prequalification questionnaire. Moving forward, contract management staff will be trained to check the prime vendor’s prequalification questionnaire for potential issues when reviewing subcontractor approvals.

Based on this response, DOI will record PPR #5 as “Partially Accepted.”

DOI PPR #6:

As part of the disclosure process described above, the City should require contractors to report all potentially adverse audit findings (such as qualified opinions, disclaimers of opinion, material findings, significant deficiencies, or similar audit findings), and update any such disclosures within thirty days of learning of any material changes. This is in addition to the current PASSPort questionnaire requirement that providers disclose whether “any audits of the submitting vendor [have] revealed material weaknesses in its system of

internal controls, its compliance with contractual agreements, and/or its compliance with laws and/or regulations.”

DSS/DHS, MORMC, and MOCS Response to PPR #6:

***Agree:** The proposed Standard Audited Financial Report (SAFR), a single audit policy for human service programs and vendors, was presented to the Vendor Compliance Cabinet in FY23, and each participating agency approved the draft SAFR manual in June 2024. MOCS, MONS, and MORMC developed SAFR to develop a risk-based approach to vendor audits, streamline the auditing process, reduce the number of audits, and provide better value to City agencies.*

The draft SAFR manual includes this disclosure of audit findings.

Based on this response, DOI will record PPR #6 as “Accepted.”

DOI PPR #7:

As part of the disclosure process described above, the City should require executives and key persons to report information relevant to potential conflicts of interest that may impact City contracts or the administration of City-funded programs. These disclosures should be signed and submitted by the individual executive or key person to whom the questionnaire relates, not other employees or designees submitting on behalf of the individual.

DOI recommended in December 2023 that the existing PASSPort principal questionnaires be “signed and submitted by the individual employee to whom the questions relate,” but MOCS responded that it was “unable” to implement the change to the principal questionnaire for technical and logistical reasons. MOCS did indicate that the proposed change could be implemented as part of a new “updated pre-qualification (PQL) [a]pplication” that is being contemplated. Accordingly, DOI recommends that the signed disclosures recommended in this PPR be implemented through the PQL application update.

DSS/DHS, MORMC, and MOCS Response to PPR #7:

***Partially Agree:** MOCS is planning to update the Prequalification Application to include additional questions about conflicts of interest, and if conflicts are disclosed or otherwise identified, the City will collect the annual disclosure statements required by the NYS Not-for-Profit Corporation Law.*

However, as MOCS previously responded, PASSPort does not have a requirement that principal questionnaires must be signed and certified by the individual principal.

Based on this response, DOI will record PPR #7 as “Partially Accepted.”

DOI PPR #8:

DSS and DHS should require shelter contractors to provide the City with copies of the board member conflict of interest disclosure forms they are required to collect pursuant to Section 6.05 of the Standard Contract. These forms should be submitted to the City at least on an annual basis. DSS, DHS, and the City-wide compliance entity described in PPR #2 should review these forms to identify conflicts that might affect City contracts.

DSS/DHS, MORMC, and MOCS Response to PPR #8:

Partially Agree: DSS has been working with MOCS and MORMC on implementation on requiring the submission of conflicts statements into the new PASSPort vault as part of the annual Human Services Prequalification certification. In the case that conflicts are identified, forms will be collected and reviewed as part of the updated Prequalification Application discussed above.

The VIU is not currently resourced to be able to review every form submitted, but MOCS welcomes DOI's support for VIU and the proposed growth in function.

Based on this response, DOI will record PPR #8 as “Partially Accepted.”

DOI PPR #9:

The City should require nonprofits' chief executives or equivalents to certify as part of the new disclosure process that the provider is in compliance with all obligations under the Standard Contract, City Cost Manual, and DHS Fiscal Manual.

DSS/DHS, MORMC, and MOCS Response to PPR #9:

Already Implemented: When authorized officers sign a City contract, they make this certification to the City. An additional certification would be redundant.

Based on this response, DOI will record PPR #9 as “Rejected.”

DOI PPR #10:

To the extent possible, the City should consolidate disclosures already required by the Standard Contract, City Cost Manual, DHS Fiscal Manual, PASSPort, and HHS Accelerator into one new disclosure process described above in PPR #4.

DSS/DHS, MORMC, and MOCS Response to PPR #10:

Agree in principle: MOCS accepts that the most efficient way to collect required disclosures is through PASSPort and is committed to accepting disclosures through this central platform.

MOCS welcomes DOI's support for improvements to PASSPort and the proposed growth in function. In order to change the PASSPort Vendor and Principal Questionnaires for all vendors, MOCS would need to engage multiple stakeholders to amend the NYC Administrative Code.

Based on this response, DOI will record PPR #10 as "Rejected."

III. **Third Party Procurement**

DOI PPR #11:

DSS and DHS should require shelter providers to disclose the true beneficial ownership of any privately-held subcontractors and vendors to shelter providers (i.e., vendors that do not directly contract with the City and receive City funds indirectly through shelter reimbursement, including landlords, maintenance providers, food vendors, and other major suppliers) for purchases exceeding \$100,000 prior to submitting any related reimbursement costs. Such submissions should be made as part of the aforementioned 65A review process.

DSS/DHS, MORMC, and MOCS Response to PPR #11:

Partially Agree. DSS is currently drafting a written policy addressing ownership-related matters that would be consistent with the responses herein. As mentioned in the response to Recommendation Number 5, the 65A process has been replaced by the subcontractor module within PASSPort. Staff will be required to review the related party transaction/conflicts of interest questions in the Human Services Prequalification questionnaire. Currently, staff check principals of proposed subcontractors by reviewing filed PASSPort questionnaires, DOI Vendor Name Checks, and Accurint to determine possible affiliations and ownership interests of the potential subcontractor.

Based on this response, DOI will record PPR #11 as "Partially Accepted."

DOI PPR #12:

DSS and DHS should require shelter landlords to certify whether they actually own the building, or whether they are themselves leasing the building from the true owner and subleasing to the property to the nonprofit. In cases where the shelter landlord is actually subleasing the property to the shelter provider, the landlord should be required to disclose the identity of the property's true owner.

Such disclosures will: (1) lead to increased transparency with respect to the parties with whom the City is indirectly doing business, and (2) help to identify any interests that related parties hold in the lease or building itself. Obtaining information about building ownership may also assist DSS and DHS in identifying any risks to the landlord's continued control over the shelter property. The disclosures should be submitted to the contracting agency for review and to the City-wide compliance entity discussed in PPR #2 for examination.

DSS/DHS, MORMC, and MOCS Response to PPR #12:

Partially Agree. DSS is currently drafting a written policy addressing ownership-related matters which will include required landlord and owner disclosures. This policy will be memorialized in all DSS open-ended Requests for Proposal associated with housing and shelter. The current DSS practice compares the site control documentation with ACRIS and the HPD public databases to confirm the owner of the property for all new shelter proposals. If the site control letter is not from the deed holder, DSS will request clarification on the reason the not-for-profit provider is leasing the property from a party other than the owner for additional review. DSS is reviewing all current shelter lease/sublease arrangements prior to any lease amendments to confirm the leasing structure.

Based on this response, DOI will record PPR #12 as "Accepted."

DOI PPR #13:

The City should explicitly provide for limited reasonable exceptions to the competition requirements of the Standard Contract, City Cost Manual, and DHS Fiscal Manual, such as in true emergency situations or where selection of a specific provider is pre-approved by the agency and clearly in the best interest of the City. Any exceptions to the competition requirements should be narrowly tailored and subject to strictly-defined criteria. Furthermore, any procurements conducted pursuant to such an exception should be reviewed by the contracting agency (e.g., DSS) and subject to audits by the City-wide

compliance entity described in PPR #2 to ensure that these criteria are applied by agencies in a consistent manner.

DSS/DHS, MORMC, and MOCS Response to PPR #13:

Partially Agree. VCC members have proposed amending the Standard Human Services Contract and possibly the Human Services Cost Manual to allow for certain exceptions to the three-bid requirement. DSS currently reviews every bid submitted prior to approving subcontractors.

The VIU is not currently resourced to be able to audit exceptions to the supplier competition rule, but MOCS welcomes DOI's support for VIU and the proposed growth in function.

Based on this response, DOI will record PPR #13 as "Partially Accepted."

IV. Invoice Review, Contract Management & Cost Allowability

DOI PPR #14:

In the 2021 Report, DOI recommended that "[a]gencies should review a more significant sample of supporting documentation prior to approving payment, and should provide more specific guidance to agency staff as to what factors in a payment request warrant further review." As the 2021 Report noted, the City's current guidance that agencies review one or two invoice lines is "too limited for the review to be meaningful."

DOI reiterates that recommendation, and now further recommends that DSS and DHS begin reviewing a larger sample of provider-submitted invoices than they do currently. DOI recommends that DSS and DHS coordinate with MOCS to identify a sample size larger than the existing City Cost Manual recommendation that will more appropriately balance the need to promptly deliver payments with the need to exercise oversight of City funding.

DSS/DHS, MORMC, and MOCS Response to PPR #14:

Agree in Principle: The City's invoice review policy was designed by the nonprofit resiliency committee to efficiently pay providers while getting documentation for large expenses and testing backup on a post-payment basis.

However, the City agrees with the concept of increasing the documentation size for invoice review on a risk basis and would welcome DOI's advice and support on best practices for efficient invoice review with appropriate accountability.

Lastly, DSS is exploring the creation of a team dedicated to Secondary Invoice Review to perform real-time and risk-based secondary review of invoices, which would further strengthen its invoice review and monitoring protocols.

Based on this response, DOI will record PPR #14 as “Accepted.”

DOI PPR #15:

DHS and DSS should take steps to provide regular financial management and compliance training to agency staff responsible for approving and reviewing invoices. The training curriculum should include, but not be limited to, instruction about the appropriate level of detail necessary for invoices to be approved. Although this program should be managed by compliance leaders at DSS and/or DHS, DOI is prepared to support the agencies in developing and delivering any such trainings.

DSS/DHS, MORMC, and MOCS Response to PPR #15:

Agree. DSS has previously conducted invoice review trainings and will continue to prioritize and develop these trainings to ensure all staff have sufficient knowledge and resources to conduct adequate invoice review.

Based on this response, DOI will record PPR #15 as “Accepted.”

DOI PPR #16:

DHS and DSS should consider dividing contract oversight responsibilities between employees who specialize in fiscal management (e.g., cost and fiscal manual compliance, reimbursements, invoice review, and payments) and employees who specialize in program management (e.g., implementation of programs, day-to-day operation of shelters, emergency response). As discussed, these responsibilities are currently assigned to program staff who, at current, generally have limited training or capacity for fiscal management duties, increasing compliance and governance risks. An alternative structure would split these responsibilities between subject-area experts: program management would remain with program staff, while devoted staff with financial oversight training would be responsible for fiscal management.

DSS/DHS, MORMC, and MOCS Response to PPR #16:

Conditionally Agree. DSS agrees that it would be advantageous to divide contract oversight responsibilities in this way. Current citywide hiring constraints prevent immediate implementation of this recommendation.

Based on this response, DOI will record PPR #16 as “Partially Accepted.”

DOI PPR #17:

DHS and DSS should immediately stop approving payments for costs where the vendor is not identified by name, or that are described as “to be determined” or in similarly indefinite terms. DSS should further advise shelter providers that invoices containing inadequate detail about expenses will not be approved.

DSS/DHS, MORMC, and MOCS Response to PPR #17:

Agree. This practice is already in place. Under current practice, staff are instructed not to approve invoices where the subcontractor is not definitively identified on the invoice. In addition, the subcontractor approval process prohibits the ability to approve any invoices without identification of the third-party vendor in the contract budget, and subsequently the invoice. Subcontracts that are not approved would be initially set up in an unallocated budget line; the not-for-profit cannot modify the budget to include any third-party services unless the third-party has been approved, and the not-for-profit can upload the approval into PASSPort. Unless the third-party service line item is approved by DHS, the not-for-profit will not be able to invoice.

Based on this response, DOI will record PPR #17 as “Practice Already In Place.”

DOI PPR #18:

In its 2021 Report, DOI recommended: “MOCS should convene a group of representatives from City agencies to develop a mechanism for disclosing information relating to executive compensation and . . . develop appropriate guidance to agencies in making determinations as to the reasonableness of executive compensation for contractors and first-tier subcontractors, including obtaining additional documentation regarding board oversight and approval if the salary is potentially excessive[, and] consider setting a cap or other parameters on City-funded executive compensation.”

DOI reiterates that recommendation, and now further recommends that as part of this process, the City establish limits on the total amount of City funds that may be used by nonprofit contractors for executive compensation. As noted in Section III of the shelter findings, such limits should be determined based on relevant comparisons, funding sources, and executive compensation rules in other jurisdictions.

In response to this recommendation, DSS/DHS, MOCS, and MORMC stated that “[t]he City researched this issue extensively and has a framework to implement a policy on executive compensation allowability” and “intends to finalize a policy and develop procedures for implementation.” DOI looks forward to reviewing these policies and procedures.

DSS/DHS, MORMC, and MOCS Response to PPR #18:

Partially Agree. The City will continue to assess the executive compensation issues and recommendations set forth in DOI's reports. Contract budgets generally do not directly fund salaries for provider executives. The issue is also legally complex – we note that a prior Executive Order from Governor Andrew Cuomo limiting not-for-profit executive compensation resulted in litigation and was eventually repealed by Governor Kathy Hochul. The issue requires further analysis.

Based on this response, DOI will record PPR #18 as “Rejected.”

DOI PPR #19:

DSS should take steps to improve providers' compliance with Section 4.02 of the Standard Contract, including any requirements that they establish and maintain separate accounts for the funds obtained through contracts with the City, as well as maintain records sufficient to adequately track and identify funds obligated through those agreements.

DSS/DHS, MORMC, and MOCS Response to PPR #19:

Agree. DSS agrees that providers' compliance with Section 4.02 of the Standard Human Services Contract is critical. DSS will work with MOCS on guidance toward this end.

Based on this response, DOI will record PPR #19 as “Accepted.”

DOI PPR #20:

As part of their ongoing work to address late payment issues, DHS, DSS, and relevant stakeholders (including MOCS, the Office of the Comptroller, and the Joint Task Force to Get Nonprofits Paid On Time) should review and consider the invoicing and budgeting matters identified in this Report as contributing to late payments.

DSS/DHS, MORMC, and MOCS Response to PPR #20:

Partially Agree. While DSS believes that payments to not-for-profits was outside the scope of this report and that the report's description of payment issues does not account for many of the compliance issues set forth in the report, DSS has been actively pursuing process changes in order to pay vendors more efficiently. These changes include analyzing approval levels for payments and staff training. In order to address provider related issues causing delays in invoice approvals, DSS will conduct reinforcement training for provider staff covering related topics, which expands current DSS efforts in working with vendors on a one-on-one basis.

Moreover, DHS has commenced hands-on review of budgets and invoices on a provider-by-provider basis, which allows, budgetary, contracting, programmatic, and payments offices to review issues together, and establish a centralized location for providers to discuss these contract management and payment issues.

MOCS is working with DSS and other HS agencies on invoicing timeliness and we can consider the information DOI learned during this review.

Based on this response, DOI will record PPR #20 as "Accepted."

V. Audits and Other Reviews

DOI PPR #21:

In its 2021 Report, DOI made multiple recommendations concerning audits and reviews by human service contracting agencies, including DSS, DHS, and MOCS. Among others, these recommendations included revising "[t]he City-wide audit policy . . . to provide guidance for agencies as to when a contract presents a higher risk and is therefore appropriate to undergo a more rigorous audit"

DOI reiterates those recommendations, and now further recommends that the City include the following contracts among those that are deemed to pose a "higher risk" warranting "a more rigorous audit": (a) contracts with "systemically important" shelter providers, meaning those which represent a substantial portion of the City's shelter capacity or that otherwise could not be easily replaced or substituted, and (b) contracts with providers who receive a "substantial" proportion of revenue from the City, meaning those for whom City funds represent approximately 75% or more of overall annual revenues.

DSS/DHS, MORMC, and MOCS Response to PPR #21:

***Agree:** The proposed Standard Audited Financial Report (SAFR), a single audit policy for human service programs and vendors was presented to the Vendor Compliance Cabinet in FY23, and each participating agency approved the draft SAFR manual in June 2024. MOCS, MONS, and MORMC developed SAFR to develop a risk-based approach to vendor audits, streamline the auditing process, reduce the number of audits, and provide better value to City agencies.*

The draft SAFR manual uses the federal Single Audit approach of categorizing programs by dollar value and then auditing significant ("Type A") Programs at least once every three years. It also allows DSS to identify all systemically important shelter providers to be considered high risk by the CPA completing the SAFR.

DSS has been an active participant in citywide audit reform. DSS also uses a variety of risk monitoring tools to inform leaders on audit strategy and remediation.

Based on this response, DOI will record PPR #21 as "Accepted."

DOI PPR #22:

DSS and DHS, in consultation with MOCS and/or the City-wide compliance entity described in PPR #2, should develop a practice for identifying shelter providers that are "systemically important" to the City's shelter system and any providers that present higher levels of risk. These entities should be subject to enhanced reviews designed to flag compliance concerns at their early stages.

DSS/DHS, MORMC, and MOCS Response to PPR #22:

***Partially agree.** DSS agrees that monitoring systematically significant providers is important. DSS has a well-established vendor monitoring and oversight process where issues are identified and remediated, including through more frequent audit. While these issues sometimes occur at the larger providers, there are also issues that arise at smaller providers that require attention.*

The City agrees with the concept of identifying vendors for proactive review on a risk-basis, and we would welcome DOI's support for an expansion of MOCS VIU to implement this recommendation.

Based on this response, DOI will record PPR #22 as "Partially Accepted."

DOI PPR #23:

DHS and DSS, in consultation with MOCS and/or the City-wide compliance entity described in PPR #2, should review shelter providers' internal procurement policies to determine whether they meet or exceed the competition requirements of the Standard Contract, City Cost Manual, and DHS Fiscal Manual. Nonprofit contractors should be explicitly informed that costs that do not comply with the City's requirements will not be reimbursed by the City.

DSS/DHS, MORMC, and MOCS Response to PPR #23:

Partially Agree. DSS thoroughly reviews all subcontractor request packages before approval. The subcontractor approval packages include all bids solicited by the not-for-profit, as well as any bid analyses required when selecting the subcontractor. Any issues with the process will result in rejection of the subcontractor. If a not-for-profit continuously makes errors in the subcontracting bidding process or is not following the requirements of Section 4.05 of the Standard Human Services Contract, DSS may request a corrective action plan, which would include a review and approval of all procurement policies of the not-for-profit.

The City agrees with the concept of identifying vendors for proactive review on a risk basis and would welcome DOI's support for an expansion of MOCS VIU to implement this recommendation.

Based on this response, DOI will record PPR #23 as "Partially Accepted."

VI. Capacity Building & Training

DOI PPR #24:

All city agencies contracting with human services providers, in coordination with MOCS and the City-wide compliance entity described in PPR #2, should evaluate the fiscal management and compliance capacity of new nonprofit contractors, provide additional capacity building and training where necessary, and conduct enhanced reviews of those not-for-profits where issues are identified. For new providers, fiscal management and compliance capacity should be evaluated prior to contracting. All new contractors should be subject to enhanced reviews for at least an initial probationary period.

DSS/DHS, MORMC, and MOCS Response to PPR #24:

Agree in Principle: The City agrees with the concept of identifying vendors for proactive review on a risk basis, and we would welcome DOI's support for an

expansion of MOCS VIU to implement this recommendation.

MOCS has draft guidance to agencies on escalating integrity information that may be followed by risk-based reviews by VIU analysts.

Providing additional capacity building and training is part of MONS' mission and roadmap.

Based on this response, DOI will record PPR #24 as "Partially Accepted."

DOI PPR #25:

The City should develop and distribute a concise reference sheet listing key compliance requirements for nonprofit contractors performing work on City contracts. This document should list key requirements relating to, among other things, conflicts of interest, nepotism, required competition for subcontracts, and allowable/disallowable costs. The document should be distributed to all potential, new, and existing contractors on a regular basis.

DSS/DHS, MORMC, and MOCS Response to PPR #25:

Agree in Principle: MOCS and MONS will explore a collaboration on content, as part of MONS' communication, training, and capacity building material development.

Based on this response, DOI will record PPR #25 as "Accepted."

VII. Systems and Data Management

DOI PPR #26:

The City should ensure that key documents relating to existing and future contracts are maintained in PASSPort or an equivalent system, including those registered under emergency procurement rules or prior to 2020.

In response to DOI's findings, MOCS noted that the City Comptroller maintains another system, the Omnibus Automated Image Storage and Information System ("OAISIS"), as the "system of record" for City contracts. MOCS further stated that "[i]t is not possible to include contract documents in PASSPort in the contracts did not originate in PASSPort."

DSS and DHS personnel who are involved in contract oversight rely on PASSPort (and previously HHS Accelerator, which has now been phased out). DOI's own oversight efforts rely on PASSPort and HHS Accelerator as well.

DOI recommends that, at a minimum, PASSPort be configured to include these missing documents going forward.

DSS/DHS, MORMC, and MOCS Response to PPR #26:

Agree, Already Implemented: The City maintains contract documents in OASIS, and DSS/DHS continue to maintain contract files in compliance with the PPB Rules to ensure the relevant staff have access to important documents.

PASSPort supports workflow management in the contract registration process, and maintains disclosures required by the NYC Administrative Code.

While it would be ideal to store all relevant contractual documents and records in one system, as discussed multiple times with DOI, personnel from DHS and DSS who are involved in contract oversight understand how these systems work together and will continue to access them as needed to acquire necessary documents.

Based on this response, DOI will record PPR #26 as “Rejected.”

DOI PPR #27:

MOCS should evaluate whether it is practicable to remove functionality in PASSPort and any other system used for invoicing that allows City employees to approve expenses submitted without a specified vendor, subcontractor, or purpose.

DSS/DHS, MORMC, and MOCS Response to PPR #27:

Not applicable. PASSPort functionality supports a flexible budget and invoice configuration to allow every agency to use it for invoicing. PASSPort supports the transparency of invoicing information to oversight agencies, including DOI, that was impossible before the use of PASSPort.

Based on this response, DOI will record PPR #27 as “Rejected.”

DOI PPR #28:

MOCS should ensure that, for all potential costs providers may invoice (including “OTPS – Operations and Support” and “OTPS – Professional Services”), PASSPort and any other system used for invoicing includes fields in which nonprofit contractors can supply adequate detail about the identity of the third-party vendor and the nature of the goods or services purchased.

DSS/DHS, MORMC, and MOCS Response to PPR #28:

Not Applicable. *PASSPort functionality supports a flexible budget and invoice configuration to allow every agency to use it for invoicing. PASSPort supports the transparency of Citywide invoicing information to oversight agencies, including DOI, that was impossible before the use of PASSPort.*

Agencies may require certain information be submitted with an invoice as needed to enforce the program requirements. The City agrees in principle that invoice policy setting should be done centrally as there is no current process owner, and we would welcome DOI's advice and support to determine where this area of expertise should live and support the necessary resourcing.

Based on this response, DOI will record PPR #28 as "Rejected."

DOI PPR #29:

To the extent that vendors may submit "Certificate of No Change" forms to update their vendor enrollment packages, MOCS should require that: (a) nonprofit contractors submit a complete copy of the package along with the form; and (b) nonprofit contractors' principals certify that they have personally reviewed the entire package, and that all of the information contained therein is full, complete, and accurate.

DSS/DHS, MORMC, and MOCS Response to PPR #29:

Agree in principle: *An authorized person is certifying on penalty of perjury that the data entered previously is still true and accurate to the best of their knowledge. It is not a paper package.*

"Since the launch of PASSPort, we have allowed vendor administrators to sign and submit the principal questionnaires to ensure efficiency and ease for vendors. When an individual signs and submits the questionnaires, they certify that they have been given legal authority by the submitting vendor and all Principal Owners and Officers that are the subject of the Principal Questionnaires to submit the disclosures, and that the questionnaires contain full, complete, and accurate responses to each item in each questionnaire to the best of their knowledge, information, and belief. This certification is binding on the vendor and principals and has been used by law enforcement officials to hold individuals accountable for their disclosures in PASSPort."

Based on this response, DOI will record PPR #29 as "Rejected."

DOI PPR #30:

MOCS should update PASSPort to add functionality that will better enable third-party oversight, including broader search functionality, affirmations of accuracy, and preservation of historical changes.

DSS/DHS, MORMC, and MOCS Response to PPR #30:

Agree in principle: MOCS added functionality to PASSPort on 9/23/24 to include better document search functionality for PASSPort users. As noted above, every document is submitted with a certification or "affirmations of accuracy" and the "preservation of historical changes" is already supported by PASSport, through change logs and the ability to view past versions of many workflow functions.

Based on this response, DOI will record PPR #30 as “Partially Accepted.”

DOI PPR #31:

MOCS (or when established, the City-wide compliance entity described in PPR #2) should regularly review publicly available information relating to the governance and fiscal condition of City nonprofit contractors (*i.e.*, IRS Forms 990) to proactively flag potential compliance issues requiring attention (*e.g.*, high compensation, transactions with related entities, etc.)

DSS/DHS, MORMC, and MOCS Response to PPR #31:

Agree in principle. Analysis of IRS 990 data is included in the conceptual design of the VIU Vendor Integrity Solution and was the subject of a successful proof of concept MOCS completed last year.

MOCS welcomes DOI's support for VIU and the continued investments in proactive risk functions.

Based on this response, DOI will record PPR #31 as “Partially Accepted.”

DOI PPR #32:

As part of its mission, the City-wide compliance entity described in PPR #2 should be charged with advising systems development staff to ensure that any future procurement or contracting systems include appropriate functions to enable oversight by contracting agencies and DOI (*e.g.*, affirmations of accuracy, historical change preservation, keyword searching, etc.).

DSS/DHS, MORMC, and MOCS Response to PPR #32:

Already implemented: MOCS works cross-collaboratively and relies on every subject matter expert in the agency to inform the functionality needed in PASSPort.

Based on this response, DOI will record PPR #32 as “Practice Already In Place.”