

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF FINANCIAL AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on Job Order Contracting by the Department of Education**

FR05-139A

**June 28, 2006**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office has audited the administration of the job order contracting system by the Department of Education.

Under the provisions of a job order contract— a contracting method for expeditiously performing maintenance, repairs, and minor construction work— the Department of Education can direct a contractor to perform individual tasks as-needed rather than awarding individual contracts for each small project. My office audits programs such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, that the cost of the work is reasonable, and that the City is obtaining work of acceptable quality.

The results of the audit, which are presented in this report, have been discussed with officials of the Department of Education, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.  
WCT/fh

**Report: FR05-139A**  
**Filed: June 28, 2006**

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*The City of New York  
Office of the Comptroller  
Bureau of Financial Audit*

**Audit Report on  
Job Order Contracting by the  
Department of Education**

**FR05-139A**

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**AUDIT REPORT IN BRIEF**

We performed an audit of the Department of Education's (Department's) administration of job order contracts. Job order contracting (JOC) is a procurement method for expeditiously performing maintenance, repairs, and minor construction work. Under a job order contract, the Department's Division of School Facilities can direct a contractor to perform individual tasks as needed rather than awarding individual contracts for each small project. The cost of JOC work is based on previously established unit prices for specific items (e.g., painting, plastering)

The Department's use of JOC began in 1994 when the Division employed a consultant, The Gordian Group, to develop and implement the Department's JOC program, create a catalog of unit prices, and provide construction management services, for which it is paid a fee on the basis of a sliding scale.

In Fiscal Year 2005, the Division of School Facilities (Division) allocated approximately \$18.7 million of its budget to JOC contracts.

**Audit Findings and Conclusions**

We found significant weaknesses in the Department's administration of the JOC program. Specifically, the Department does not have adequate procedures to ensure that required project documentation was submitted and approved. Moreover, the Department lacks any written policies or guidelines that spell out the circumstances—including a monetary threshold—under which the use of job order contracting is appropriate. Further, the Department has not ensured that inspections of proceed order work are adequately conducted and documented by reports, daily logs, and photographs. These weaknesses have led to contractors being assigned work outside their contract locations and contractors not completing all required work, not performing work satisfactorily, and not completing work on time.

In addition, the Department does not have a system in place to review the prices that are used to determine the cost of JOC work. The Department also lacks an adequate system of

internal controls to ensure that invoices submitted by The Gordian Group are properly reviewed and approved. As a result, the Department overpaid The Gordian Group \$63,482 in construction management fees in Fiscal Years 2004 and 2005.

We found problems with the Department's mainframe computer system PASSPORT and the Division's PROGEN databases.

### **Audit Recommendations**

This report makes a total of 24 recommendations. The major recommendations are that the Department should:

- Ensure that JOC contractors submit all required material samples, product data, drawings, test reports, guarantees and warranties. Record and properly maintain all required documentation in Departmental files.
- Ensure that JOC contractors are assigned work within their designated regions. In those cases where work must be assigned to a contractor in another region, written justification must be included in Department files.
- Develop and implement written guidelines that stipulate the circumstances and monetary threshold under which the use of job order contracts would be appropriate. In this regard, the use of job order contracts should be limited to the performance of repairs, maintenance work or minor construction.
- Ensure that it adheres to unit prices in its "Construction Cost Catalog" when determining the cost of proceed order work. The Department should also review the unit prices in the "Construction Cost Catalog," and make any necessary adjustments to ensure that the prices are consistent with industry standards.
- Implement inspection procedures for Division inspectors consistent with procedures required for The Gordian Group inspectors. Review file documentation to determine if The Gordian Group inspected the work discussed in this report. If the Department cannot verify that inspections were properly conducted, the Department should seek to recoup any payments made to The Gordian Group for that work.
- Ensure that JOC contractors complete all work satisfactorily, and on schedule. Compel the contractors mentioned in this report to immediately perform all necessary remedial work to correct noted deficiencies.
- Recoup \$63,482 in overpayments to the Gordian Group. Implement internal controls to ensure that invoices are properly reviewed and approved.
- Implement adequate controls, as required by Comptroller's Directive 18, to ensure that databases are complete and accurate.

## INTRODUCTION

### Background

The Department of Education (Department) provides primary and secondary education to more than one million New York City students. The school system is organized into 10 regions, each of which includes approximately 120 schools. Six Regional Operation Centers (ROCs) provide comprehensive business and administrative services.

The Department uses job order contracting (JOC) a contracting method, for expeditiously performing maintenance, repairs, and minor construction work.<sup>1</sup> A JOC is an indefinite quantity contract under which a contractor performs a series of individual tasks as needed. JOC contracts are based on previously established unit prices for specific work items (e.g., painting, plastering) Vendors seeking to obtain a JOC contract must competitively bid on an adjustment factor known as a “multiplier,” which represents a bidder’s indirect costs such as overhead, profit, bonds and insurance.<sup>2</sup> Contracts are awarded to the bidder with the lowest multiplier. To determine payment for each work item, the unit price is multiplied by the quantity of units of work performed, and then adjusted by the multiplier. Consequently, under JOC, the Department does not have to competitively bid individual contracts for each small project.

The Department’s Division of School Facilities (Division) is responsible for overseeing school building maintenance by using its own work force of skilled trades people and by administering JOC and requirement contracts. Approximately 13 percent (i.e., \$18.7 million) of the Division’s \$143 million Fiscal Year 2005 budget was allocated to JOC contracts. The Division solicits one \$4-million general construction JOC contract for each of six ROCs, and two electrical JOC contracts for three ROCs each. Citywide, the Division solicits one JOC plumbing contract, one mechanical contract, one stage curtains contract, and one bleachers contract. The term of each current JOC contract is four years with an option to withdraw annually.

The Department’s use of JOC began in 1994 when the Division employed a consultant, The Gordian Group, to develop and implement the Department’s JOC program and to provide construction management services, for which it is paid a fee on the basis of a sliding scale.<sup>3</sup> The Gordian Group also created a “Construction Task Catalog” of unit prices for specific work items, upon which the value of JOC contracts are based. The catalog contains approximately 70,000 unit prices for general construction, electrical, plumbing, and mechanical work. Unit prices consist of the costs for local labor, material, and equipment.

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<sup>1</sup>JOC was originally developed for military procurement applications.

<sup>2</sup>There are separate multipliers for work performed during normal hours and for overtime.

<sup>3</sup>The term of the current contract between the Department and The Gordian Group is from December 1, 2004, to November 30, 2007. The previous contract with The Gordian Group was from November 18, 1999, to November 17, 2004.

After a JOC contract has been awarded, individual work scopes are to be jointly determined by Division contract managers and contractors. Based on this determination, a contractor must submit a “job order proposal” to the Division in which specific work items and their associated unit prices from the “Construction Task Catalog” are identified. After approval by Division officials, a “proceed order” to do the work is issued to the contractor. Any subsequent changes in the work must be authorized by Division officials. Once a JOC contractor has started to carry out a proceed order, the work is inspected by project managers employed by either the Division or The Gordian Group.

Information about the JOC program is contained in PROGEN, a proprietary software application developed by The Gordian Group. Information about all Department contracts, including JOC contracts, is contained in its mainframe software application known as PASSPORT.

### **Objectives**

The objectives of this audit were to determine whether the Department of Education is properly administering job order contracts; whether the cost of work is reasonable; and whether the quality of work is satisfactory.

### **Scope and Methodology**

The scope of this audit covered work performed under proceed orders associated with general construction job order contracts that were in effect in Fiscal Years 2004 and 2005. We obtained electronic files from the Department’s PASSPORT computer system and tested them for data reliability, integrity, completeness, and accuracy. The Department provided us with a list from the PASSPORT system of all JOC contracts that were active during Fiscal Years 2004 and 2005. We restricted our sample to the general construction contracts because these represented 81 percent of committed funds and 73 percent of the proceed orders associated with the JOC contracts in effect during our scope period.

There were 21 general construction contract agreements with seven contractors that were in effect during Fiscal Years 2004 and 2005. (See Appendix II for a list of contracts.) We compared the database of contract agreements with a list we independently obtained from the Comptroller’s image storage and information system, OASIS, to determine its completeness. According to PASSPORT, as of November 7, 2005, the total value of committed funds for these contracts was \$61,330,415.64. The Department provided us with a list derived from the PASSPORT system of all proceed orders associated with those contracts. We then tested the completeness of the PASSPORT database of proceed orders by searching for gaps in sequential numbering. We tested the reliability of the database by determining whether the total of each individual proceed order was equivalent to the overall contract amount totals. We limited our population to the 1,625 proceed orders totaling \$42,730,277.13 for which PASSPORT indicated the commencement dates as being in Fiscal Years 2004 and 2005.<sup>4</sup> We then selected a random

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<sup>4</sup>To ensure that our population was complete for sampling purposes, we included as part of the population, 10 proceed orders that our data testing identified as missing from the list of all proceed orders.

sample of 50 proceed orders totaling \$1,108,365.66. The amount of the sampled proceed orders ranged from \$242.48 to \$157,461.12.

We reviewed rules and regulations governing the program, and Department policies and procedures. To understand the Department's internal controls for administering the program, we interviewed Department personnel who oversee the program. We documented our understanding of these controls in written descriptions.

To determine whether the Department is properly administering job order contracts, we reviewed file documentation for the 50 selected proceed orders. We also reviewed construction management records to determine whether there was adequate oversight of the work. Moreover, we determined whether the files contained all required documentation such as guarantees and warranties for new equipment and materials. Finally, we reviewed invoices submitted by The Gordian Group to the Department for the scope period of our audit to determine whether the appropriate fees were paid.

To determine whether the cost of the work is reasonable, we used a construction industry standard (R.S. Means Building Construction Cost Data) to independently prepare cost estimates for the sampled proceed orders. In addition, we checked computations in the contractors' approved job proposals to ascertain their accuracy.

To determine whether the quality of work was satisfactory, we conducted school building inspections for the 50 sampled proceed orders to observe the work. Our inspections were conducted from December 19, 2005, to January 20, 2006. We also accompanied inspectors of the Department and The Gordian Group to observe their procedures for carrying out typical types of JOC inspections. Our own inspections were limited to visual observations of completed work because we were unable to inspect underground, in-wall, or other construction work that was covered by finishing materials.

Because each JOC contract and school building is independent and has different work requirements, the field observations and file review were not projected to all contracts. However, the results of our tests provide a reasonable basis to determine whether the Department is properly administering its job order contracts.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with Department officials during and at the conclusion of this audit. A preliminary draft report was sent to Department officials and discussed at an exit conference held on May 10, 2006. On May 19, 2006, we submitted a draft report to Department officials with a request for comments. We received a written response from the Department on June 19, 2006.



In their response, Department officials stated that “the Report reflects a fundamental lack of understanding on the part of the auditors about the way a Job Order Contracting (JOC) program operates and is designed and intended to operate. . . . The Department takes particular umbrage with the repeated suggestions in the Report that the Department paid JOC contractors for incomplete and inferior work . . . The Department takes exception to the auditors’ use of the R.S. Means Building Construction Cost Data book as a basis for assessing the reasonableness of the cost of work.” In addition, Department officials stated that “the finding in the Report that the Department overpaid a contractor in the amount of \$63,482 for construction management services is simply wrong” and “disagrees with the contention in the Report that there was anything inappropriate about its use of JOC contractors to perform work outside of the primary Regional Operations Center to which they were initially assigned.”

The Department also stated, “Notwithstanding the serious concerns the Department has about many of the conclusions expressed in the Report, we thank the Comptroller for identifying the need for clearer and more comprehensive documentation in the area of JOC management, and have already begun to make changes to our recordkeeping processes to address those shortcomings.”

The Department agreed with 5 and disagreed with 2 of our 24 recommendations. The Department maintains that it has implemented 16 recommendations and has partially implemented 1 recommendation.

The Department’s specific comments and our rebuttals are contained in the relevant sections of this report. However, the nature of the Department’s response calls for the following general comments.

The Department’s response attempted to obfuscate the serious issues raised in the report by speculating that the auditors do not understand the job order contracting program; by contending that the opinions expressed in the audit were predicated on the auditors’ “philosophy”; by submitting information that contradicts documentation in its files; and by providing irrelevant information.

Clearly, the Department has failed to understand the salient conclusion of this audit report—that the Department has not properly managed the administration of the JOC program. While we maintain that job order contracting is a worthwhile method for expeditiously performing maintenance, repairs, and minor construction work, nonetheless, administering the program without adhering to adequate procedures is unacceptable for the management of any government procurement program. It is especially unacceptable as far as job order contracting is concerned, since this program is critical for ensuring that school buildings are properly maintained and is responsible for Department expenditures of more than \$18 million in Fiscal Year 2005.

The full text of the Department’s response is included as an addendum to this report.

## FINDINGS AND RECOMMENDATIONS

We found significant weaknesses in the Department's administration of the JOC program. Specifically, the Department does not have adequate procedures to ensure that required project documentation was submitted and approved, including the Department's written approval of subcontractors. Moreover, the Department lacks any written policies or guidelines that spell out the circumstances—including a monetary threshold—under which the use of job order contracting is appropriate. Furthermore, the Department has not ensured that inspections of proceed order work are adequately conducted and documented by reports, daily logs, and photographs. These weaknesses have led to contractors being assigned work outside their contract locations and contractors not completing all required work, not performing work satisfactorily, and not completing work on time.

In addition, the Department does not have a system in place to review "Construction Task Catalog" prices that are used to determine the cost of JOC work. Our own independent review found a wide fluctuation in those prices. While some work cost up to 41 percent more than industry standard pricing, other work cost up to 47 percent less. Consequently, we cannot conclude with certainty that the cost of JOC work is reasonable.

The Department also lacks an adequate system of internal controls to ensure that invoices submitted by The Gordian Group are properly reviewed and approved. As a result, the Department overpaid The Gordian Group \$63,482 in construction management fees in Fiscal Years 2004 and 2005.

Finally, we found problems with the Department's mainframe computer system PASSPORT and the Division's PROGEN databases.

Table I on page 8 lists the 50 work locations visited. The Table also includes the following information: work out of scope; missing submissions, warranties, subcontractor approvals, and inspection reports; work completed late; problems with quality; and work not done.

**Table I**  
**50 Work Locations Visited and Status of Work Requirements**

School	Work Description	Work Out of Scope	Missing Submissions	Missing Warranties/ Guarantees	Missing Sub-contractor Approval	Missing Inspection Report	Work Completed Late	Problems with Quality	Work Not Done
Various K+A51	Fire extinguishers		X	X	X	X	X		
PS 11K	Exterior sign	X	**	X	X		X		
PS 28K	Bathroom renovation	X	X	X	X	X	*		X
PS 91K	Floor tile abatement	X	**	X	X		X		
IS 96K	Refinish classrooms		X	X	NA				
PS 108K	Plaster ceiling	X	X	X	X		X		
PS 114K	Entrance doors		X	X	X	X	*		
PS 114K	Entrance doors mod.		X	X	X	X	X		
PS 138K	Paint and Plaster		X	X	NA		X	X	X
JHS 142K	Toilet Partitions	X	X	X	X				
JHS 142K	Concrete replacement	X	X	X	X	X			
PS 194K	Tree removal	X	NA	NA	X	X			
PS207K	Painting		X	X	X	X		*	
PS214K	Waterproofing	X	X	X	X	X			
IS 228K	Carpeting	X	X	X	NA	X	*	X	X
PS 179K	Exterior sign		X	X	X	X		X	
PS 262K	Main entrance		X	X	X		X	X	X
JHS 293K	Paint and plaster	X	X	X	X			*	
Bklyn Technical HS	Paint and plaster	X	X	X	X		X	*	
Eastern District HS	Window guards	X	X	NA	NA		X	X	
South Shore HS	Install ceiling tiles	X	**	X	X		X		
William Grady HS	Library upgrade		X	X	X	X	X		***
75 Lewis Ave. K	Repair/install doors	X	X	X	NA	X	*		
IS 13M	Repair hinges			NA	X				
JHS 25M	Refurbish Library		**	X	X				
IS 88M	Window shades		**	X	X		*	*	
IS 136M	Ceiling tiles		X	X	X	X	X		
IS 136M	Ceiling suspension		X	X	X	X	X		
IS 136M	Renovation		X	X	X	X	*		X
PS 149M	Basketball backboards		X	X	X	X			X
Seward Park HS	Additional urethane		X	X	NA	X			
F.Laguardia HS	Orchestra pit flooring		**	X	X				
IS 53Q	Toilet partition repairs		**	X	NA				
PS 70Q	Exterior doors	X	X	X	X			X	
PS 95Q	Floor refinishing	X	X	X	NA				
PS 95Q	Main entrance	X	X	X	NA		X		
IS 125Q	Install flooring		X	X	NA	X	*		
PS 162Q	Paint and plaster		X	X	NA	X	*	*	X
PS 175Q	Toilet partitions	X	**	X	X	X			X
PS 29R	Retaining wall repair	X	X	X	NA	X			
PS 45R	Ceiling tiles		**	X	NA		X		
Various X	Fire Extinguishers	X	**	X	X	X			
PS 29X	Asbestos tiles		**	X	NA	X	*		
PS 39X	Window shades		X	X	NA	X	*		
PS 46X	Paint and plaster		X	X	X			X	
PS 62X	Paint and plaster		X	X	X		X	*	
PS 93X	Concrete replacement		X	X	X				
PS 94X	Ceiling painting		X	X	NA	X	*	*	
IS 144X	Ceiling replacement		X	X	NA	X	*		
South Bronx HS	Concrete wall repair		X	X	NA	X	*		X
<b>Total =</b>		<b>20</b>	<b>37</b>	<b>47</b>	<b>32</b>	<b>27</b>	<b>16</b>	<b>7</b>	<b>9</b>

\* Cannot Determine \*\* Partial Submissions  
\*\*\* In Progress NA- Not Applicable

## **The Department Is Not Effectively Administering The Job Order Contracting Program**

The Department does not have adequate internal controls or guidelines to ensure that the JOC program is administered effectively. As a result, Department files did not contain evidence that required project documentation was submitted and approved. In addition, there was no documentation in the files to justify the Department's decision to assign work to contractors beyond their designated regions.

Contract specifications stipulate that JOC contractors fulfill certain requirements. These include: submitting material samples, product data, drawings, and test reports; obtaining manufacturer's warranties and guarantees for materials and equipment, and obtaining Department approval of subcontractors. However, as far as work for the 50 sampled proceed orders is concerned we found:

- 37 (76%) of 49 files for projects that required contractors to submit material samples and other product information lacked the required documentation. Files for 11 (22%) additional projects contained only partial documentation.
- None of the 47 files of projects that required contractors to submit manufacturer's guarantees and/or warranties contained the required documentation.
- None of the 32 files of projects for which contractors reported using subcontractors, contained the Department's written approval of those subcontractors.

This documentation is important because it is the means of ensuring that contractors obtain approval, subsequently install, and receive payment for only specified items such as paint, carpet, and washroom accessories. The failure to submit and approve submittals may have, as discussed on page 14, exacerbated problems we identified with work quality and completeness. Furthermore, without proper warranties, the Department may be unable to compel manufacturers to correct any defects found during the warranty period. Finally, subcontractor approvals are necessary to ensure that contractors employ only qualified and responsible companies to carry out the work. However, our review of records indicates that the Department does not take adequate steps to ensure that it obtains, reviews, and approves all required submittals.

We attribute many of the problems with missing submittals to the Department's lack of a formal, organized system for administering, collecting, and maintaining documentation. Obtaining project documentation during the course of our audit work was a lengthy and difficult process. In fact, the Department's administrative system is so fraught with disarray that not only does it lack a reliable means of identifying the location of project files, but each contract manager must maintain a filing system. Moreover, the Department does not know if specific project files are maintained by its own contract managers, its financial management staff, or by its consultant, The Gordian Group.

**Department Response:** Without conceding the soundness of the underlying bases for the auditors' conclusion, the Department acknowledges that collection and maintenance of JOC-related records can be improved and is currently considering how that will be accomplished.

As to specific issues identified in this section of the Report, first, despite that language in the contract allows the Department always to demand material samples and product data, the auditors' working assumption that all job orders require that information is wrong. JOC contract guidelines require contractors to install materials and equipment consistent with the terms and specifications of each job order. Therefore, when the materials/equipment clearly have been specified there is no need to have samples or catalog cuts provided to ensure that these materials/equipment are appropriate. One of the benefits of JOC is the ability to move quickly on projects. Requiring materials and sample cuts in every circumstance would not further that objective.

Second, the Comptroller suggests that in the absence of "proper" warranties in DSF files, the Department "may be unable to compel manufacturers to correct any defects found during the warranty period," thereby implying that there is no method to redress defects other than invoking the obligations on a paper warranty. However, omitted from the Report is that JOC contractors are contractually obligated to guarantee materials and workmanship for a minimum of two years. This requirement, which satisfies most of the types of work performed under the JOC program, is also an obligation of the sureties that provide mandated performance and labor and material payment bonds for the JOC vendors. Thus, were a contractor to become financially unviable after performing a JOC-related project, any defect that would have been covered by the warranty provisions of the contract would become the responsibility of the surety.

The third matter concerns the lack of file documentation of DSF's pre-approval of the use of subcontractors. It is true, as the Report states, that "contractor approvals are necessary to ensure that contractors employ only qualified and responsible companies to carry out the work." For that reason the Department instituted a subcontractor qualification process beginning in April 2004, before the start of the Comptroller's audit. Since that time, over 190 contractors have been approved to work as subcontractors for our contract repair programs, including JOC projects.

**Auditor Comment:** The Department is incorrect in stating that we assumed that all job orders require material samples and product data. Our audit testing was limited to the 49 proceed orders that contained items whose specifications required submittals. These specifications clearly spell out what contractors are required to submit. For example, specification section 08210-1.04 (Wood Door Submittals) for proceed order No. 5771-00217, required the contractor to submit product data, shop drawings, and a corner sample of the door. However, Department files did not contain any of this documentation. The lack of this material may have contributed to the deficiencies we identified with the installed doors (see page 25). As another example, specification section 09680-1.04 (Carpet Submittals) for proceed order No. 8559-00010 required the contractor to submit three 18-inch square samples of carpet and a material certificate

from the manufacturer. However, Department files did not contain any of this documentation. Consequently, we were unable to determine whether the carpet that was installed by the contractor actually met Department specifications.

As far as warranties and guaranties are concerned, we reiterate that Department specifications require their submittal. However, even if, as the Department contends, a bonding company is available to remedy deficient work, warranties and guaranties are still necessary to identify and verify product information and manufacturer. In addition, although the Department claims that JOC contractors are contractually obligated to guarantee materials and workmanship for a minimum of two years, we found products whose warranty periods exceeded this time frame. For example, specification section 10151-1.07 (Toilet Compartments, Manufacturer's Warranty) for proceed order No. 7214-00031 requires the contractor to provide a ten-year written warranty against breakage, corrosion, and delamination. In another example, specification section 07120-1.07 (Fluid Applied Waterproofing, Manufacturer's Warranty) for proceed order No. 9243-00036 required the contractor to provide a ten-year written warranty for masonry waterproofing. Obviously, these examples demonstrate that proper warranties are necessary to compel manufacturers to correct any defects after the initial two-year period.

After the exit conference, the Department provided us with the information that it had implemented a subcontractor qualification process in April 2004. However, the Department did not provide us with a list of subcontractors that had already been approved. Moreover, during the course of our audit fieldwork, we did not find any evidence that Department staff had determined whether the subcontractors associated with our sampled proceed orders were on the approved list. Therefore, while we commend the Department for implementing a qualification process, we cannot ascertain whether those subcontractors were actually approved by the Department.

### **Recommendations**

The Department should:

1. Ensure that JOC contractors submit all required material samples, product data, drawings, and test reports for approval.

**Department Response:** In most cases, the materials required for a project are specified in the job order. We require that material supplies, product data samples and supporting documentation be provided in those instances where the contract specification reference is not explicit or the contractor wants to use "or equal" materials such as for non-pre-priced items.

**Auditor Comment:** We disagree. As stated above, submittals should be provided whenever required by Department specifications. Additionally, by failing to provide required submittals, the Department is neglecting an important safeguard for ensuring that work is done satisfactorily and with the proper materials.

2. Ensure that JOC contractors submit all required guarantees and warranties.

**Department Response:** We have a built-in contractual two-year guarantee for materials and workmanship in the JOC contract which covers most of our job order work. We require hard copy guarantees and warranties only for products where the manufacturer's warranty is greater than the contractual coverage period: e.g., air conditioner compressors and hot water heaters. This requirement is also an obligation of the sureties that provide mandated performance and labor and material payment bonds for the JOC vendors. Thus, were a contractor to become financially unviable after performing a JOC-related project, any defect that would have been covered by the warranty provisions of the contract would become the responsibility of the surety.

**Auditor Comment:** Although the Department now contends that it does require a "hard copy" guaranty or warranties where the manufacturer's warranty is greater than the two-year contractual period, our review did not find any of these warranties in the files. As previously noted, warranties and guarantees are needed to identify and verify product information and manufacturer.

3. Approve in writing the use of subcontractors to be employed by contractors on JOC projects.

**Department Response:** The Division implemented a subcontractor approval process beginning in April 2004 to qualify subcontractors. The JOC contractors must use these approved subcontractors or have an unapproved subcontractor qualified.

**Auditor Comment:** We were not given the opportunity to audit the Department's subcontractor approval process. Therefore, we cannot ascertain whether this process is appropriate. Nevertheless, the Department should verify in writing that prospective subcontractors have been approved as qualified by the Department, or qualify the subcontractors prior to their employment by JOC contractors, documenting their approvals in writing.

4. Implement an effective system of administration to record, collect, file, and properly maintain all required documentation in Departmental files.

**Department Response:** We agree and will issue guidelines for better documentation collection and maintenance by September 2006. The guidelines will include electronic inspection tracking reports as well as before and after project photographs.

### **Work Performed Out of Scope**

Job order contract agreement Article 2.1 stipulates that the contractor is expected to perform work primarily in the region set forth in the contract. However, in the cases of 20 (40%) of 50 sampled proceed orders, the Department directed contractors to perform work outside their assigned regions. Ensuring that contractors work within their regions is an important means of maintaining the integrity of the competitive bidding process. Moreover, a contractor that was

fairly awarded a contract for a particular region should not have its work assigned to another contractor without written justification. The contract does permit the Department to assign work beyond designated regions “as a secondary contractor, in the event that the primary contractor for that geographic region is unable to perform under its contract.” However, there was no evidence in Department files to indicate that such a determination was made for any of the cases reviewed.

This is particularly troubling given the fact that Eastco Building Services Inc., the contractor for 9 of the 20 instances in which the Department directed job order contractors to work beyond their assigned locations, performed inferior work in 3 of those 9 cases (see page 25 of this report).<sup>5</sup> Clearly, the Department should not assign work to contractors beyond their assigned regions without determining the necessity to do so and without undertaking a thorough review of the contractor. Moreover, the Department must document in writing any decision to assign contractors work beyond their regions.

***Department Response:*** Our objections are to the auditors’ failure to raise the matter of out-of-jurisdiction work as an issue of concern during the course of fieldwork; failure to conduct a fair inquiry once the issue had surfaced; and, most troubling, the insinuation that contracts were improperly steered to vendors.

Had the auditors brought the matter of the 20 out-of-jurisdiction proceed notices to the attention of DSF managers during fieldwork, those managers would have had the opportunity to research and offer the reasons for the assignments so that the legitimacy of their actions would not have to be presented in a defensive posture. As that opportunity for a fair presentation of the issue has been left to this response, we offer the following: One job involved fire extinguisher work that was part of a citywide project assigned to one contractor for purposes of project management; three job orders were issued to the contractor that was in fact assigned to the Region in which the work was performed; three job orders were issued to contractors out of Region for reasons related to the assigned JOC contractor’s bankruptcy; four job orders were issued to out-of-Region contractors because the Regional contractors were either approaching their contract not-to-exceed values or were unavailable due to other project commitments; and, nine were assigned out of Region because there were no active Regional contracts in place when the job orders were issued.

In these cases the primary concern was to get work completed using all available resources. Given the option of waiting for an in-Region contractor or proceeding with one that was available, judgment was exercised in conformity with the terms of the contract and in favor of getting the work done. Based on our research, there is no evidence of preferential treatment in the assignment of the projects. However, in answer to the Comptroller’s concerns, we have begun documenting the bases for these decisions.

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<sup>5</sup> In a December 3, 2004 letter, the Comptroller’s Office notified the Department about possible bid rigging by Eastco Building Services Inc. At the exit conference, Department officials informed us that Eastco was not being awarded additional work.



**Auditor Comment:** As stated in the audit, there was no evidence in the files to indicate that the Department had documented its decisions to assign contractors work beyond their regions. Certainly, the Department’s suggestion that it would have researched the reasons for the assignments had “the auditors brought the matter” to its attention would not have been necessary if the Department were properly administering the job order contracting program all along.

It should further be noted that the Department’s use of a job order contract to do fire extinguisher work, as discussed on page 17 of this audit, was inappropriate.

### **Recommendations**

The Department should:

5. Ensure that JOC contractors are assigned work within their designated regions. In those cases where work must be assigned to a contractor in another region, written justification must be included in Department files.

**Department Response:** We agree that the Division will document instances in the PassPort database when job orders are assigned outside a specified JOC contractor’s region.

**Auditor Comment:** It appears that the Department has not understood our audit recommendation. Rather than merely “document” in its computer database, instances of work assigned outside a contractor’s region, the Department must provide formal written justification for the assignment. This will assist Department management to ensure that contractors are not being given preferential treatment if work needs to be assigned beyond a contractor’s authorized region.

### **The Department Lacks Adequate Written Policies for Performing Work under Job Order Contracts**

Job order contracting is “a way of getting small, simple, and commonly encountered construction projects done easily and quickly. . . .The job order contracting delivery method is particularly well suited to repetitive jobs and situations.”<sup>6</sup> Indeed, job order contracting was intended to be used for maintenance, repair, and minor construction work. However, the Department lacks any written policies or guidelines that spell out the circumstances—including a monetary threshold—under which the use of job order contracting is appropriate. The lack of written policies means that the Department can preferentially assign work to job order contractors that should be done by either the Department’s own skilled trades people or by separate requirement contracts.

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<sup>6</sup> Source: “Fact Sheet Job Order Contracting for Novices” by the Alliance for Construction Excellence, 2002.

**Department Response:** We are perplexed by the notion that a decision to use a JOC contractor that has been selected through a competitively bid process and holds a “not-to exceed” contract, rather than use a skilled tradesperson who is an employee of the Department or undertake a lengthy procurement process to find a contractor, could bespeak anything improper. . . .

We take the position that setting an artificial JOC project dollar limit is unnecessary as the managers’ experience with meeting repair needs enables them to determine how best to allocate funds within their fixed budgets. Moreover, as the auditors are aware, no job that is the subject of the Report comes close to approaching the monetary ceilings set for JOC work in other large urban school districts.

**Auditor Comment:** It appears that the Department has misinterpreted the audit by contending that we find improper the methods by which the Department procures job order contractors. As stated in the audit, the problems we identified concern the Department’s lack of written policies or guidelines that spell out the circumstances—including a monetary threshold—under which the use of job order contracting is appropriate.

The Department contends that establishing a dollar limit for JOC work is unnecessary because it relies on its managers’ experience in these matters. However, the administration of a costly City program such as job order contracting must be based on clearly established procedures that are transparent to both contractors and the public, and not on the subjective decisions of individual managers.

We are also concerned that the Department argues that it need not establish a dollar threshold for JOC projects, but then points to the use of monetary ceilings by other large, urban school districts that sponsor JOC programs.

Thus, the Department issued a \$75,143.52 proceed order (No. 8021-00068) to Biltmore General Contracting, Inc., to upgrade the library at William Grady High School in Brooklyn. The upgrade involved various skilled trades to do demolition, electrical work, and finish woodwork. In our opinion, however, the extensive scale of the upgrade did not constitute maintenance, repair, or minor construction work, and therefore was not an appropriate use of job order contracting. In fact, Biltmore had to solicit a \$17,205.08 lump sum price from a subcontractor to furnish and install the library’s wood veneer panels, because the “Construction Task Catalog” did not contain a unit price for these items. However, there was no documentation in the files to indicate that Biltmore had obtained competitive prices for the work, or provided a cost analysis report as required by the Department’s “Job Order Contract General Conditions.”

At the exit conference, Department officials told us that the Department did not obtain competitive pricing because the panels were a “sole source” item, which could not be obtained from any other vendor. However, there was no documentation in the file to support this contention. In fact, according to an industry reference guide—the New York edition of the “The

Blue Book-Building and Construction”—the wood paneling could have been obtained from multiple vendors.

Even when work appears to be an appropriate use of job order contracting, the Department has no clear guidelines for carrying it out. Accordingly, the Department issued a \$46,944.45 proceed order (No. 5365-00136) to JCH Delta, Inc., to furnish and install window shades at PS 39 in the Bronx. Although the “Construction Task Catalog” contained a unit price for window shades, the Department approved the cost of the work as a fixed price based on two bids solicited by JCH Delta, Inc., and a price from another job order contractor, Volmar Services Inc. Clearly, this was an inappropriate use of the job order contracting method. However, had the Department utilized the unit price in its own catalog, we calculate that the cost of the shades would have been \$31,305.29, or \$15,639.16 less than the price actually paid. Moreover, there was no documentation in the file to indicate why the Department did not use the established unit price. However, the Department did use the established unit price when approving the cost of another sampled proceed order totaling \$3,880.20 (No. 6108-00111) to Volmar Services, Inc., to furnish and install window shades at JHS 88 in Manhattan.

Department officials told us that the window shades at PS 39 were “fiberglass, lightproof,” and therefore more expensive than the window shades installed at JHS 88. However, as previously discussed, there was no documentation (e.g., catalog cuts, samples) to substantiate whether these types of shades were actually ordered and installed. But, even if the shades at PS 39 were indeed made of fiberglass and were lightproof, the Department should have derived their cost by using the “Construction Task Catalog” unit price for this item. Using the catalog unit price would have yielded a total cost for the shades of \$45,912—still \$1,032 less than the \$46,944 that the Department actually paid.

**Department Response:** As to the first two instances cited by the auditors as examples of what can go awry in the absence of written guidelines, we stand by the information provided at the exit conference, to wit: (1) the paneling installed in the library at William E. Grady High School in Brooklyn was obtained from the same vendor as had provided the modular units selected by the School Construction Authority because the specifications called for the furnishings to match; and, (2) the PS 39 window shades were installed to specification at a savings of \$128. That the auditors’ calculations arrive at a lower cost is a consequence of their incorrect comparison to window shades that do not meet the PS 39 specifications.

**Auditor Comment:** The Department is incorrect in its contention that the wood paneling at William Grady High School could only be obtained from the same vendor that provided the modular units. As noted in the audit, the type of common wood paneling that we observed during our field inspection could have been provided by multiple vendors in the New York City area. Moreover, as stated previously in this audit, had material samples been submitted by the contractor, the Department would have been able to readily match the existing units.

As far as the window shades at PS 39 are concerned, the Department did not provide any evidence to substantiate its contention that the installed shades saved \$128. Further, in its

response the Department chose to ignore our analysis for the installation of fiberglass, lightproof shades that were described to us by Department officials at the exit conference. As noted in the audit, this analysis resulted in shades that would have cost \$1,032 less than what the Department actually paid.

### **Problems with Using a Job Order Contract For Fire Extinguisher Work**

The consequences of the Department's lack of written policies or guidelines for job order contracts is exemplified by the Department's approval of two separate proceed orders (No. 5771-00293 for \$44,514.10 and No. 5771-00190 for \$64,087.85) to Eastco Building Services, Inc., to recharge and replace fire extinguishers at various schools in Brooklyn and the Bronx.<sup>7</sup> In our opinion, the citywide scale of the work far exceeded the type of maintenance and repair work for which the job order contracting method was intended. Thus, work was done at three schools for proceed order No. 5771-00293 and at 33 schools for proceed order No. 5771-00190. (Moreover, the 33 schools were located outside the designated contractor's assigned region.)

For proceed order No. 5771-00190, Eastco solicited from one subcontractor three separate lump sum prices totaling \$25,977.04 to recharge fire extinguishers and supply additional parts, because the "Construction Task Catalog" did not contain a unit price for these items (i.e., no prepriced tasks). For proceed order No. 5771-00293, Eastco solicited from the same subcontractor two separate lump sum prices totaling \$7,864.22 to recharge fire extinguishers and supply parts. However, file documentation lacked competitive quotations for any of this work.

We found the following additional problems:

- General Conditions Section V.A.4. of the contract requires that "the Contractor shall perform with its own forces, and not with subcontractors, 10% of the work." However, file documentation indicates that all the work was done by the subcontractor. The Department's "Instructions to Bidders" do require that the 10 percent requirement is to be calculated on the basis of all the job orders for a particular contract. However, there was no file documentation to indicate that the Department had analyzed Eastco's overall use of subcontractors to ensure that it adhered to the required percentage.
- File documentation lacked final reports, which according to the "Detailed Scope of Work" dated July 25, 2003, item 9 "shall be submitted to the Project Manager listing the total number of fire extinguishers purchased, replaced, repaired discarded, left with the custodial engineer as extras, and delivered to the depository."

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<sup>7</sup> The Department's PASSPORT computer system identified the work locations as PS 3 in Brooklyn (proceed order No. 5771-00293), and PS 4 in the Bronx (proceed order No. 5771-00190). In addition, for proceed order No. 5771-00190, the Department's July 25, 2003 Detailed Scope of Work incorrectly identified the project locations as "Various Manhattan schools."

- According to the “Detailed Scope of Work” dated July 25, 2003, page 2, “The subcontractor must also have an adequate number of trained and qualified personnel, equipment, and facilities to accomplish the work.” The work was performed between October and December 2003. However, file documentation indicated that licenses for three of four technicians employed by the subcontractor expired on July 12, 2003. After the exit conference, Department officials provided us with copies of valid licenses for two of the three technicians whose licenses were expired.<sup>8</sup>

In the past, the Department awarded contracts that were specifically used to undertake fire extinguisher work. Other City agencies, such as the Departments of Environmental Protection and Sanitation, currently procure these services under competitively bid contracts. Bidding directly to qualified fire extinguisher contractors gives City agencies a greater degree of scrutiny and control over contractors that provide a critical safety service. In contrast, the Department’s decision to undertake fire extinguisher work under the job order contracting method failed to fulfill the method’s intent of “getting small, simple, and commonly encountered construction projects done easily and quickly.” Again, this example indicates that the Department has no clear standards for using job order contracting and, in fact, used the method inappropriately.

Department officials told us that its decision to undertake the fire extinguisher work with a job order contract resulted from revised New York City Fire Department rules, which precluded the Department from doing the work with its own forces. Furthermore, although the Department employed a requirement contractor to do the fire extinguisher work under the new rules, that contractor’s inability to carry it out successfully compelled the Department to utilize a job order contract while it sought to award six new fire extinguisher requirement contracts. However, it should be noted that the revised Fire Department rules became effective on May 5, 2000—more than three years before the Department instructed Eastco to do the work, and sufficient time for the Department to have prepared bids, awarded contracts, and carried out the work with new requirement contractors.<sup>9</sup>

The implementation of written policies and guidelines for job order contracting is an important internal control to ensure that the Department effectively administers the job order contracting program. Given that the Department expended approximately \$18.7 million on the program in Fiscal Year 2005, it is critical that the City’s interests be protected by ensuring that these funds are used properly.

***Department Response:*** It is necessary at the outset of this discussion to clarify what the Report fails to make clear, to wit, that the “problems” raised by the auditors do not equate with unsafe conditions; there is no question that the fire extinguishers that were recharged

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<sup>8</sup>Although the Department provided us with three valid licenses after the exit conference, one of the licenses was already in the Department’s files during our audit review. The Department was still unable to provide proof of a valid license for one of the four technicians.

<sup>9</sup>Proceed order No. 5771-00190 was issued in July 2003; proceed order No. 5771-00293 was issued in December 2003.

and repaired under the JOC program were rendered fully charged and operational as a result of the work performed. . . .

We have elsewhere in this response conceded that the Department's recordkeeping practices require improvement in certain respects and that we will work toward correcting those conditions. However, there can be no concession with respect to the wholly subjective conclusion that work orders for common repairs and maintenance, such as the fire extinguisher work that is the subject of the finding, are unsuitable for JOC assignment simply because the work extends across boroughs, or in the words of the auditors, is "city-wide" in scale. The lack of any logical basis for this opinion is apparent and, since that is the case, further response to the statement is unnecessary.

**Auditor Comment:** In response to our inquiry during the audit about using JOC contractors to do fire extinguisher work, the Department's March 17 e-mail stated that "JOC contracts are not going to be used to perform this work in the future." Therefore, the Department's decision to ultimately award the fire extinguisher work to "ROC specific requirement contracts," as stated in the e-mail, rather than JOC contractors belies its statement that it does not recognize the logical basis for our finding that the citywide scale of the work far exceeded the type of maintenance and repair work for which the job order contracting method was intended.

### **Recommendations**

The Department should:

6. Develop and implement written guidelines that stipulate the circumstances and monetary threshold under which the use of job order contracts would be appropriate. In this regard, the use of job order contracts should be limited to the performance of repairs, maintenance work or minor construction.

**Department Response:** The Regional Facilities Managers and Planners are knowledgeable about the needs of this agency and the use of available procedures for facilities maintenance/repair/renovation. The managers determine how best to utilize the ROC's maintenance budgets for ensuring prompt and cost effective work completions either through skilled trades, requirement contracts or use of JOCs. As discussed in the Department's response, DSF's levels of review ensure that services are procured and implemented appropriately."

**Auditor Comment:** The administration of the job order contracting program must be based on clearly established procedures and not on the subjective decisions of individual managers. Therefore, the Department should develop and implement written guidelines for the use of job order contracts.

7. Ensure that it adheres to unit prices in its "Construction Cost Catalog" when determining the cost of proceed order work. For items whose price cannot be determined by established unit prices, ensure that contractors obtain competitive bids.

***Department Response:*** Our current standard procedure is to utilize the Price Book for job orders. When it is necessary to use materials that are not pre-priced, we solicit a minimum of three bids.

***Auditor Comment:*** As discussed in the audit, we uncovered instances in which the Department failed to comply with its standard procedure. Therefore, we question the Department's contention that it is actually adhering to its procedure.

### **The Department Is Not Ensuring That Adequate Work Inspections Are Conducted**

The Department has not ensured that inspections of proceed order work are adequately conducted and documented by reports, daily logs, and photographs. An effective project management system includes conducting routine inspections of work performed. However, records for 27 (54%) of the 50 sampled proceed orders did not contain documentation indicating that inspections were ever conducted. If adequate inspections had taken place, work deficiencies that we uncovered in our review of records and visits to work locations might have been corrected while work was still ongoing.

We found the following deficiencies:

- For 9 (18%) of 50 sampled proceed orders, portions of the work were not completed. In 7 of these cases, Department files did not contain inspection reports.
- At 7 (14%) of the 50 work locations visited, we observed problems with the quality of the work. In 2 of these cases, Department files did not contain inspection reports.
- Sixteen (32%) of 50 projects were completed late. In 5 of these cases, Department files did not contain inspection reports. We were unable to determine if 13 (26%) additional projects were completed late because Department files lacked the appropriate information.

Under its construction management contracts with the Department, The Gordian Group carried out inspections for 30 of the 50 sampled proceed orders. Previous problems with performing adequate inspections led to The Gordian Group's agreement to adhere to specific inspection procedures outlined in letters dated October 20, 2003, from the Special Commissioner of Investigation for the New York City School District, and April 2, 2004 from the Department. These procedures included preparing inspection reports and digital photographs of work inspected and ensuring that work was not covered before inspection. Despite these instructions, files for 8 (27%) of the 30 proceed orders managed by The Gordian Group lacked inspection reports. Moreover, there was no evidence in the Department's files that Division staff had reviewed The Gordian Group's reports to ensure compliance with required procedures.

Inspections of the 20 sampled proceed orders were carried out by Department staff. Interviews with Department officials indicate that although The Gordian Group is required to adhere to specific inspection procedures, Division inspectors are not. In fact, Division inspectors are not even required to maintain any type of records or reports. Thus, 19 (95%) of the 20 proceed orders lacked evidence of adequate inspections by Division staff. Consequently, if adequate inspections had taken place, work deficiencies that we discuss in the following section might have been corrected while work was still ongoing.

***Department Response:*** At the outset, the Department questions the connection between missing inspection reports and purportedly inadequate inspections and disputes the sweeping statement that the work was deficient. In that latter regard, DSF management has conducted a review of work items identified under the headings “Problems with Quality” and “Work Not Done” in *Table 1* of the Report . . . Our response to each is detailed in Table 1B, attached. We also attach copies of photographs of post-work conditions that, unlike the photographs appended to the Report, had been taken contemporaneously with project completion and that were in the original work files and, thus, available to the auditors during their fieldwork. Based on the photographic evidence and DSF’s recent review of each project, we have concluded that the work cited in the Report generally was performed properly and in accordance with specifications; where work was incomplete, payment was not made; and, in the two instances where we agree that the work was not performed as required, the dollar value of that portion of the work totaled \$526, that is, approximately one twentieth of one percent of the \$1,108,365 total value of the work sampled.

As to inspection reports, we have reviewed the projects which the auditors indicated lacked reports and other related documents and grant that the Report correctly identifies missing documentation in the files of jobs inspected by Department staff. That situation will be remedied going forward. However, DSF managers’ records reflect that files associated with the eight Gordian projects cited in the Report had been submitted to the auditors during their fieldwork and that, upon DSF’s review, those files contained inspection documents and, in some cases, photographs of the inspected work.

Since we were puzzled by the finding that contradicted information in our possession, Office of Auditor General managers contacted the auditors and again offered the files and encouraged their review. Initially, the Comptroller declined to do that, suggesting that had the inspection reports been in the files during audit fieldwork, they would not have been missed by the auditors. Further, the Comptroller took the position that the time to have raised the issue was at the exit conference, not thereafter. Two business days before the response due date, upon request by the Deputy Chancellor, Comptroller staff reviewed the eight disputed files.

The Department requested an opportunity to consider any revision to the Draft Report based on the new review before submitting a written response. However, we were advised that the Draft Report would not be amended prior to this written response for reasons similar to those provided upon our initial request that the auditors take another look at the files. What the Comptroller did share with us informally is that two of the



eight files contained “acceptable” inspection reports and that a third “acceptable” inspection report was located in a file, albeit not in the correct file. As for the remaining five reports, the Comptroller takes the position that they are “not appropriate inspection reports.” Unfortunately, we do not know which reports were deemed “not appropriate” and on what basis. Nonetheless, the Department stands by its position that the inspection reports are sufficient.

The Department has no basis to believe that the eight inspection reports in question were added to the files, as has been suggested by the Comptroller, after the auditors conducted fieldwork. Were this simply a matter of reconciling which agency’s records accurately reflect what the files contained at the time they were turned over to the Comptroller’s staff and whether the documents we offered for review constituted “acceptable” inspection reports, the issue could be raised as such and remain unresolved. However, the more pressing concern – one that we would like to see resolved before the Report is finalized and made public - is that the Report uses the assertion about eight (now five) allegedly missing inspection reports out of thirty to resurrect a 2003 letter from the Special Commissioner of Investigation for the New York City School District directing Gordian to maintain complete files. While we believe that the finding should be removed from the final Report in its entirety, in the interest of fairness we ask, at the least, that the final Report reflect only that the contents of the files are in dispute; the inflammatory reference to the Special Commissioner should be removed. If the Comptroller agrees to either eliminate the finding or redact it, we request an opportunity to amend our formal response to remove the reference to the Special Commissioner as well.

***Auditor Comment:*** While the audit did uncover certain work deficiencies, the audit does not make a “sweeping statement that the work was deficient.” Furthermore, our audit states that we did not find documentation to substantiate whether inspections were adequately conducted in 54 percent of sampled cases. Consequently, the lack of such documentation, which is a necessary control, means that the Department cannot ascertain that work is being properly carried out.

Our rebuttal to the comments contained in the Department’s Table 1B are attached as Appendix I to this report.

The Department’s response that it considers the inspection reports provided to us after the exit conference to be “sufficient” reveals much of what is deficient with the Department’s administration of the job order contracting program. Despite the Department’s claim that the files associated with the eight cases cited in the report were provided to us during our audit field work, our own records indicate otherwise; in fact, we were not provided with two of these files until one month after the exit conference. After we finally obtained the two files, we verified the validity of the inspection reports they contained.

As far as the other six missing reports are concerned, we are particularly troubled by the Department’s contention that “upon DSF’s review, those files contained inspection documents.” Our review indicated that two of the alleged reports were actually documents indicating the receipt of fire extinguishers that were signed by Department

school custodians and not by inspectors employed by The Gordian Group. As far as two other missing reports are concerned, our review indicated that those inspections reported solely on floor-tile work, and not the installation of entrance doors that was required by the sampled proceed orders.

For the remaining two sampled proceed orders, we were provided with inspection reports that were in associated proceed order files but not in the sampled proceed order files. However, copies of the inspection reports should be available in all of the proceed order files associated with the work. Our particular concern in the case of one of these two proceed order files is that our review of the reports contained in the associated files leads us to question whether the entire amount of one of the required items, namely, a four-inch thick crushed-aggregate base course, was ever installed.<sup>10</sup>

Clearly, this discussion indicates that the Department is not effectively reviewing The Gordian Group's reports to ensure compliance with required procedures, and does not have adequate controls over the documentation that is necessary to manage the JOC program properly.

### **Recommendations**

The Department should:

8. Implement inspection procedures for Division inspectors consistent with procedures required for The Gordian Group inspectors. Ensure that all inspections of proceed order work adhere to procedures and are adequately conducted and documented.

**Department Response:** We will require our inspectors to better document their field inspections of job order work and track the information electronically. This procedure will be supplemented with photographs by September 2006.

9. Instruct Division staff to review inspection reports submitted by The Gordian Group to ensure compliance with required procedures.

**Department Response:** We have been performing quality control reviews of The Gordian Group documents to ensure compliance with our requirements and will continue to do so in a more aggressive manner.

**Auditor Comment:** Despite the Department's contention, we found no evidence of these quality control reviews during the course of the audit.

10. Maintain all required inspection reports and supporting documentation in Department files.

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<sup>10</sup> Crushed aggregate is a material that is placed underneath concrete. Since this material is not visible after work is complete, an inspection report is important to confirm that the aggregate was properly installed in the required quantity.

**Department Response:** We agree and will expand our inspection files to incorporate electronic tracking and photos of project inspections.

11. Review file documentation to determine if The Gordian Group inspected the work discussed in this report. If the Department cannot verify that inspections were properly conducted, the Department should seek to recoup any payments made to The Gordian Group for that work.

**Department Response:** DSF reviewed the audit findings and conducted field visits of the work locations cited in the Report. Based on that review, it was determined that it was done to specification or that a credit had already been taken for any incomplete work by the contractor. The Gordian Group therefore complied with its obligations under their contract.

**Auditor Comment:** We disagree. Our review of the missing inspection reports discussed above indicates that in two cases there was no evidence to confirm that The Gordian Group conducted any inspections at all. In two additional cases, there is no evidence to confirm that The Gordian Group actually inspected the specific work associated with our sampled proceed orders. Additionally, The Gordian Group inspectors need to be more vigilant in documenting work quantities actually installed. Finally, the Department should ensure that inspection reports are filed in all applicable proceed order files.

### **Problems with Work Quality, Completeness, and Timeliness**

Problems with ensuring that adequate inspections were conducted have led to job order contractors not completing all required work, not doing satisfactory work, or not completing work on time. Examples include deteriorated and defective doors at PS 70 in Queens, unpainted ceiling piping at PS 162 in Queens, frayed and missing carpeting at IS 228 in Brooklyn, missing adhesive strips in entrance steps at PS 262 in Brooklyn, unpainted basketball support steel at PS 149 in Manhattan, and an inoperable message board at PS 179 in Brooklyn. (See Appendix III for photographs of problems with work.) As a result, contractors may be paid for work that they did not complete, or did not complete satisfactorily. (See Table II on page 25 for work not completed.)

Job order contract agreement, Article 2.1, states, “The Contractor shall perform the work as described in the individual Job Orders and Detailed Scopes of Work pursuant to this Contract,” and, “The work shall be performed in a workmanlike manner.” Article 4.2 states, “Each Detailed Scope of Work shall be completed within the time specified or referenced in the Job Order.”

**Table II**  
Work Not Done by JOC Contractors

School	Contractor	Proceed Order No.	Work Not Done	Amount of Work Not Done (\$)
PS 28K	Eastco Building Services, Inc.	7532-00100	4th floor washroom fixtures	\$278.11
PS 138K	Biltmore General Contractors	7074-00011	2nd floor corridor unpainted piping	\$524.48
IS 228K	Eastco Building Services, Inc.	8559-00010	Vinyl base	\$241.86
PS 262K	Eastco Building Services, Inc.	5771-00171	Unpainted and curved handrails	\$363.71
PS 136M	Volmar Services, Inc.	8020-00005	Watercloset and accessories	\$2,831.41
PS 149M	Volmar Services, Inc.	8020-00091	Basketball steel support painting	\$451.76
PS 162Q	Volmar Services, Inc.	8547-00126	Unpainted piping	\$217.62
PS 175Q	JCH Delta Contracting	7214-00031	(4) Washroom accessories	\$320.28
South Bronx HS	Volmar Services, Inc.	8020-00082	Concrete soffit repair	\$763.85

**Total = \$5,993.08**

Eastco Building Services, Inc., was required to furnish and install new entrance doors at PS 70 in Queens (proceed order No. 5771-00217 totaling \$24,086.60). However, our observation found the doors were pitted, deteriorated, misaligned, and difficult to egress, thereby posing a potentially hazardous condition. In fact, school custodians had to “shave” the door edges to enable them to open properly. (See photographs #1 and #2 in Appendix III.) Although the files contained an inspection report for the completed work, it did not identify any of these problems. In addition, the files lacked evidence that required material submissions had been submitted and approved, and that required warranties had been submitted. Finally, as previously discussed, the work was performed beyond the assigned region of this contractor.

In another example of work problems, Eastco Building Services, Inc., was required to remove and reinstall metal window air conditioner guards at Eastern District High School in Brooklyn, (proceed order No. 8164-00037 totaling \$1,194.08). The Department’s work scope stated, “Guards shall cover all areas of the window around the ac units so that no birds are able to come in and nest.” However, our observation found that the guards were torn and improperly sealed, thereby allowing birds entry. (See photograph #9 in Appendix III.) Although an inspector identified this problem in a report dated October 12, 2004, as of January 18, 2006 the condition had not been corrected. Moreover, the files lacked evidence that required technical drawings had been submitted and approved. Furthermore, the work was performed beyond the assigned contractor’s region.

Biltmore General Contracting Inc., was required to paint and plaster walls, ceiling, doors, radiators, and other surfaces at PS 138 in Brooklyn (proceed order No. 7074-00011 totaling

\$157,461.12). Although file documentation showed that inspections were conducted, our observation found doors, radiators and walls that were not properly prepared and patched before paint coatings were applied. (See photographs #7 and #8 in Appendix III.) It should be noted that the files for three additional schools at which painting was done by various contractors lacked any inspection reports.<sup>11</sup> The absence of inspection reports, in tandem with our own observations at those schools and discussions with school maintenance staff, leads us to question whether surfaces were properly prepared and primed before finish paint was applied.

As a final example of work problems, the Division approved a \$75,143.52 proceed order (No. 8021-00068) to Biltmore General Contracting to upgrade the library at William Grady High School in Brooklyn. The work was originally scheduled to start on April 1, 2005, and be complete by April 22, 2005. However, as of January 5, 2006, the data lines and connections required for providing Internet service were not completed. (See photograph #10 in Appendix III.) According to school officials, the lack of this service adversely affected their ability to process college applications and students' ability to properly conduct research projects. There were no inspection reports in Departmental files.

These examples further represent many of the problems with the Department's administration of the JOC program. As previously stated, these problems include the lack of a formal, organized system for administering, collecting, and maintaining documentation; the lack of written policies or guidelines that spell out the circumstances under which the use of job order contracting is appropriate; the failure to ensure that all inspections of proceed order work are adequately conducted and documented; and the failure to ensure that job order contractors complete all required work satisfactorily and on time.

If work is delayed beyond its scheduled completion date, job order contract agreements Article 4.2 state that "the Contractor may, on individual Job Orders, be required to pay to the Department as liquidated damages a sum in accordance with General Conditions." However, none of the job/proceed orders contained provisions to assess liquidated damages nor was there any documentation to support that decision. While the Department is not obligated to assess liquidated damages, the practice of Division staff to routinely relieve contractors of this obligation increases the City's risk that work may not be completed on time.

### **Recommendations**

The Department should:

12. Ensure that JOC contractors complete all work satisfactorily.

**Department Response:** The Report's findings are addressed in the Department's response. The Department already takes steps to ensure that all work is done completely and satisfactorily, including work performed by JOC contractors.

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<sup>11</sup> The three schools were PS 207 in Brooklyn, PS 162 in Queens, and PS 94 in the Bronx.

**Auditor Comment:** The Department did not take adequate steps to ensure that all work was done completely and satisfactorily during the scope period of this audit, as indicated by the work deficiencies we observed.

13. Ensure that inspectors certify the worthiness of surface preparation work before finish paint coatings and plaster are applied.

**Department Response:** We will continue to enforce our existing requirements concerning paint and plaster work to ensure compliance consistent with all contract specifications including those related to lead-base paint and painting on surfaces that have suffered problems with leakage. Contractors who do not follow job specification guidelines are directed to return to finish the work.

**Auditor Comment:** Since determining the worthiness of surface preparation is a critical project milestone, inspectors should be instructed to conduct inspections and document their approval of this work.

14. Compel the contractors mentioned in this report to immediately perform all necessary remedial work to correct noted deficiencies.

**Department Response:** Consistent with procedures that are already in place, we have taken credits for work where we deemed that contractors failed to perform satisfactorily.

**Auditor Comment:** As discussed in Appendix I, we maintain that additional credits or remedial work should be undertaken as stated in the audit report.

15. Ensure that JOC contractors complete work on schedule.

**Department Response:** Overall, we agree that contractors should complete work on schedule. However, the original job order schedule is only an estimate and should be updated by the inspector to reflect conditions at the school and time of year. This information will be better documented in the project files.

**Auditor Comment:** While the Department agrees that contractors should complete work on schedule, the fact that 16 of 50 sampled projects were completed late suggests that the Department should take steps to ensure achieving the results it purports to desire.

16. Ensure that contractors complete any incomplete work.

**Department Response:** We require contractors that have not completed work satisfactorily to return to the job site to fulfill their obligations. Failure of compliance may also result in monetary penalties.

Two contractors that were cited by the auditors for incomplete work were ordered to return to the projects and have now completed the jobs.

**Auditor Comment:** Once again, as discussed in Appendix I and the audit report, we found instances of incomplete work that have not been addressed by the contractors. Thus, the Department should adhere to its procedures and ensure that contractors complete this work.

17. Ensure that proceed orders contain provisions for liquidated damages. Assess liquidated damages when contractors fail to complete work in accordance with scheduled timeframes.

**Department Response:** We have sufficient provisions in our contracts concerning the assessment of liquidated damages where appropriate.

**Auditor Comment:** We agree that liquidated damages should be assessed where appropriate. Although the contracts do contain provisions to assess liquidated damages, all of the sampled proceed orders stated that liquidated damages were zero. Therefore, we question the Department's seriousness about invoking the contract provisions for liquidated damages.

### **Problems with Cost-Reasonableness**

The cost of each proceed order is based on unit prices contained in The Gordian Group's "Construction Task Catalog." Our independently prepared estimates based on R.S. Means Building Construction Cost Data determined that the cost of 28 (56%) of the 50 sampled proceed orders far exceeded or fell short of industry standard pricing.<sup>12</sup> We found that the prices for those proceed orders ranged from 41 percent greater to 47 percent less than the industry standard prices. (Prices for 8 of the proceed orders were greater than the standard; 20 were lower.) Such a wide fluctuation in prices leads us to question the overall cost-reasonableness of JOC work.

For example, according to unit prices in the "Construction Task Catalog," the cost of install ceiling tiles at South Shore High School in Brooklyn (proceed order No. 6808-00017) was \$41,624.70.<sup>13</sup> However, we estimate that the work should have cost only \$36,123.13. Accordingly, the catalog price was \$5,501.57 (15%) more than our estimated price. As another example, the cost to replace a concrete sidewalk at PS 93 in the Bronx (proceed order No. 7072-00013) was \$41,954.94. However, we estimate that the work should have cost only \$36,887.62. In this case, the catalog price was \$5,067.32 (14%) more than our estimated price.

In contrast to the above examples where the catalog prices were too high, the cost to plaster ceilings at PS 108 in Brooklyn (proceed order No. 7825-00074) was \$45,144.48. However, we estimate that the work should have cost \$59,939.57. Accordingly, the catalog price was \$14,795.09 (25%) less than our estimated price. Similarly, the cost to install flooring at IS

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<sup>12</sup> The price of the other 22 proceed orders ranged from 10 percent above to 10 percent below standard pricing. We consider this difference as an acceptable estimating variation.

<sup>13</sup> Unit prices from the "Construction Task Catalog" are subsequently adjusted by the contractor's multiplier.

125 in Queens (proceed order No. 8547-00011) was \$7,581.04. However, we estimate that the work should have cost \$14,175.75. In this case, the catalog price was \$6,594.71 (47%) less than our estimated price.

Interviews with Department staff indicate that the Department does not review prices in the “Construction Task Catalog.” Such a review is unnecessary according to Department officials, who rely on their own inspectors or those employed by The Gordian Group to identify any price inconsistencies. Further, the Department contends that contractors can compensate for price variations by adjusting their multipliers when bidding for contracts.

Relying on contractors and inspectors, however, to uncover problems with the cost of work constitutes a serious weakness in the Department’s internal controls. This is a particular concern given the fact that many of those inspectors are employed by The Gordian Group, the same consultant that produced the “Construction Task Catalog” in the first place. The Department’s widespread use of the The Gordian Group to undertake both inspection and consulting services is an apparent conflict of interest. In addition, by neglecting to conduct its own independent price review to ensure that prices are consistent with industry standards, the Department is leaving the JOC program susceptible to fraud and abuse.

***Department Response:*** Several conclusions might be drawn from the finding that 20 of 28 JOC projects cost the Department less than estimates for the same work based on *R.S. Means Building Construction Cost Data (R.S. Means)*. Among the least logical of possible conclusions is that the Department has mismanaged its JOC program from a cost perspective, and yet, that is the conclusion drawn in the Report. Moreover, despite that the cost comparisons actually work in the Department’s favor, we take the position that the auditors erred in relying on *R.S. Means* as a cost estimating tool because *R.S. Means* does not accurately represent standard industry pricing for routine repair and maintenance projects in New York City.

That position rests squarely on *R.S. Means* itself in that the publication sets guidelines for its use as follows: “This book is aimed primarily at commercial and industrial projects costing \$1,000,000 and up, or large multi-family projects. Costs are primarily for new construction or major renovation of buildings rather than repairs or minor alterations”; “[w]e have made no allowance for overtime”; “in dense urban areas, traffic and site storage limitations may increase [materials] costs”; and, “[l]abor costs are based on the average of wage rates from 30 major cities . . . If wage rates in your area vary from those used in this book, or if rate increases are expected within a given year, labor costs should be adjusted accordingly.

The above guidelines, plus the facts that *R.S. Means* does not contain many of the standard products and materials upon which the Department relies for school maintenance and repair, and that *R.S. Means* does not include demolition prices for most of the replacement-in-kind work performed by the Department, render *R.S. Means* an unsuitable guide for the Department’s cost estimates. For those same reasons it should not have been used by the auditors to evaluate the cost effectiveness of the JOC program.



As to the assertion that the Department's use of Gordian to undertake the development of the Construction Task Catalog, as well as inspection and consulting services could be a conflict of interest, we offer this. First, the Construction Task Catalog is, through the competitive bidding process, subject to market forces that operate as a natural check on the prices established in that catalog. However, as we seek to avoid even the appearance of impropriety, in addition to those controls already inherent in the competitive JOC bidding process and DSF's scope of work review . . . we commit to implementing random site reviews by DSF personnel of Gordian's scoping of projects, including those below the current \$50,000 threshold for QCC reviews . . .

**Auditor Comment:** It is unclear as to why the Department believes that we concluded that the JOC program was mismanaged from a "cost perspective," when in fact we stated that the wide price fluctuation raises questions about the overall cost-reasonableness of JOC work. Therefore, we reiterate the importance of reviewing prices in the Department's cost catalog.

The Department's contention that the R.S. Means Building Construction Cost Data is an unsuitable guide is contradicted by the fact that the Department's files indicate that The Gordian Group often uses R.S. Means data to prepare its own independent estimates of JOC work. The R.S. Means guide itself states "with reasonable exercise of judgment the figures can be used for any building work." Indeed, our own engineering auditors who prepared the cost estimates during audit field work were careful to exercise proper judgment to ensure that all necessary cost adjustments (e.g., labor rates, magnitude of the work) were taken into account.

We acknowledge the Department's decision to implement random site reviews of The Gordian Group's project scoping. However, we believe that random reviews do not go far enough to dispel the notion that the use of The Gordian Group for both consulting services and inspections is not a conflict of interest. Therefore, the Department should employ separate consultants to perform inter-dependent types of construction services to ensure objective and transparent practices.

### **Recommendations**

18. The Department should review the unit prices in the "Construction Cost Catalog," and make any necessary adjustments to ensure that the prices are consistent with industry standards.

**Department Response:** The competitive bidding process provides assurance that "Construction Cost Catalog" prices reflect market conditions. However, as an additional check, we will conduct an annual sample review of unit prices of commonly used materials in the "Construction Cost Catalog" and will recommend changes as appropriate.

**Auditor Comment:** The Department should not be dependent on competitive bidding by private contractors to correct deficiencies in "Construction Cost Catalog" pricing. Therefore, the Department should strengthen its commitment to conducting a price

review by ensuring that such a review includes a sufficient number and variety of work items.

### **\$63,482 in Fees Overpaid**

Interviews with Department officials indicate that the Department lacks an adequate system of internal controls to ensure that invoices submitted by The Gordian Group are properly reviewed and approved. As a result, based on our review of documentation, the Department overpaid The Gordian Group \$63,482 in construction management fees associated with invoices for Fiscal Years 2004 and 2005.

The Gordian Group's contract with the Department required that it be paid a 13 percent construction management fee for the period of November 18, 2002, through November 17, 2003. In an amendment to the contract, The Gordian Group agreed "for the period from November 18, 2003 through November 17, 2004, to reduce its project management fee by one-half percent (0.5%) from thirteen-and-one half percent (13.5%) to thirteen percent (13%)." Nevertheless, the Gordian Group billed the Department a fee of 13.5 percent for invoices submitted for July 2003 to April 2004.

Department officials told us that our interpretation of the contract was incorrect, and that "the lower 13% rate only goes into effect AFTER the first \$1.8 million in fees were exhausted." However, the Third Amendment Agreement of November 18, 2003, clearly states that the term of the original contract was from November 18, 1999, to November 17, 2000, and the terms of the first, second, and third annual renewal periods was from November 18, 2000, to November 17, 2003. Thus, the third renewal period would have been from November 18, 2002, to November 17, 2003. According to a September 10, 1999 letter from The Gordian Group to the Department, the fee for Option 3 (i.e., the third renewal period from November 18, 2002, to November 17, 2003) is 13 percent.

In addition, The Gordian Group might also have improperly billed the Department a fee of 13 percent for the December 2004 invoice totaling \$5,343. According to the contract agreement between The Gordian Group and the Department that commenced on December 1, 2004, that fee should have been 10.25 percent. The Department contended that work described in the December 2004 invoice was actually carried out "before the expiration of the 1999-2004 contract" and therefore subject to the 13 percent fee. However, the Department did not provide any documentation that the work had in fact been completed prior to December 2004—a prerequisite for submitting payment invoices.

***Department Response:*** The Report clearly indicates that there is no meeting of the minds between the auditors and the Department with respect to which contract payment terms were in effect at the time the Department paid Gordian invoices submitted for July 2003 through April 2004 and whether the Department overpaid Gordian. . . .

In May 2004, the contract was again amended to increase the total contract value from \$9 million to \$11 million over the period November 1999 through November 2004 (the

original contract term plus the four option years). In consideration for the increased total contract value, Gordian agreed to two conditions: (1) a construction management fee of 13% would be applied to all work managed in excess of \$9 million - a threshold that was reached in mid-April 2004; and, (2) a fee of 13.5% would be applied to *all* work performed that year within the \$9 million contract threshold. The original agreement for that option period called for a 13.93% construction management fee to be applied to the first \$10 million in total costs of projects managed and 13.5% to the excess.

**Auditor Comment:** We disagree with the Department's characterization that the determination of which contract terms were in effect is dependent on a "meeting of the minds." The Department has not provided new documentation to dispute our finding that the Department overpaid The Gordian Group \$63,482 in construction management fees associated with invoices for Fiscal Years 2004 and 2005. None of the documentation provided to us by the Department during audit work and after the exit conference supports the Department's contention that The Gordian Group agreed to the two conditions cited in the Department's response. Therefore, we continue to assert that the Department overpaid The Gordian Group for these invoices.

### **Recommendations**

The Department should:

19. Recoup \$63,482 in overpayments to The Gordian Group.

**Department Response:** The Department paid the Gordian Group a construction management fee in accordance with the contract terms in effect at the time the fee accrued.

**Auditor Comment:** As stated above, we disagree with the Department's contention that it paid The Gordian Group a fee in accordance with the contract terms.

20. Verify that all work included in The Gordian Group's December 2004 invoice was actually completed in the period before December 2004.

**Department Response:** In response to the finding, a DSF manager reviewed whether the work overseen by The Gordian Group and invoiced in December 2004, was actually completed. The results of that desk audit indicates that the work was completed satisfactorily.

We will subsequently determine the dates when the work was completed.

**Auditor Comment:** We are pleased that the Department is implementing our recommendation to verify whether all work included in The Gordian Group's December 2004 invoice was actually completed in the period before December 2004. Accordingly, we expect that the Department to recoup any overpayments to The Gordian Group for work completed *after* December 2004.

21. Implement internal controls to ensure that invoices are properly reviewed and approved.

**Department Response:** Before the release, and independently of the Comptroller's draft audit report, DSF implemented additional internal controls which became effective with the Gordian Group's new contract. A senior DSF manager has been assigned to review, on a post-audit basis, Gordian's construction management fees to verify that work has been completed before payment is made.

**Auditor Comment:** Notwithstanding the Department's contention, it provided no evidence or documented procedures to indicate that the Department had implemented additional internal controls for The Gordian Group's current contract, which became effective during the scope period of our audit.

### **Problems with Databases**

The Department has two databases associated with the JOC program. The mainframe database is a Department-wide system that contains information relating to all Department contracts such as contract value, payments, and invoices. In contrast, the PROGEN database is used exclusively by the Division to record certain information about JOC projects, such as job status, scope of work, contractor proposals, and unit pricing.

We found problems with the Department's mainframe computer system PASSPORT and the Division's PROGEN databases. Comptroller's Directive #18, §8.2, requires that agencies ensure that adequate controls be implemented to eliminate computer input, processing, and output problems. However, the Department does not have an adequate control system to ensure that information in the program's databases is recorded and processed completely and accurately. As a result, we found the following database problems:

#### **Problems with PASSPORT**

- *Difficulty in reconciling the total of all proceed order amounts for a JOC contract with the amount committed under that associated JOC contract.* We were unable to use the PASSPORT database to reconcile 37 of the 42 JOC contracts in effect during our scope period.<sup>14</sup> Even after undertaking a series of manual manipulations, we were still unable to reconcile four of these cases.
- *No formal procedure for recording additional work assigned to a JOC contractor.* Department officials use multiple methods for recording additional work (e.g., recording the work using either the original proceed order number, a new proceed order number, or a new proceed order number associated with a different contract

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<sup>14</sup> The 42 contracts include all JOC contracts (i.e., electrical, mechanical) in addition to the 21 sampled general construction contracts.

with the same contractor). This practice leads to confusion and “paper trail” problems, and could promote the possibility of duplicate payments for the same work.

- *Work assigned to a contract but subsequently transferred to a different contract.* For example, the work in proceed order No. 00074 under Contract No. 7825 is identical to the work in proceed order No. 00001 under Contract No. 8547. But according to PASSPORT, proceed order No. 00001 has neither any value nor payments. It appears as if the work was originally assigned to Contract No. 8547 and subsequently transferred to Contract No. 7825. We attribute this practice to the Department’s uncertainty as to the amount of funds remaining in a particular contract.

### **Problems with PROGEN**

- *Separate PROGEN system at the Division’s Brooklyn office.* The Brooklyn PROGEN system is not connected to the system at the Division’s main office in Queens. As a result, information recorded in PROGEN in Brooklyn is not available in the main office (and vice versa).

### **Problems with Systems Integration**

- *No common field directly linking the two systems.* PROGEN and PASSPORT are not integrated. Projects in PROGEN are identified by “project number,” whereas those in PASSPORT are identified by “work order number.” Although according to Department officials, the project number is sometimes entered in the text field in PASSPORT to tie the two systems together, there is no common field directly linking the two systems. As a result, computer reports cannot be effectively generated.
- *Discrepancies in recording proceed order amounts in the two systems.* For example, the amount of proceed order No. 00036 (contract No. 9243) in PROGEN is \$4,955.53; however, the amount recorded in PASSPORT is \$5,000.00. The amount of proceed order No. 00068 (contract No. 8021) in PROGEN is \$75,143.52; the amount recorded in PASSPORT is \$76,000.00.
- *No link between PASSPORT and the Department’s accounting system FAMIS.* Although PASSPORT contains financial information about JOC contracts, and the system is used to authorize payments, the actual payments are encumbered and prepared through FAMIS. Thus, payments that are authorized in the PASSPORT system cannot be reconciled with actual payments.

Overall, these problems highlight another aspect of the Department’s lack of adequate internal controls that hinder the Department’s ability to effectively administer the JOC program.

***Department Response:*** Many of the shortcomings of the data systems identified by the auditors also had been noted by DSF managers. Consequently, policies and procedures already have been implemented to significantly improve the integrity of PASSPORT

data, which is now reconcilable with both PROGEN and, very importantly, FAMIS, the Department's financial accounting system.

### **Recommendations**

The Department should:

22. Implement adequate controls, as required by Comptroller's Directive #18, to ensure that databases are complete and accurate.

**Department Response:** DSF has established an Enterprise Reporting Unit (ERU) to report on the information contained in PASSPORT; to provide database management quality control; and to ensure that data protocols are established and properly maintained. The ERU is comprised of information technology staff and construction and maintenance professionals who have a background in database management. Their day-to-day review of the data allows them to identify, on a very granular level, issues involving data input and integrity. With the ERU taking the lead, a "best practices" working group has been established.

23. Create an electronic interface that would allow information to be sent between PROGEN and PASSPORT and also allow for system reconciliation.

**Department Response:** Since early 2006, the PROGEN and PASSPORT systems have been utilizing a work order field that allows the Division to reconcile project information contained in both data bases.

24. Correct all database deficiencies identified in this report.

**Department Response:** The updating of databases is an ongoing process for DSF and has already resulted in improvements as discussed in the Department's audit response.

**Additional Auditor Comments to Address  
Table 1B of the Department Response**

**PS 28K Bathroom Renovation:** This project was cited in the report for 4th floor washroom fixtures that were not installed.

*Department Response:* A couple of faucet handles were vandalized after installation. Work was done according to the specifications. The bathroom where the work was done was a boy's bathroom, not a girl's bathroom.

*Auditor Comment:* We are perplexed as to why the Department discusses faucet handles, when in fact the Department's work scope for the sampled proceed order does not specify these accessories. We inspected work according to the Department's July 1, 2004 "Final Detailed Scope of Work," which require that washroom accessories be installed in the 4th floor girls' bathroom. A Department memorandum dated May 3, 2006—after we submitted the preliminary draft of this audit to the Department on April 26, 2006—contends that the "detailed scope of work had a typing error. The fixtures were installed in the Boys 4th floor bathroom and the scope stated the Girls 4<sup>th</sup> floor bathroom." However, the Department submitted no evidence to substantiate this claim.

**PS 138K Paint and Plaster:** This project was cited in the report because of unpainted piping at the second floor corridor.

*Department Response:* The contractor provided the work according to the exact specifications of the job. The length of the painted conduit along with the wire mold more than equal the footage of pipe required in the Job Order. The contractor was not required to paint the galvanized pipe. There are a few areas in the building demonstrating poor preparation (i.e.: painted over staples) which are not part of this job but likely performed by the on site staff as part of the maintenance painting duties. Painted radiator guards, wood molding, riser guards and some doors show that the work was done over chips (this is a common practice due to lead abatement issues). Funding constraints limited the scope of this project to ceiling repair and surface cosmetic painting so that we could increase the amount of needed work in other areas of the building. A review of the building after receipt of the audit reveals that there are areas that were patched due to later damage.

*Auditor Comment:* Our inspection of the work specified in the Department's March 9, 2004 "Final Detailed Scope of Work" indicated that the contractor neglected to paint approximately 440 linear feet of 1" piping in the second floor corridor. The Department provided no documentation to verify its contention that "the contractor provided the work according to the exact specifications of the job." Further, the Department has not

provided any documentation to verify its contention that the areas demonstrating poor preparation were “not part of this job.” In contrast, during our field visits on January 18, 2006, and February 10, 2006, to PS 138, we inspected only those areas that were clearly identified in the Department’s “Final Detailed Scope of Work.”

**PS 179K Exterior Sign:** This project was cited in the report because the exterior message board was inoperable.

*Department Response:* Contractor successfully installed a sign provided and purchased by the PTA. The defect noted was not the contractor’s responsibility and was repaired.

*Auditor Comment:* We agree that the contractor was only responsible for installing and not for purchasing the message board. According to the Department’s June 16, 2004 “Final Detailed Scope of Work,” the contractor was required to install the message board and provide electrical service to power it. We have no way of substantiating the Department’s contention that the problem with the message board was not the contractor’s responsibility because Department files lacked documentation indicating that the electrical service had been tested as required by Department’s “General Provisions for Electrical Work” and found operable.

**IS 228K Carpeting:** This project was cited in the report for frayed and missing carpeting, and for a vinyl base that was not installed.

*Department Response:* We agree that the cove base was not installed; however, there were no payments made for any alleged work done.

*Auditor Comment:* While the Department acknowledged that the cove base was not installed, it did not address our finding about frayed and missing carpeting. Moreover, Department records indicate that the reason that the payments were not made was because the contractor did not submit an application for payment. Therefore, we cannot ascertain whether the Department would have paid the contractor had an application for payment been submitted.

**PS 262K Main Entrance:** This project was cited in the report for missing adhesive strips in entrance steps, handrails that were unpainted, and curved handrails that were not installed.

*Department Response:* Alleged “unpainted” handrail was galvanized pipe that is not supposed to be painted. Installation of galvanized pipe and sloped stair is equivalent in price to the curved and painted rails and an acceptable substitute. The strips were not contained in the proposal, thus not part of the installation.

*Auditor Comment:* There was no documentation in Department files to indicate that the galvanized pipe and sloped stair were equivalent in price and were acceptable substitutes



for the curved and painted handrails. Further, there was no documentation to indicate that the Department had granted this modification. As far as the adhesive strips are concerned, the original terrazzo stairs (as shown in the Department's photograph and as verified by school custodial staff) contained metal embedded safety strips as required by specification. The Department did not have a specification for the new marble stairs that were installed under the sampled proceed order. Therefore, in the absence of a specification, it is logical that this recognized safety item would have been part of the newly installed work.

**Eastern District HS Window Guards:** This project was cited in the report for torn and improperly sealed window guards.

*Department Response:* DoE agrees with the Comptroller and took an exception to the work done. Since there was no corrective action, no payment was made for that work performed.

*Auditor Comment:* While the Department agrees with our finding about the torn and improperly sealed window guards, we question why it has not taken any corrective action since its own inspector identified this problem in October 2004, more than 1 1/2 years ago. Moreover, regarding the correction of deficient work, a March 17, 2006 e-mail from Department officials stated that, "JOC contractors have a performance bond in place and the Department can look to that company to perform the work." Therefore, we question why the Department did not seek to instruct the surety to remedy the torn and improperly sealed window guards.

**William Grady HS Library Upgrade:** This project was cited in the report for incomplete data lines and connections required for providing Internet service.

*Department Response:* Major changes in scope requested by the school as well as coordination with the SCA [School Construction Authority] led to the project delays. The use of the non-pre-priced veneer plywood was in response to a request from the Furniture and Equipment Unit at the SCA in order to match the veneer of the furniture supplied by the SCA for the Library.

*Auditor Comment:* Regardless of whether or not the project was beset by delays as the Department contends, we note that at the time of our inspection in January 2006, the work was not completed. Even in its June 2006 response, the Department did not certify that the work was complete. We do not understand why the Department mentions the use of non-pre-priced veneer in regard to the project delay.

**IS 136M Bathroom Renovation:** This project was cited in the report for a watercloset and bathroom accessories that were not installed.

*Department Response:* There were changes made to the project scope so installation of the original items were no longer required. The contractor properly installed an alcove stall and a wall hung water closet while removing two urinals. The on-site staff properly installed the grab bar.

*Auditor Comment:* There was no documentation in the Department's files indicating that changes were made to the project scope. When we accompanied building custodial staff on our inspection of the premises, there was no evidence that the watercloset and bathroom accessories had been installed.

**PS 149M Basketball Backboards:** This project was cited in the report for unpainted basketball support steel.

*Department Response:* Supporting steel should have been painted since it was part of the scope. DoE records indicate payment for work not done. The contractor has since returned to the site and completed the required work.

*Auditor Comment:* The required painting work was not completed at the time of our field visit on January 13, 2006. In this instance, in which inspection reports were missing from Department files, the job order contractor may not have completed all required work because of a lack of adequate inspections. Nevertheless we are pleased that the Department has now stated that it has compelled the contractor to complete the required work.

**PS 70Q Exterior Doors:** This project was cited in the report for doors that were pitted, deteriorated, misaligned, and difficult to egress.

*Department Response:* There was no problem with the quality of the installation of the entrance doors. Damage (scratches) are likely due to impact from hand trucks. The condition of the doors (rust and pitting) is attributable to "inadequate or deferred maintenance" by the staff at the site. Moreover, repeated banging of the doors while open would cause misalignment. It appears that the doors were planed or sanded after installation which allowed water to penetrate and create swelling.

*Auditor Comment:* The Department was unable to provide any documentation to substantiate its contention that the poor condition of the doors was attributable to impact from hand trucks and from inadequate staff maintenance. Further, the type of deficiencies that we observed during our field inspection were more severe than merely door scratches. Moreover, the Department's contention that rusting and pitting resulted from maintenance problems is not consistent with the severe deficiencies

observed. As noted previously, if the Department had obtained and reviewed appropriate shop drawing submittals and other product data for the doors, these problems may have been avoided or mitigated.

**PS 162Q Paint and Plaster:** This project was cited in the report for unpainted ceiling piping.

*Department Response:* All required work was completed according to specifications, except for approximately 19 linear feet. The contractor has returned to the site and completed the remaining required work.

*Auditor Comment:* Our inspection of the work specified in the Department's June 13, 2004 "Final Detailed Scope of Work" indicated that the contractor neglected to paint approximately 100 linear feet in Room 213 and approximately 20 linear feet in Room 328. Therefore, we do not know why the Department believes that the disputed quantity was only 19 linear feet.

**PS 175Q Toilet Partitions:** This project was cited in the report for four washroom accessories that were not installed.

*Department Response:* All accessories installed along with partitions according to job specifications. Inspection in response to Comptroller's finding reveals units were removed subsequent to installation.

*Auditor Comment:* With its response, the Department provided a photograph that purported to show a sanitary napkin disposal unit installed in a washroom. However, since the project file lacked an inspection report by Department staff, we cannot confirm the Department's contention that the required accessories were ever installed. Furthermore, our review of the photograph indicates that the unit was not the type specified.

**PS 46Q Paint and Plaster:** This project was cited in the report for quality problems.

*Department Response:* Due to budget constraints and the desire to improve the condition of the ceiling, there was a limited scope of work issued costing \$28,695.36 that did not amount to a full scale paint and plaster job that would have cost a minimum of \$100,000.

*Auditor Comment:* The Department's response does not address our concerns with the project's quality problems. The Department's May 26, 2004 "Final Detailed Scope of Work" requires the contractor to paint and spackle ceilings in Rooms 110, 304, and 404. During our field visit on January 10, 2006, we observed rough spots in the ceilings of Rooms 110 and 304 and found that ceiling light fixtures had been paint-soiled by the contractor. In Room 304, the drop-down portion of the ceiling was not completely

finished. Moreover, the Department rated the contractor as “marginal” on its “Contractor’s Evaluation Form.”

**South Bronx HS Concrete Wall Repair:** This project was cited in the report for a concrete soffit that was not repaired.

***Department Response:*** There is no issue with the quality of the work. Nonetheless, there is a below grade moisture condition present which led to problems with paint and stucco coverage. It appears that the removal (not by the contractor) of stored pipe damaged the stucco.

***Auditor Comment:*** In contrast to the Department’s understanding of our audit, we took exception to the fact that a concrete soffit was not visible, and accordingly not repaired, not that the quality of the repair was deficient.

**GENERAL CONSTRUCTION JOC CONTRACTS IN EFFECT  
DURING FISCAL YEARS 2004 AND 2005**

<b>Contract Number</b>	<b>Contractor</b>	<b>Total Amount Committed</b>
00004370	Volmar Services, Inc.	\$2,231,077.81
00004626	L. Naro General Building & Construction	\$3,332,495.41
00005299	Volmar Services, Inc.	\$5,148,520.89
00005365	JCH Delta Construction, Inc.	\$2,574,466.51
00005771	Eastco Building Services, Inc.	\$8,808,890.24
00006108	Volmar Services, Inc.	\$3,569,955.15
00006761	EEC Group, Inc.	\$96,579.78
00006808	Volmar Services, Inc.	\$3,999,386.56
00007072	D&K Construction, Inc.	\$2,891,281.85
00007074	Biltmore General Contracting, Inc.	\$3,646,563.16
00007214	JCH Delta Construction, Inc.	\$1,709,850.17
00007532	Eastco Building Services, Inc.	\$3,775,196.79
00007825	Volmar Services, Inc.	\$2,092,661.82
00008020	Volmar Services, Inc.	\$1,524,027.53
00008021	Biltmore General Contracting, Inc.	\$3,948,110.54
00008164	Eastco Building Services, Inc.	\$1,821,014.38
00008547	Volmar Services, Inc.	\$3,977,699.90
00008559	Eastco Building Services, Inc.	\$523,597.88
00009243	D&K Construction, Inc.	\$2,266,987.61
00009441	Volmar Services, Inc.	\$1,462,463.66
00009463	Biltmore General Contracting, Inc.	\$1,929,588.00

**Total = \$61,330,415.64**

**PHOTOGRAPHS OF INCOMPLETE OR UNSATISFACTORY JOC WORK**

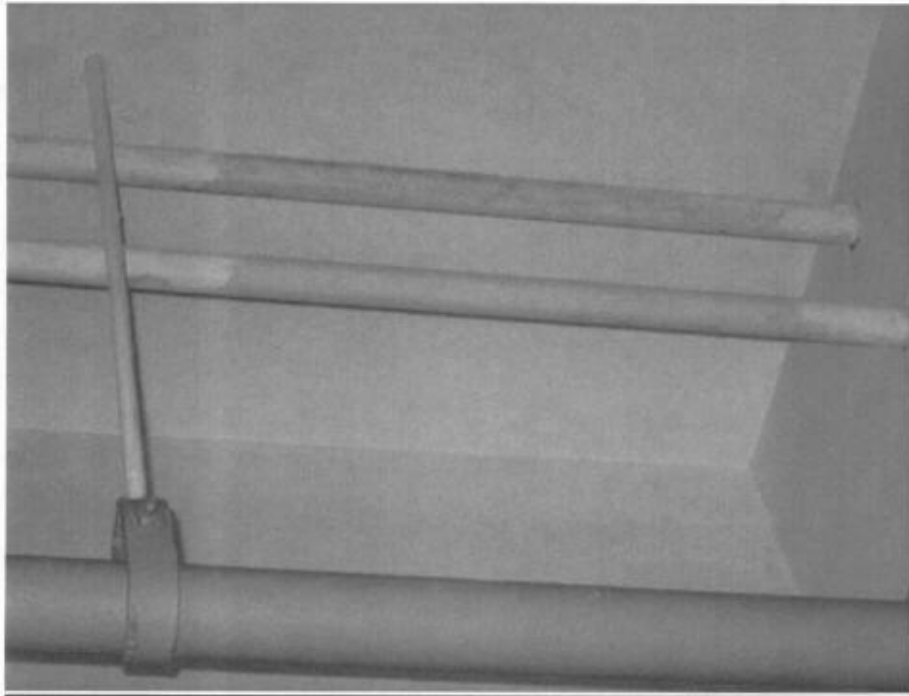
**PS 70 Queens, Photograph #1, Deterioration in Exit Doors**



**PS 70 Queens, Photograph #2, Exit Door Corrosion**



PS 162 Queens, Photograph #3, Unpainted Ceiling Piping



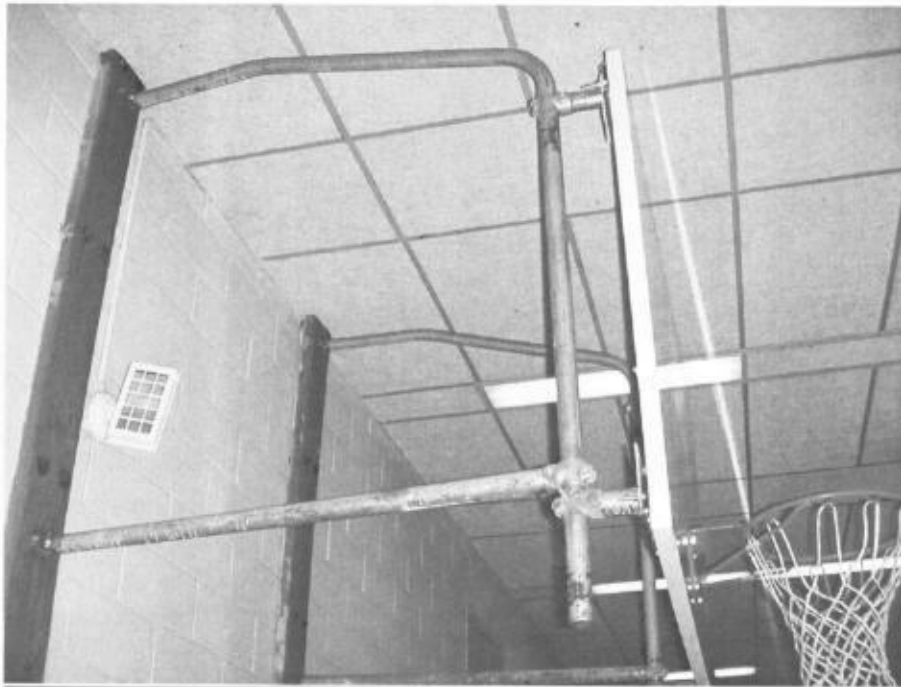
IS 228 Brooklyn, Photograph #4, Missing Carpet and Vinyl Base in Principal's Office



PS 262 Brooklyn, Photograph #5, Missing Adhesive Strip in Lobby Steps

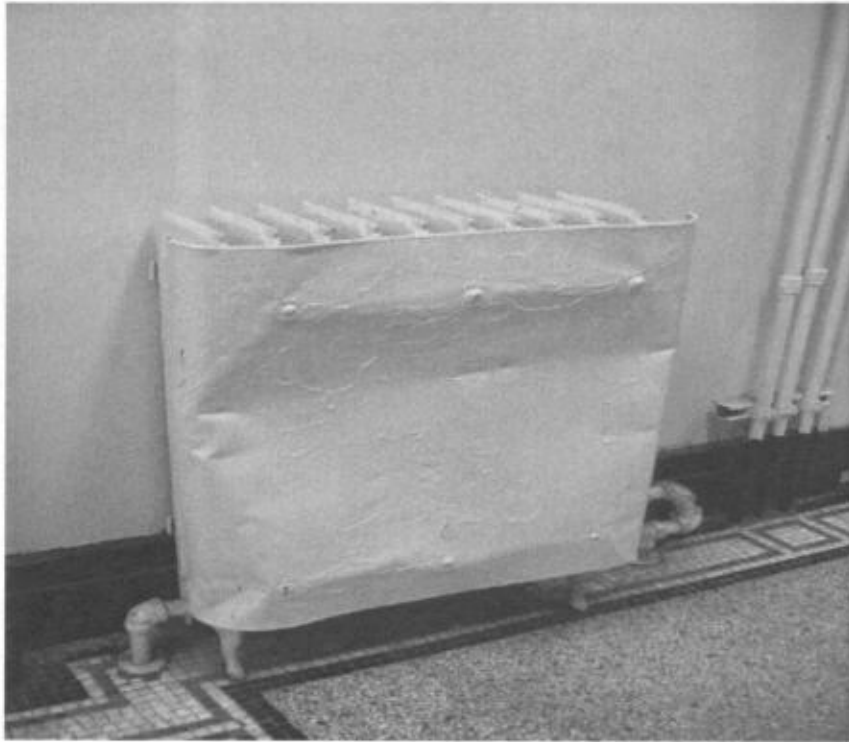


PS 149 Manhattan, Photograph #6, Unpainted Basketball Support Steel





PS 138 Brooklyn, Photograph #7, Radiator Cover Not Properly Prepared and Painted



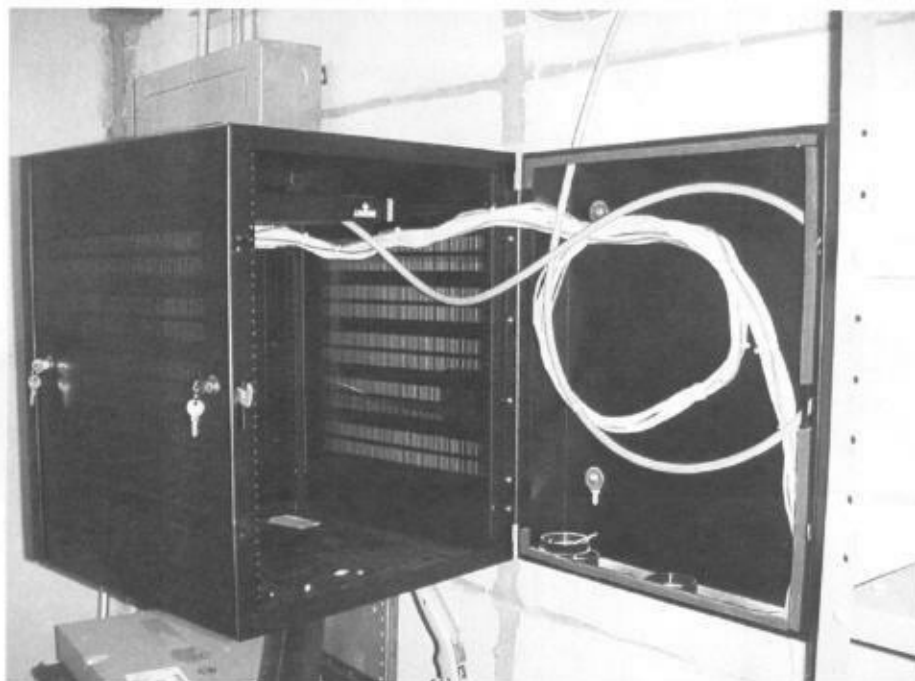
PS 138 Brooklyn, Photograph #8, Inadequate Plaster Patch and Repair Work at Stairway



Eastern District HS, Photograph #9, Defective Window Guards in Classrooms



William Grady HS, Photograph #10, Wiring Connections Not Completed in Library





**THE NEW YORK CITY DEPARTMENT OF EDUCATION**

**JOEL I. KLEIN, *Chancellor***

**Kathleen Grimm, Deputy Chancellor for Finance and Administration**

June 19, 2006

Honorable John Graham  
Deputy Comptroller  
The City of New York  
Office of the Comptroller  
One Centre Street  
New York, NY 10007-2341

Re: Draft Audit Report on Job  
Order Contracting by the  
Department of Education  
(FR05-139A)

Dear Mr. Graham:

Per your letter of May 19, 2006, enclosed are the New York City Department of Education's (Department) formal comments on the City of New York Office of the Comptroller, Bureau of Financial Audit (Comptroller), draft audit report (Report) titled "Audit Report on Job Order Contracting By the Department of Education", for inclusion, with this cover letter, as an Appendix to the Comptroller's final report.

Because of the length and complexity of both the Report and the Department's formal comments, I wish to summarize in this letter the Department's primary concerns with the auditors' findings and recommendations, which are set forth in greater detail within the attached formal comments.

The Department believes that the Report reflects a fundamental lack of understanding on the part of the auditors about the way a Job Order Contracting (JOC) program operates and is designed and intended to operate. JOC is not a substitute for competitive bidding or a way to circumvent competitive bidding for maintenance and repair work. It is, rather, an alternative to job-specific bidding – one that saves time, expense and uncertainty by shifting the competitive bidding process to the front end of its management of maintenance and repair work. The JOC delivery method is itself a competitive process resulting in a discrete number of on-call contractors available to perform according to their demonstrated expertise and experience on an as-needed basis at a fixed price for units of work or materials. This delivery method has been used successfully by public and private entities around the country for over two decades, including by other agencies within New York City.

John Graham  
June 19, 2006  
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Secondly, the Department takes particular umbrage with the repeated suggestions in the Report that the Department paid JOC contractors for incomplete and inferior work. The Department closely reviewed 14 projects cited by the auditors for incomplete or inferior work and found only two instances where minor work was not completed – work that accounts for \$526, or less than one-tenth of one percent of the \$1,108,365 total value of the 50 projects in the audit sample. The auditors' suggestion that the JOC program has resulted in a pattern of acceptance of and payment for inferior and incomplete work is entirely unfounded.

Thirdly, the Department takes exception to the auditors' use of the R.S. Means Building Construction Cost Data book as a basis for assessing the reasonableness of the cost of work procured by the Department through the JOC program. The R.S. Means Company recommends using this book primarily for commercial and individual projects in excess of \$1 million for new construction and major renovations, whereas the Department uses JOC contractors for maintenance and repair projects at an average cost of between \$25,000 and \$35,000 per project. Moreover, the Department's projects frequently require overtime and are based on prevailing wage rates in New York City, which the auditors' use of the R.S. Means book clearly does not take into account. Prices for the work of JOC contractors were established through the competitive bidding process and thus are competitive for the nature of the work and for the City of New York.

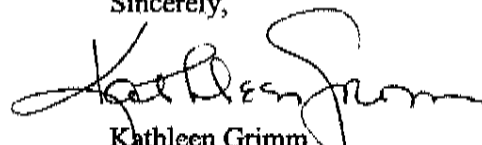
Fourthly, the finding in the Report that the Department overpaid a contractor in the amount of \$63,482 for construction management services is simply wrong, and we provided documentation to the auditors that clearly contradicted the finding. Based on the contract and the documentation provided to the auditors, it appears clear to us that the Department did not overpay at all, but rather saved more than \$114,000 over the original contract terms.

Finally, the Department disagrees with the contention in the Report that there was anything inappropriate about its use of JOC contractors to perform work outside of the primary Regional Operations Center to which they were initially assigned. The Department's assignment of work in those twenty instances cited was based on sound criteria, as set forth in detail in the enclosed formal comments, and was well within the scope of the contracts at issue.

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June 19, 2006  
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Notwithstanding the serious concerns the Department has about many of the conclusions expressed in the Report, we thank the Comptroller for identifying the need for clearer and more comprehensive documentation in the area of JOC management, and have already begun to make changes to our recordkeeping processes to address those shortcomings. Additionally, the Comptroller's recommendations concerning technological improvements have been noted; to the extent that they are not already in place or underway, we will consider and implement them as appropriate.

Sincerely,



Kathleen Grimm  
Deputy Chancellor

KG:nf  
Enclosures

C: Joel I. Klein  
Michael Best  
Marty Oestreicher  
Brian Fleischer  
James Lonergan  
John O'Connell  
Mark David  
Volkert Braren  
Robert Meeker  
Marlene Malamy  
Nader Francis

**New York City Department of Education Response to the City of New York  
Office of the Comptroller's Draft Audit Report on Job Order Contracting  
by the Department of Education (FR05-139A)**

This response, with the attached cover letter, addresses the findings and recommendations of the City of New York Office of the Comptroller, Bureau of Financial Audit, (Comptroller) draft audit report (Report) titled "Audit Report on Job Order Contracting By the Department of Education."

The Department of Education (Department) has a demonstrated interest in improving internal processes and welcomes constructive recommendations from external audit agencies that are based on an understanding of the systems under review and the needs of this agency. However, although we can agree with and will act upon certain of the Comptroller's recommendations, as discussed below, we cannot agree with, and are disturbed by, findings and recommendations that rest upon uninformed opinion and skewed perspective. We therefore offer, first, a framework for understanding the background of and environment in which JOC is used globally as a method for procuring construction services, and then particularly by the Department as it meets its considerable responsibilities for maintaining in excess of 1,200 physical plants. Following that is our response to specific findings and recommendations.

**THE JOB ORDER CONTRACTING DELIVERY METHOD**

The JOC delivery method is neither new nor exclusive to the Department insofar as it has been used in the public and private sectors throughout the country since the 1980's. Although there is no one fixed definition, common key elements are that JOC provides a means by which maintenance repair or replacement projects and relatively minor capital construction projects can be accomplished through selection of fixed priced units of work or materials without the costly and time consuming need for job-specific bidding or price negotiations. The benefits of the system derive largely from the ability to manage under one prime contractor a multitude of tasks that might otherwise have entailed the use of separate individual prime contractors and the fact that at the front end of the JOC delivery method is a competitive process resulting in a discrete number of on-call contractors available to perform according to their demonstrated expertise and experience on an as-needed basis.

The exit conference with Comptroller staff provided an opportunity for the Department to explore with the auditors the bases for opinions expressed in the Report, since it was, and remains, the Department's position that its application of the JOC delivery method was in line with its usage elsewhere, including other City agencies. Despite that these other agencies, which were well within the auditors' reach, could have informed their opinions, information provided by audit staff at the exit conference and the Report's text indicate that the judgment exercised by the auditors in opining that certain of DSF's undertakings represented an

“inappropriate” use of JOC, was predicated on the auditor’s “philosophy” and a description in a fact sheet titled “Job Order Contracting for Novices” (Fact Sheet) published on an Arizona State University website.<sup>1</sup>

We cannot speak to the auditor’s philosophy, but have carefully reviewed the Fact Sheet and have concluded that a fair and complete reading of that source supports that the Department’s selection of JOC for each of the construction jobs cited in the Report was well within the accepted and common use of that delivery method. Thus, we ask the Comptroller to consider that the Fact Sheet, which is the admitted source of opinions expressed in the Report, explains that “[m]any diverse tasks such as routine maintenance, upgrades and renovations, alterations, and minor construction for a site are very efficiently handled using a single JOC contract.” Indeed, the Fact Sheet illustrates only two categories of work that are outside the accepted use of JOC, to wit, (1) JOC is not an appropriate method for engaging construction services for “large, complex new construction projects that require extensive or innovative design”; and, (2) “some states require each job completed under a JOC contract to cost less than \$750,000.” Neither of these limitations applies to the scope or cost of work cited in the Report. As to dollar limits, the average price for the jobs with the audit sample and for the 2004 and 2005 period was between \$22,167 and \$26,295. The most costly project cited in the Report was \$157,461.12, well below the ceiling suggested in the Fact Sheet and cost reports of JOC projects performed in other large urban school districts.<sup>2</sup>

## **DEPARTMENT OF EDUCATION’S USE OF AND CONTROLS OVER JOB ORDER CONTRACTING**

New York City school custodian engineers’ responsibility for maintaining school facilities includes submitting requests for repairs and/or improvements beyond the scope of their expertise or responsibility for review by the Department’s Division of School Facilities (DSF) Managers. These requests, submitted through PASSPORT, the Department’s computerized maintenance management system,<sup>3</sup> are reviewed by a DSF manager to determine whether the work should be performed other than by the custodian engineer. Unless the request is denied at that point, a “work order task” estimating the resources required to complete the work is prepared. Thereafter, the DSF Regional Facilities Planner decides whether the job will be assigned to in-house skilled trades personnel or private contractors. If the latter, the Regional

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<sup>1</sup> © 2002 Arizona State University/Alliance for Construction Excellence  
([www.tcpn.org/JOC/The%20Story%20of%20JOC-1.pdf](http://www.tcpn.org/JOC/The%20Story%20of%20JOC-1.pdf)).

<sup>2</sup> Although the Report neither acknowledges nor incorporates comparative information provided by the Department, DSF staff forwarded to the Comptroller summaries of JOC usage obtained from the Los Angeles Unified School District (LAUSD) and the Program Director for the Chicago School Associates. The LAUSD reports that 510 projects were awarded totaling over \$37,880,000 - a per project average of just under \$75,000. According to the LAUSD Program Manager, the largest project was \$908,000; 100 projects each totaled over \$250,000. The Chicago School Associates report that 63 projects were issued at a value of \$17,428,249 - a per project average of \$276,638.

<sup>3</sup> Although the process is currently automated, during the audit period, requests for maintenance or repairs were submitted on hardcopy forms to DSF clerical staff for entry into PASSPORT.

Contract Manager determines whether the work will be performed using a requirements contract vendor or a JOC contractor.

The Department's requirements contracts for repair and maintenance are awarded on a competitive basis, generally for a construction specialty. They are best used for work that is specific and limited to clearly definable items or types of work to be performed such as toilet partitions, fluorescent ballast replacements, repairs to burners for boilers, masonry or sidewalk concrete work. By contrast, JOC is a good choice for projects requiring coordination of work to be done by multiple trades and subspecialties. In other words, the JOC method works efficiently by assigning one prime contractor to manage a multitude of tasks which otherwise would entail the use of separate individual prime contractors and an array of separate contracts.

JOC contract awards are based on a competitive process which invites contractors to submit bids in the form of a "multiplier factor" that is applied to a list of common tasks with specifications contained in the *Job Order Construction Task Catalog* (Construction Task Catalog). The Construction Task Catalog, developed by The Gordian Group (Gordian)<sup>4</sup> in consultation with DSF, currently contains approximately 70,000 units of work. In preparing a bid for a JOC contract, contractors evaluate a mix of items in the Construction Task Catalog against their own cost structure and then bid multiplier factors that reflect the contractors' anticipated costs. Multiplier factors may be higher or lower than one; a factor less than one, for example, will result in a bid price lower than the Construction Task Catalog price. The qualified contractor bidding the lowest factor is awarded the JOC contract for the specific type of work. Contracts may be awarded by Region, though contract terms permit the Department to assign work to another JOC contractor if need dictates.

When the Regional Contract Manager elects to use JOC for a particular project, the contractor is chosen based on the majority of work trade(s) involved. If more than one contractor is qualified for that type of work, the selection is based on the Region in which the project is located unless the in-Region contractor cannot perform, in which case the work may be assigned to the available JOC contractor with the lowest multiplier factor.<sup>5</sup>

Responsibility for management of work order tasks to be performed by JOC contractors may be assigned to in-house contract management staff or to the Department's construction management consultant, Gordian. Under the terms of the JOC agreement the contract manager conducts a Joint Scope Meeting with the selected contractor at the work site, resulting in a "Detailed Scope of Work" from which the contractor prepares a proposal for doing that work. As the contractor

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<sup>4</sup> The Gordian Group provides consulting services, software and documents necessary to develop, implement and support Job Order Contracting programs for facility owners including municipalities and educational systems nationwide.

<sup>5</sup> It is DSF's current practice to document on the Job Information Sheet and the PASSPORT system the reasons for reassignment of projects to a contractor other than the contractor assigned to the Region in which the work is performed.



prepares the proposal, the contract manager independently arrives at a cost estimate for the job. At the end of that process an understanding of scope and price is reached and a final proposal is prepared.

Proposals and cost estimates for jobs managed by Gordian are reviewed with DSF managers. At that point the submissions are compared with the original work order task and cost estimates. Further information regarding scope and price may be sought from the Deputy Regional Manager and from the site custodian engineer. Further, any proposal submitted by Gordian exceeding \$50,000 requires DSF's Quality and Cost Control (QCC) unit to conduct a review, which may include a site visit.

Whether the work is performed by a JOC contractor or a vendor holding a requirements contract, the work does not begin until a proceed order outlining the scope of work and price is generated. Upon completion of the job the QCC conducts a payment review/audit which may include site visits and interviews of school personnel.

#### **RESPONSE TO KEY FINDINGS**

**Finding:** *The Department is not effectively administering the Job Order Contracting Program.* The Report outlines particular areas where weaknesses were perceived and offers, in general, the observation that "problems" identified in the Report were attributable to the "lack of a formal, organized system for administering, collecting and maintaining documentation." (Report, p. 8).

**Response:** Without conceding the soundness of the underlying bases for the auditors' conclusion, the Department acknowledges that collection and maintenance of JOC-related records can be improved and is currently considering how that will be accomplished.

As to specific issues identified in this section of the Report, first, despite that language in the contract allows the Department always to demand material samples and product data, the auditors' working assumption that all job orders require that information is wrong. JOC contract guidelines require contractors to install materials and equipment consistent with the terms and specifications of each job order. Therefore, when the materials/equipment clearly have been specified there is no need to have samples or catalog cuts provided to ensure that these materials/equipment are appropriate. One of the benefits of JOC is the ability to move quickly on projects. Requiring materials and sample cuts in every circumstance would not further that objective.

Second, the Comptroller suggests that in the absence of "proper" warranties in DSF files, the Department "may be unable to compel manufacturers to correct any defects found during the warranty period," thereby implying that there is no method to redress defects other than invoking the obligations on a paper warranty.

However, omitted from the Report is that JOC contractors are contractually obligated to guarantee materials and workmanship for a minimum of two years. This requirement, which satisfies most of the types of work performed under the JOC program,<sup>6</sup> is also an obligation of the sureties that provide mandated performance and labor and material payment bonds for the JOC vendors. Thus, were a contractor to become financially unviable after performing a JOC-related project, any defect that would have been covered by the warranty provisions of the contract would become the responsibility of the surety.

The third matter concerns the lack of file documentation of DSF's pre-approval of the use of subcontractors. It is true, as the Report states, that "contractor approvals are necessary to ensure that contractors employ only qualified and responsible companies to carry out the work." For that reason the Department instituted a subcontractor qualification process beginning in April 2004, before the start of the Comptroller's audit. Since that time, over 190 contractors have been approved to work as subcontractors for our contract repair programs, including JOC projects. Although we provided the auditors with documentation relative to the subcontractor qualification process that we had instituted, the Report is silent in that regard.

Finally, as to the finding subtopic: "work performed out of scope," we note that "scope" is more commonly used in the construction industry to define the *type* rather than the *location* of the work to be performed. Our quarrel, however, is neither with the misuse of that term nor the recommendation that the Department document the reasons for assigning work outside a contractor's jurisdiction, a recommendation we intend to implement. Our objections are to the auditors' failure to raise the matter of out-of-jurisdiction work as an issue of concern during the course of fieldwork; failure to conduct a fair inquiry once the issue had surfaced; and, most troubling, the insinuation that contracts were improperly steered to vendors.

Had the auditors brought the matter of the 20 out-of-jurisdiction proceed notices to the attention of DSF managers during fieldwork, those managers would have had the opportunity to research and offer the reasons for the assignments so that the legitimacy of their actions would not have to be presented in a defensive posture. As that opportunity for a fair presentation of the issue has been left to this response, we offer the following: One job involved fire extinguisher work that was part of a citywide project assigned to one contractor for purposes of project management; three job orders were issued to the contractor that was in fact assigned to the Region in which the work was performed; three job orders were issued to contractors out of Region for reasons related to the assigned JOC contractor's bankruptcy; four job orders were issued to out-of-Region contractors because the Regional contractors were either approaching their contract not-to-exceed values or were unavailable due

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<sup>6</sup> Although the auditors were provided with copies of the relevant JOC contract requirements section before and, again, after the exit conference, the existence of contractual protections against defects beyond the manufacturers' warranties was not addressed in the Report.

to other project commitments; and, nine were assigned out of Region because there were no active Regional contracts in place when the job orders were issued.

In these cases the primary concern was to get work completed using all available resources. Given the option of waiting for an in-Region contractor or proceeding with one that was available, judgment was exercised in conformity with the terms of the contract and in favor of getting the work done. Based on our research, there is no evidence of preferential treatment in the assignment of the projects. However, in answer to the Comptroller's concerns, we have begun documenting the bases for these decisions.

**Finding:** *The Department lacks adequate written policies for performing work under Job Order Contracts.* Incorporated within this finding are the auditors' restatement of what they believe JOC is intended to be used for<sup>7</sup> and an admonition that in the absence of monetary ceilings and clear guidelines for its use, "the Department can preferentially assign work to job order contractors that should be done by either the Department's own skilled trades people or by separate requirement contracts." (Report, p. 10).

**Response:** We are perplexed by the notion that a decision to use a JOC contractor that has been selected through a competitively bid process and holds a "not-to-exceed" contract, rather than use a skilled tradesperson who is an employee of the Department or undertake a lengthy procurement process to find a contractor<sup>8</sup>, could bespeak anything improper. JOC is neither more nor less a legitimate tool for construction jobs than is any one of the other available options, regardless of the auditors' implications otherwise.

Thus, within the context of meeting the significant demands of maintaining and repairing the Department's physical plants, DSF has sought to maximize its management options through the use of in-house skilled trades, requirement contracts and, most recently, the JOC contractor program. Each Regional office has been provided with a maintenance budget to be used by the Regional contract manager and planner to assess needs and review repair requests. Managers are charged with responsibility and are held accountable for prioritizing the work, determining which repair method will facilitate completion, and working within assigned budgets. To this end, DSF managers apply their professional judgment to the assessment of the type and complexity of the work required; whether time is of the essence; and, where the work is of a type that can be performed by skilled trades, their availability. Decisions about which work method to use are driven less by the cost of a particular job than by the scope of work. We take the position that setting an artificial JOC project dollar limit is unnecessary as the managers' experience with meeting repair needs enables them to determine how best to allocate funds within

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<sup>7</sup> The Department's position relative to the appropriate use of JOC is discussed on pages 1-2 of this response.

<sup>8</sup> Requirements contracts already in place at the Department are generally not suitable for projects requiring coordination or work involving multiple trades and specialties. (See page 3, above).

their fixed budgets. Moreover, as the auditors are aware, no job that is the subject of the Report comes close to approaching the monetary ceilings set for JOC work in other large urban school districts. (See page 2, above).

As to the first two instances cited by the auditors as examples of what can go awry in the absence of written guidelines, we stand by the information provided at the exit conference, to wit: (1) the paneling installed in the library at William E. Grady High School in Brooklyn was obtained from the same vendor as had provided the modular units selected by the School Construction Authority because the specifications called for the furnishings to match; and, (2) the PS 39 window shades were installed to specification at a savings of \$128. That the auditors' calculations arrive at a lower cost is a consequence of their incorrect comparison to window shades that do not meet the PS 39 specifications.

The third issue raised within the finding concerns the Department's use of JOC to accomplish fire extinguisher work and is treated as a subtopic under the heading: "Problems With Using a Job Order Contract for Fire Extinguisher Work." (Report, p. 11). It is necessary at the outset of this discussion to clarify what the Report fails to make clear, to wit, that the "problems" raised by the auditors do not equate with unsafe conditions; there is no question that the fire extinguishers that were re-charged and repaired under the JOC program were rendered fully charged and operational as a result of the work performed. Rather, the "problems" cited in the Report pertain to missing file documentation<sup>9</sup>; one instance of a lapsed license<sup>10</sup>; and the auditors' "opinion" that the "citywide scale of the work far exceeded the type of maintenance and repair work for which the job order contracting method was intended." (Report, p. 11).

We have elsewhere in this response conceded that the Department's recordkeeping practices require improvement in certain respects and that we will work toward correcting those conditions. However, there can be no concession with respect to the wholly subjective conclusion that work orders for common repairs and maintenance, such as the fire extinguisher work that is the subject of the finding, are unsuitable for JOC assignment simply because the work extends across boroughs, or in the words of the auditors, is "city-wide" in scale. The lack of any logical basis for this opinion is apparent and, since that is the case, further response to the statement is unnecessary.

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<sup>9</sup> The auditors found that files did not contain competitive quotations; one subcontractor's file showed no evidence that the percentage of subcontractor use had been calculated; and files did not contain final reports.

<sup>10</sup> Indicative of the Report's bias in favor of fault-finding is the presentation of the licensing issue. That section leads with a finding that file documents indicated that licenses for three of the four technicians employed by the subcontractor had lapsed at the time the work was performed. The very next sentence refines the finding to incorporate the Department's post-exit conference submission of valid licenses for two of the three employees. The point is that one employee, who apparently had a valid license until it lapsed, performed some work after it had lapsed. While that is not a good thing, and we do not seek to excuse the omission, we question the manner of the presentation of this finding in the Report.

As a final point, the Department wishes to reply to and expand upon the Report's portrayal of the Department's fire extinguisher repair and maintenance services procurement. Fire extinguishers generally had been maintained in schools by custodial staff and repaired by a private contractor under a requirements agreement. When the New York City Fire Department (FDNY) revised its rules late in School Year 2000 so as to prohibit custodial staff from re-charging fire extinguishers, the Department entered into what turned out to be lengthy negotiations with the FDNY, and then, upon the failure of the negotiations, called upon the vendor that held the requirements contract to perform the work required by the FDNY. Subsequently, when it became apparent that the vendor would be unable to perform the high volume of fire extinguisher work in a timely manner, the Department opted to supplement available resources through JOC. Despite the auditors' beliefs and intimations to the contrary, there was nothing improper about the manner in which the pool of available contractors was widened. Since the particular fire extinguisher-related tasks were not already in the JOC Price Book, the Department requested bids and as many as seven distinct subcontractors submitted bids for the work. The work was done quickly and competently.

**Finding:** *The Department is Not Ensuring that Adequate Work Inspections Are Conducted.* The auditors reviewed files related to 50 sampled proceed orders and found that of the 20 projects inspected by Department staff, 19 files lacked inspection reports; of the 30 projects managed by The Gordian Group, eight were missing inspection reports. Using the missing inspection reports as a springboard, the auditors conclude that "adequate" inspections had not taken place. Had they taken place, the Report continues, "work deficiencies that we uncovered in our review of records and visits to work locations might have been corrected while work was still ongoing." (Report, p. 13).

**Response:** At the outset, the Department questions the connection between missing inspection reports and purportedly inadequate inspections and disputes the sweeping statement that the work was deficient.<sup>11</sup> In that latter regard, DSF management has conducted a review of work items identified under the headings "Problems with Quality" and "Work Not Done" in *Table 1* of the Report. (Report, p. 7). Our response to each is detailed in *Table 1B*, attached. We also attach copies of photographs of post-work conditions that, unlike the photographs appended to the Report, had been taken contemporaneously with project completion and that were in the original work files and, thus, available to the auditors during their fieldwork. Based on the photographic evidence and DSF's recent review of each project, we have concluded that the work cited in the Report generally was performed properly and in accordance with specifications; where work was incomplete, payment was not made; and, in the two instances where we agree that the work was not performed as required, the dollar value of that portion of the work totaled \$526, that is, approximately one twentieth of one percent of the \$1,108,365 total value of the work sampled.

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<sup>11</sup> The issue is raised within the finding under the heading "Problems with Work Quality, Completeness, and Timeliness."

As to inspection reports, we have reviewed the projects which the auditors indicated lacked reports and other related documents and grant that the Report correctly identifies missing documentation in the files of jobs inspected by Department staff. That situation will be remedied going forward.<sup>12</sup> However, DSF managers' records reflect that files associated with the eight Gordian projects cited in the Report had been submitted to the auditors during their fieldwork and that, upon DSF's review, those files contained inspection documents and, in some cases, photographs of the inspected work.

Since we were puzzled by the finding that contradicted information in our possession, Office of Auditor General managers contacted the auditors and again offered the files and encouraged their review. Initially, the Comptroller declined to do that, suggesting that had the inspection reports been in the files during audit fieldwork, they would not have been missed by the auditors. Further, the Comptroller took the position that the time to have raised the issue was at the exit conference, not thereafter. Two business days before the response due date, upon request by the Deputy Chancellor, Comptroller staff reviewed the eight disputed files.

The Department requested an opportunity to consider any revision to the Draft Report based on the new review before submitting a written response. However, we were advised that the Draft Report would not be amended prior to this written response for reasons similar to those provided upon our initial request that the auditors take another look at the files. What the Comptroller did share with us informally is that two of the eight files contained "acceptable" inspection reports and that a third "acceptable" inspection report was located in a file, albeit not in the correct file. As for the remaining five reports, the Comptroller takes the position that they are "not appropriate inspection reports." Unfortunately, we do not know which reports were deemed "not appropriate" and on what basis. Nonetheless, the Department stands by its position that the inspection reports are sufficient.

The Department has no basis to believe that the eight inspection reports in question were added to the files, as has been suggested by the Comptroller, after the auditors conducted fieldwork. Were this simply a matter of reconciling which agency's records accurately reflect what the files contained at the time they were turned over to the Comptroller's staff and whether the documents we offered for review constituted "acceptable" inspection reports, the issue could be raised as such and remain unresolved. However, the more pressing concern – one that we would like to see resolved before the Report is finalized and made public - is that the Report uses the assertion about eight (now five) allegedly missing inspection reports out of thirty to resurrect a 2003 letter from the Special Commissioner of Investigation for the New York City School District directing Gordian to maintain complete files.

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<sup>12</sup> We agree with the auditors' recommendation that we upgrade our in-house inspection reporting to more closely resemble the reporting performed by Gordian. The upgrade will include electronic inspection reports and photographs.

(Report, p. 14). While we believe that the finding should be removed from the final Report in its entirety, in the interest of fairness we ask, at the least, that the final Report reflect only that the contents of the files are in dispute; the inflammatory reference to the Special Commissioner should be removed. If the Comptroller agrees to either eliminate the finding or redact it, we request an opportunity to amend our formal response to remove the reference to the Special Commissioner as well.

**Finding: Problems with Cost Reasonableness.** The auditors compared the cost of projects within the scope of audit with their “independently prepared estimates” of that same work using *R.S. Means Building Construction Cost Data* and determined that in eight cases the cost of the project exceeded the auditors’ estimates and that in 20 instances the estimates were more than the actual projects’ cost the Department. The conclusion drawn by the auditors from this analysis is that “[s]uch a wide fluctuation in prices leads us to question the overall cost reasonableness of JOC work.” (Report, p. 17). It is further opined that “[t]he Department’s widespread use of the [*sic*] The Gordian Group to undertake both inspection and consulting services is an apparent conflict of interest. In addition, by neglecting to conduct its own independent price review to ensure that prices are consistent with industry standards, the Department is leaving the JOC program susceptible to fraud and abuse.” (Report, p. 18)

**Response:** Several conclusions might be drawn from the finding that 20 of 28 JOC projects cost the Department less than estimates for the same work based on *R.S. Means Building Construction Cost Data (R.S. Means)*. Among the least logical of possible conclusions is that the Department has mismanaged its JOC program from a cost perspective, and yet, that is the conclusion drawn in the Report. Moreover, despite that the cost comparisons actually work in the Department’s favor, we take the position that the auditors erred in relying on *R.S. Means* as a cost estimating tool because *R.S. Means* does not accurately represent standard industry pricing for routine repair and maintenance projects in New York City.

That position rests squarely on *R.S. Means* itself in that the publication sets guidelines for its use as follows: “This book is aimed primarily at commercial and industrial projects costing \$1,000,000 and up, or large multi-family projects. Costs are primarily for new construction or major renovation of buildings rather than repairs or minor alterations”<sup>13</sup>; “[w]e have made no allowance for overtime”<sup>14</sup>; “in dense urban areas, traffic and site storage limitations may increase [materials] costs”<sup>15</sup>; and, “[l]abor costs are based on the average of wage rates from 30 major

<sup>13</sup> The average project size in our Job Order Contracting is approximately \$25,000. The Construction Task Catalog is designed specifically around this size project.

<sup>14</sup> Between 80-90% of all work performed under the Department’s Job Order Contracting program is performed after normal school hours when the buildings are not fully occupied by students and staff. The Department’s requirement that the contractors bid an Other Than Normal Working Hours Adjustment Factor has allowed the Department to take advantage of competitive bidding for this work.

<sup>15</sup> Each material cost in the *R.S. Means* must be adjusted. This is in addition to using the City Cost Index. The JOC Construction Task Catalog is prepared with New York City material prices.

cities . . . If wage rates in your area vary from those used in this book, or if rate increases are expected within a given year, labor costs should be adjusted accordingly.”<sup>16</sup>

The above guidelines, plus the facts that *R.S. Means* does not contain many of the standard products and materials upon which the Department relies for school maintenance and repair, and that *R.S. Means* does not include demolition prices for most of the replacement-in-kind work performed by the Department, render *R.S. Means* an unsuitable guide for the Department’s cost estimates. For those same reasons it should not have been used by the auditors to evaluate the cost effectiveness of the JOC program.

As to the assertion that the Department’s use of Gordian to undertake the development of the Construction Task Catalog, as well as inspection and consulting services could be a conflict of interest, we offer this. First, the Construction Task Catalog is, through the competitive bidding process, subject to market forces that operate as a natural check on the prices established in that catalog. However, as we seek to avoid even the appearance of impropriety, in addition to those controls already inherent in the competitive JOC bidding process and DSF’s scope of work review (see pages 2-4, above), we commit to implementing random site reviews by DSF personnel of Gordian’s scoping of projects, including those below the current \$50,000 threshold for QCC reviews. (See page 4, above).

**Finding:** *\$63,482 in Fees Overpaid.* The Report states that Gordian billed, and the Department overpaid \$63,482 in construction management fees, in that Gordian charged 13.5% for invoices submitted for July 2003 to April 2004, when it should have billed at a rate of 13% for that work. The Report ties the purported overpayment to a finding that the “Department lacks an adequate system of internal controls to ensure that invoices submitted by Gordian are properly reviewed and approved.” (Report, p. 18).

**Response:** The Report clearly indicates that there is no meeting of the minds between the auditors and the Department with respect to which contract payment terms were in effect at the time the Department paid Gordian invoices submitted for July 2003 through April 2004 and whether the Department overpaid Gordian. Since option periods were imbedded within the original contract and amendments were executed for sound reasons during option periods, perhaps clarity can be reached by reference to the following outline of relevant contract terms that were in effect from contract inception through the audit period.

Gordian contracted with the Department to provide construction management services for JOC work on an as-needed basis. The original contract term was one year beginning November 18, 1999 and ending November 17, 2000, with an option

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<sup>16</sup> Labor rates in the R.S. Means Building Construction Data are not comparable to NYC prevailing wage rates. Each labor rate must be adjusted. This is in addition to using the City Cost Index. The JOC Construction Task Catalog is prepared using New York City prevailing wage rates.



to renew for one additional year up to four years, each of those option periods to begin and end in November. The annual not-to-exceed contract value was \$1.8 million, that is, \$9 million in total over the life of the original contract plus four option years.

Gordian's fees, computed as of the date a proceed order was issued, were based on a negotiated percentage to be applied to the cost of JOC projects managed by Gordian during each contract/option period.<sup>17</sup> As originally drafted, the contract allowed for the application of a percentage of construction management fees to the first \$10 million in total costs of projects managed and a smaller percentage to projects managed in excess of \$10 million for the year. The management fee percentages increased, per the original contract's terms, by a small amount in each option year.

In April 2002, during the second option period, the original contract was amended to offer the Department greater flexibility of use and continuity of service. Thus, rather than requiring DSF to wait for the November anniversary date before exercising the option to renew the contract for an additional year, the amendment allowed a new contract period to begin either upon the expiration of the option period in November (as the original contract anticipated) or upon the payment to Gordian of \$1.8 million during that year, whichever was earlier.<sup>18</sup>

Thereafter, in May 2004, the contract was again amended to increase the total contract value from \$9 million to \$11 million over the period November 1999 through November 2004 (the original contract term plus the four option years). In consideration for the increased total contract value, Gordian agreed to two conditions: (1) a construction management fee of 13% would be applied to all work managed in excess of \$9 million - a threshold that was reached in mid-April 2004; and, (2) a fee of 13.5% would be applied to *all* work performed that year within the \$9 million contract threshold. The original agreement for that option period called for a 13.93% construction management fee to be applied to the first \$10 million in total costs of projects managed and 13.5% to the excess.

Since the invoices submitted for July 2003 through April 2004 (the period of audit inquiry) would have been subject to a 13.93% construction management charge but for the amendment reducing the fee to 13.5%, the Department did not overpay Gordian, and in fact, realized a savings of approximately \$43,000. As a final note, we have computed the overall cost savings to the Department as a consequence of exercising the last option period and entering into a contract amendment with Gordian and are pleased to report that the Department saved in excess of \$114,000

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<sup>17</sup> Payment to Gordian accrued at the time of project completion.

<sup>18</sup> As more/larger projects were managed by Gordian over the course of the contract and option periods, the \$1.8 million contract ceiling was reached earlier, leaving DSF with no recourse under the terms of the original contract but to wait for the contract period to expire before assigning new management work to Gordian. The amendment was aimed at remedying this situation.

for construction management work performed by Gordian between July 2003 and November 17, 2004.

We again offer the contracts and amendments to the auditors for their review and will provide staff if necessary to explain them to the auditors. However, since the payment terms are not subjective, we expect that at the end of this process, the Report will be amended to accurately reflect the facts.

**Finding:** *Problems with Databases.* The Report point to various database reconciliation problems with both PASSPORT (the Department's maintenance and repair request tracking system) and PROGEN (the JOC-specific database management software application). The auditors recommend that the Department implement internal control procedures to ensure data integrity and create an electronic interface between PASSPORT and PROGEN.

**Response:** Many of the shortcomings of the data systems identified by the auditors also had been noted by DSF managers. Consequently, policies and procedures already have been implemented to significantly improve the integrity of PASSPORT data, which is now reconcilable with both PROGEN and, very importantly, FAMIS, the Department's financial accounting system. Included among the significant improvements that have occurred in Fiscal Year 2006 are the following that directly relate to the findings.

- A PASSPORT work order number field has been added to the PROGEN database providing an electronic link with PASSPORT to permit us to update and reconcile work scope information that resides in both systems.
- DSF's Brooklyn area office, including its contract management staff, is relocating to DSF Headquarters in Long Island City, thereby obviating the need for a stand-alone PROGEN application in the Brooklyn area office.
- An upgrade of the PASSPORT system to Version 10 has allowed for more detailed reporting of data and provides DSF with the ability to more easily view and verify data.
- DSF has established an Enterprise Reporting Unit (ERU) to report on the information contained in PASSPORT; to provide database management quality control; and to ensure that data protocols are established and properly maintained. The ERU is comprised of information technology staff and construction and maintenance professionals who have a background in database management. Their day-to-day review of the data allows them to identify, on a very granular level, issues involving data input and integrity. With the ERU taking the lead, a "best practices" working group has been established.

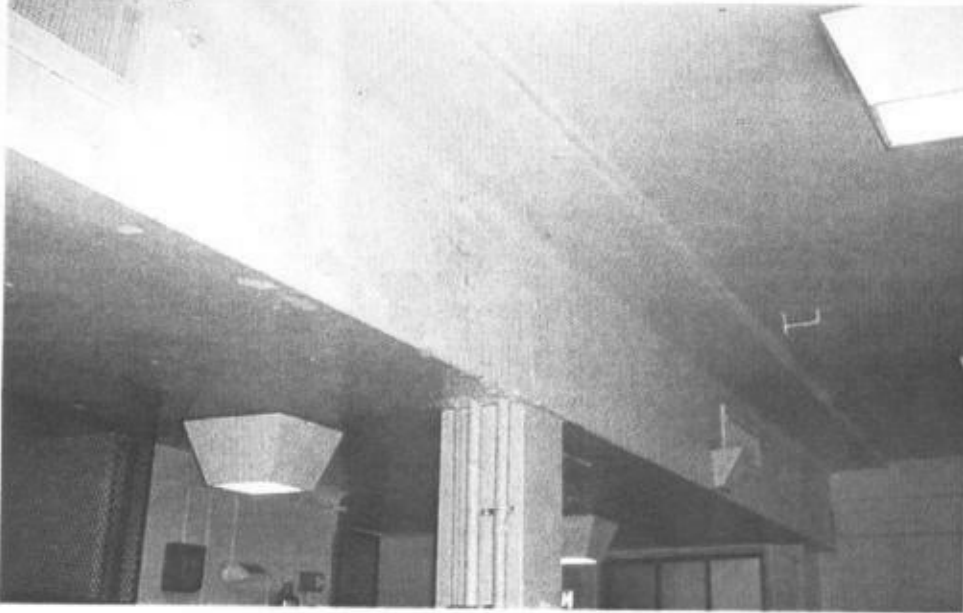
**TABLE 1A**  
**Summary of Comptroller's Audit of NYCDOE's Job Order Contracting**

Serial	Work Description	Summary of Department of Education's Response	Original Cost	Payment for Incomplete Work
<b>1 Comptroller's Finding: Incomplete Work</b>				
M136	Bathroom Renovation	Work was done according to the work order specifications.	\$114,000	\$0.00
K620	Library Upgrade	Scope changes led to project delays.	\$75,144	\$0.00
K028	Installation of Bathroom Fixtures	Work was done according to the work order specifications.	\$43,140	\$0.00
Q175	Installation of Toilet Partitions	Work was done according to the work order specifications.	\$15,294	\$0.00
Q162	Painting of Pipes	The contractor has returned to the site and completed the required work.	\$4,615	\$74.56
X470	Repair of Concrete Wall	Work was done according to the work order specifications.	\$3,274	\$0.00
M149	Installation of Basketball Backboards	The contractor has returned to the site and completed the required work.	\$2,715	\$451.76
<b>2 Comptroller's Finding: Quality Issue</b>				
X046	Paint and Plaster of Ceiling	There is no issue with the quality of the work.	\$28,695	\$0.00
Q070	Installation of Entrance Doors	There is no issue with the quality of the work.	\$24,087	\$0.00
K179	Installation of Exterior Sign	Work was done according to the work order specifications.	\$3,249	\$0.00
K450	Installation of Air Conditioner Guards	No payment was made for the poor work performed.	\$1,194	\$0.00
<b>3 Comptroller's Finding: Incomplete Work and Quality Issue</b>				
K138	Painting of Pipes	Work was done according to the work order specifications.	\$157,461	\$0.00
K262	Installation of Handrails	Work was done according to the work order specifications.	\$36,009	\$0.00
K228	Installation of Carpeting	Contractor did not do the work and payment was not made.	\$4,012	\$0.00

TABLE 1B  
Detail Summary of Comptroller's Audit of NYCDOE's Job Order Contracting

School	Work Description	Comptroller's Findings with Proposed to Work	Date of Educator's Response	Original Cost	Value of Reimbursable Work
K028	Installation of bathroom fixtures [G]	Work Not Done (4th fl washroom fixtures \$278.11);	A couple of faucet handles were vandalized after installation. Work was done according to the specifications. The bathroom where the work was done was a boy's bathroom, not a girls bathroom.	\$43,140.30	\$0.00
K138	painting of pipes [G]	Work Not Done (2nd fl corridor unpainted piping \$524.48); Problems with Quality	The contractor provided the work according to the exact specifications of the job. The length of the painted conduit along with the wire mold more than equal the footage of pipe required in the Job Order. The contractor was not required to paint the galvanized pipe. There are a few areas in the building demonstrating poor preparation (i.e., painted over staples) which are not part of this job but likely performed by the on site staff as part of the maintenance painting duties. Painted radiator guards, wood moulding, riser guards and some doors show that the work was done over chips (this is a common practice due to lead abatement issues). Funding constraints limited the scope of this project to ceiling repair and surface cosmetic painting so that we could increase the amount of needed work in other areas of the building. A review of the building after receipt of the audit reveals that there are areas that were patched due to later damage.	\$157,461.12	\$0.00
K179	installation of exterior sign [DSF]	Problems with Quality (inoperable message board);	Contractor successfully installed a sign provided and purchased by the PTA. The defect noted was not the contractor's responsibility and was repaired.	\$3,249.25	\$0.00
K228	installation of carpeting [DSF]	Work Not Done (vinyl base \$241,86, missing carpeting); Quality Issue	We agree that the core base was not installed; however, there were no payments made for any alleged work done.	\$4,012.23	\$0.00
K262	installation of handrails [G]	Work Not Done (missing adhesive strips, unpainted and curved handrails \$363.71); Problems with Quality	Alleged "unpainted" handrail was galvanized pipe that is not supposed to be painted. Installation of galvanized pipe and sloped stair is equivalent in price to the curved and painted rails and an acceptable substitute. The strips were not contained in the proposal, thus not part of the installation.	\$36,009.49	\$0.00
K450 E. Dist. HS	installation of air conditioner guards [G]	Problems with Quality	DoE agrees with the Comptroller and took an exception to the work done. Since there was no corrective action, no payment was made for that work performed.	\$1,194.08	\$0.00
X620 Grady HS	library upgrade [DSF]	Work Not Done - but still in progress (data lines and connections for internal service)	Major changes in scope requested by the school as well as coordination with the SCA led to the project delays. The use of the non-pre-priced veneer plywood was in response to a request from the Furniture and Equipment Unit at the SCA in order to match the veneer of the furniture supplied by the SCA for the Library	\$75,143.52	\$0.00
M136	bathroom renovation [DSF]	Work Not Done (watercloset and accessories \$2,831.41)	There were changes made to the project scope so installation of the original items were no longer required. The contractor properly installed an alcove stall and a wall hung water closet while removing two urinals. The on-site staff properly installed the grab bar.	\$114,000.00	\$0.00
M149	installation of basketball backboards [DSF]	Work Not Done (unpainted basketball steel support \$451,76)	Supporting steel should have been painted since it was part of the scope. DoE records indicate payment for work not done. The contractor has since returned to the site and completed the required work.	\$2,714.66	\$451.76
Q070	installation of entrance doors [G]	Problems with Quality	There was no problem with the quality of the installation of the entrance doors. Damage (scratches) are likely due to impact from hand trucks. The condition of the doors (rust and pitting) is attributable to "inadequate or deferred maintenance" by the staff at the site. Moreover, repeated banging of the doors while open would cause misalignment. It appears that the doors were planned or ordered after installation which allowed water to penetrate and create swelling.	\$24,086.60	\$0.00
Q162	painting of pipes [DSF]	Work Not Done (Unpainted piping \$217.62)	All required work was completed according to specifications, except for approximately 19 linear feet. The contractor has returned to the site and completed the remaining required work.	\$4,614.86	\$74.56
Q175	installation of toilet partitions [G]	Work Not Done (4 washroom accessories \$320.28);	All accessories installed along with partitions according to job specifications. Inspection in response to Comptroller's finding reveals units were removed subsequent to installation.	\$15,293.93	\$0.00
X046	paint and plaster of ceiling [G]	Problems with Quality	Due to budget constraints and the desire to improve the condition of the ceiling, there was a limited scope of work issued costing \$28,695.36 that did not amount to a full scale paint and plaster job that would have cost a minimum of \$100,000.	\$28,695.36	\$0.00
X470 So. Bx. HS	repair of concrete wall [DSF]	Work Not Done (concrete soffit repair \$763.85);	There is no issue with the quality of the work. Nonetheless, there is a below grade moisture condition (contractor) of stored pipe damaged the stucco.	\$3,273.53	\$0.00

X046 Ceiling Before 3



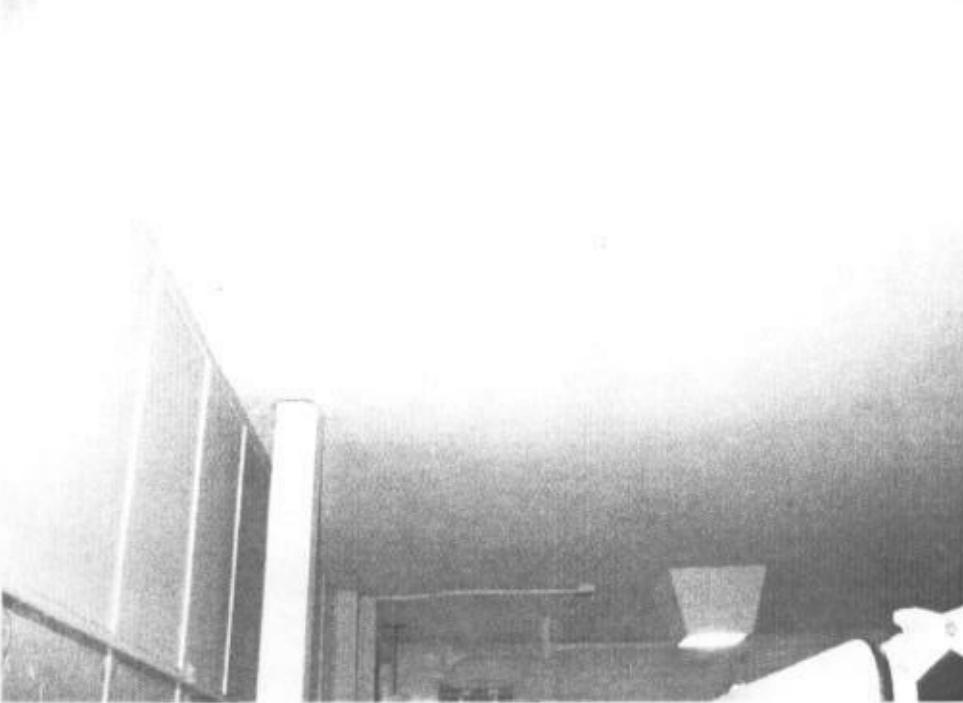
X046 Ceiling After 3



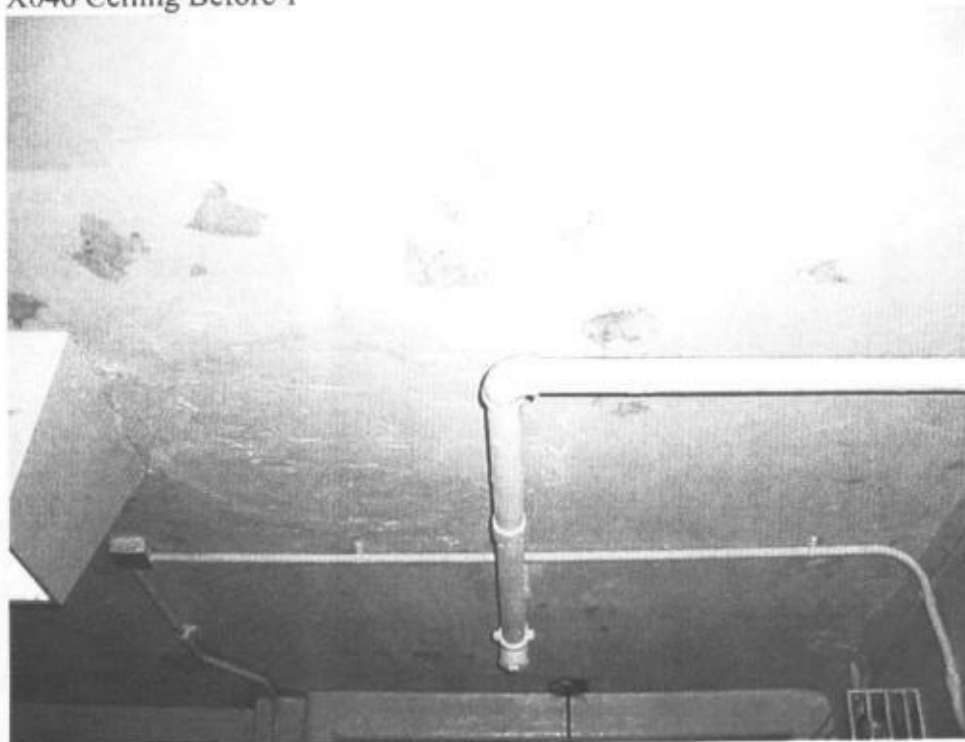
X046 Ceiling Before 2



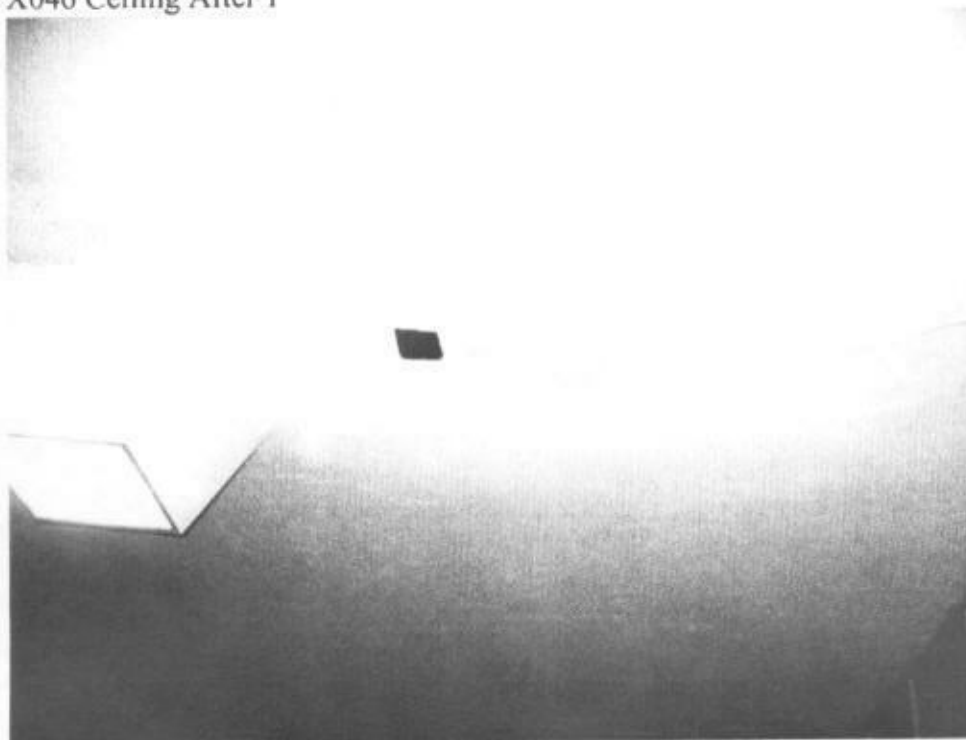
X046 Ceiling After 2



X046 Ceiling Before 1



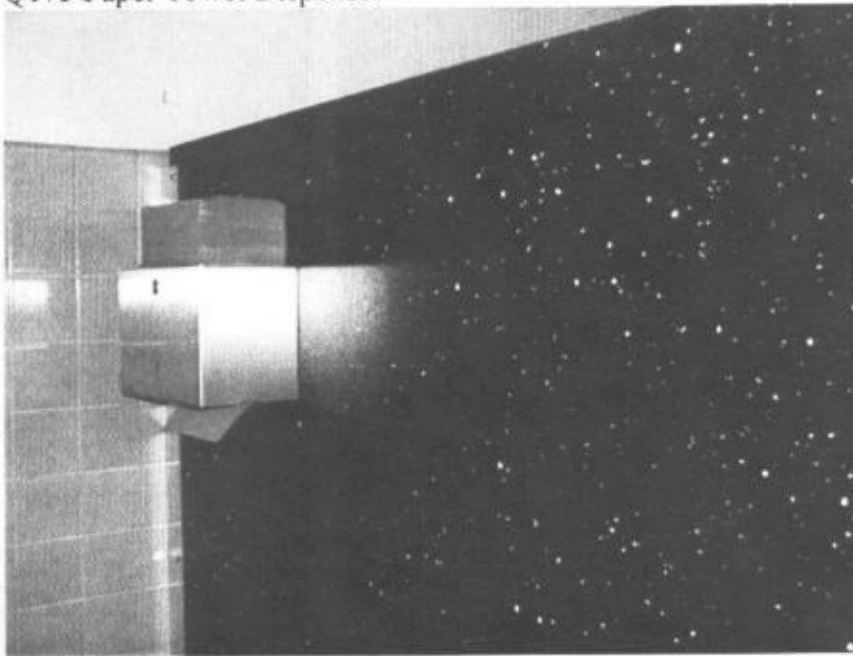
X046 Ceiling After 1



Q175 Sanitary Napkin Holder



Q175 Paper Towel Dispenser

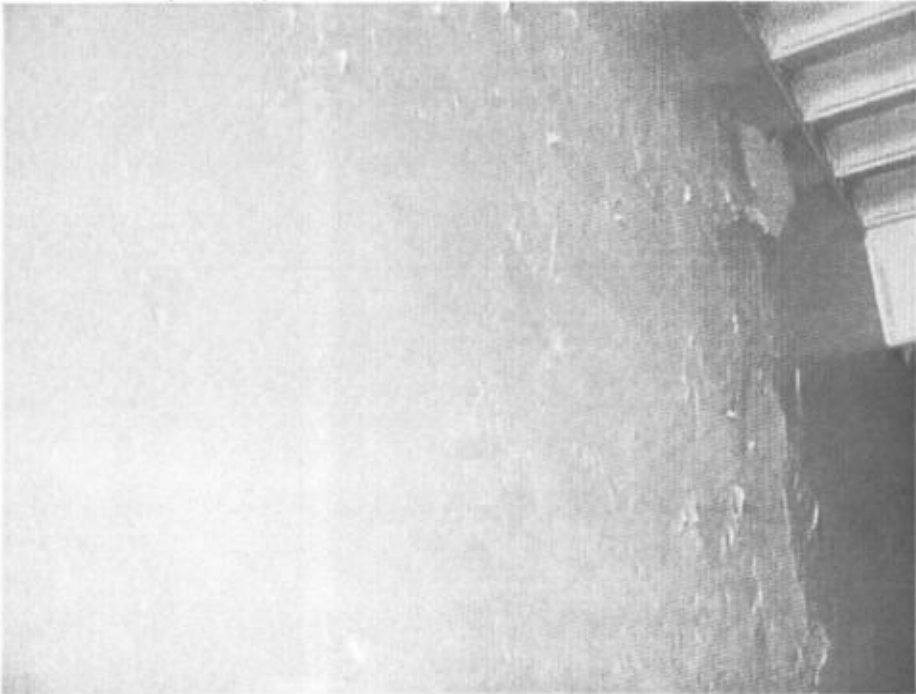




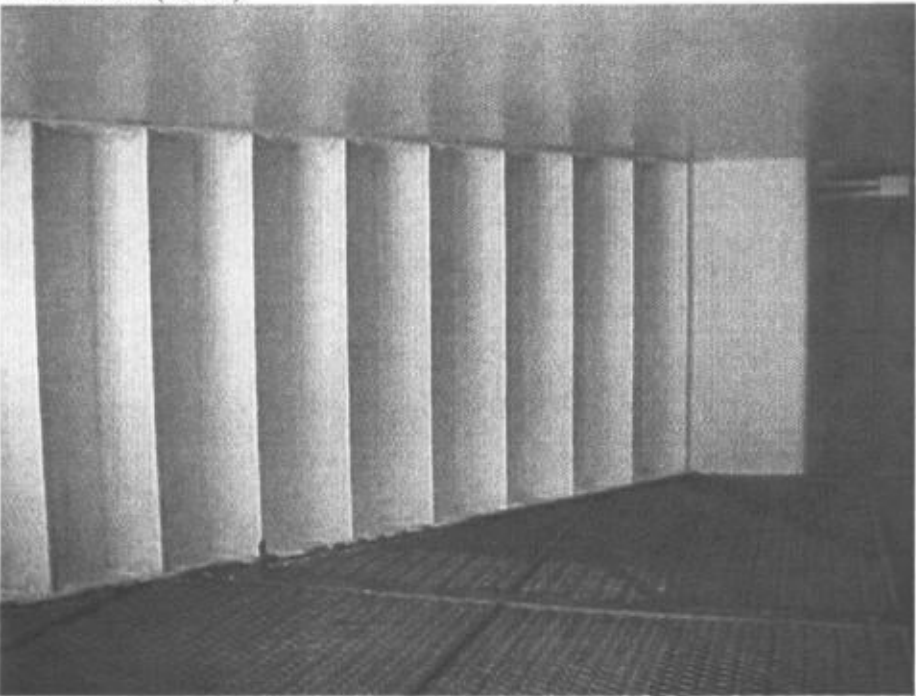
K028 Faucets Installed



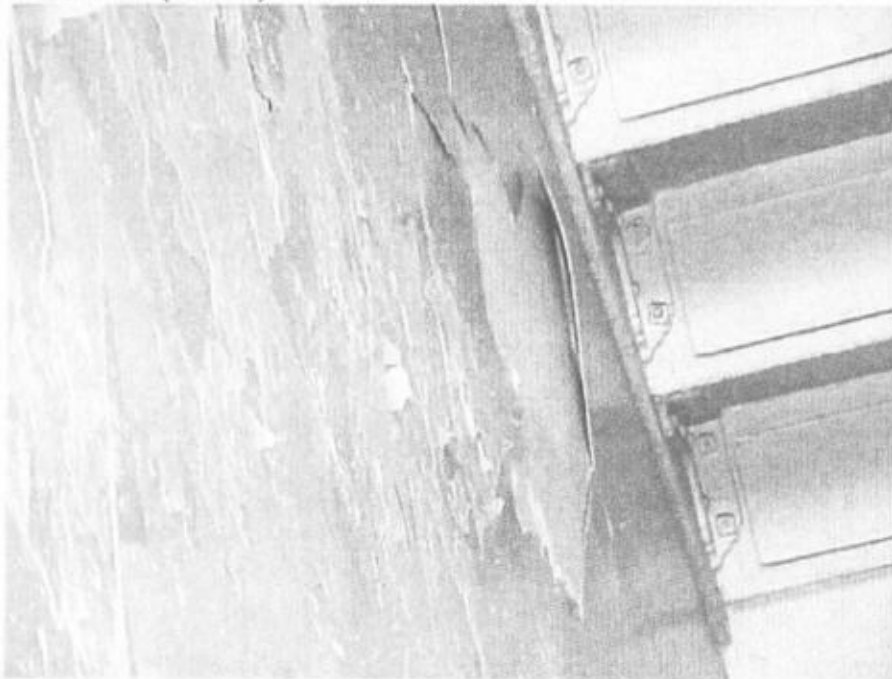
K138 Walls (Before)



K138 Walls(After)



K138 Wall (Before)



K138 Wall (After)



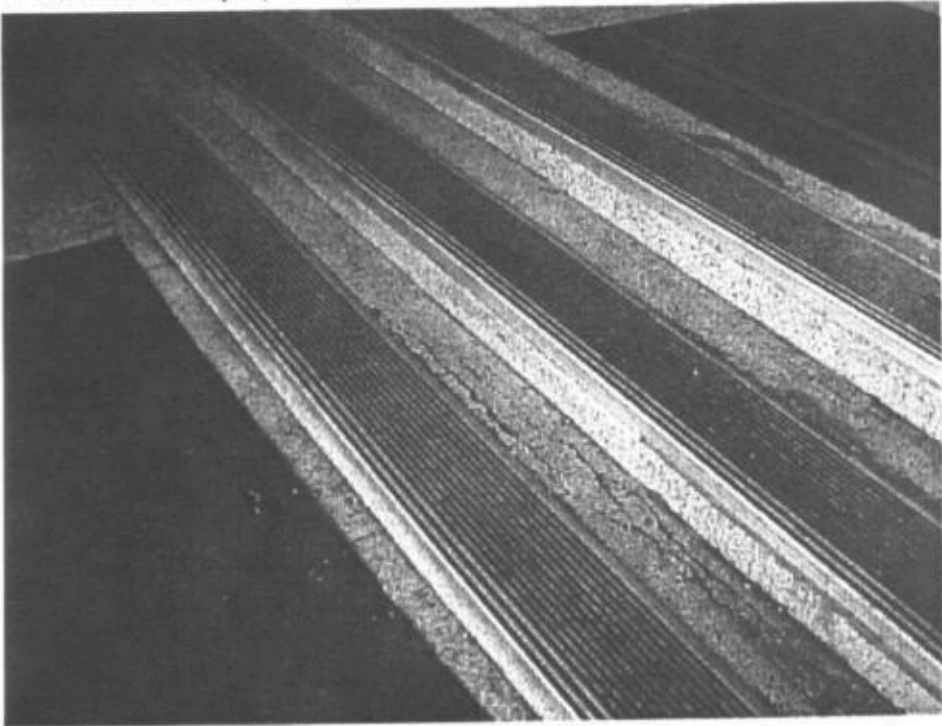
K138 Stairway Ceiling (Before)



K138 Stairway Ceiling (After)



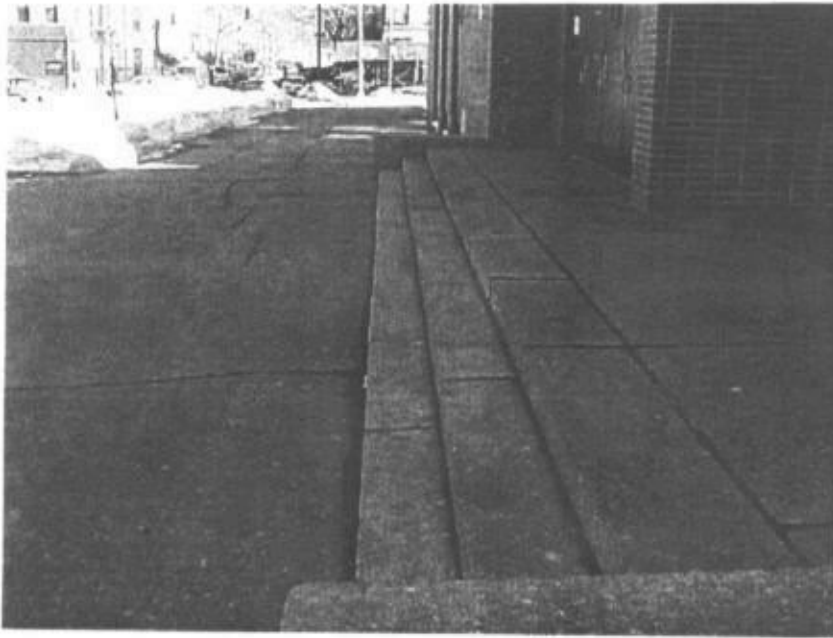
K262 Marble Steps (Before)



K262 Marble Steps (After)



K262 Handrails (Before)



K262 Handrails (After)



Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 1 OF 24

RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

1. The Department should ensure that JOC contractors submit all required material samples, product data, drawings, and test reports for approval.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

1. In most cases, the materials required for a project are specified in the job order. We require that material supplies, product data samples and supporting documentation be provided in those instances where the contract specification reference is not explicit or the contractor wants to use "or equal" materials such as for non-prepriced items.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 2 OF 24

RESPONSE DATE: June 2006

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AUDITING AGENCY: NYC Comptroller's Office

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DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

2. The Department should ensure that JOC contractors submit all required guarantees and warranties.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

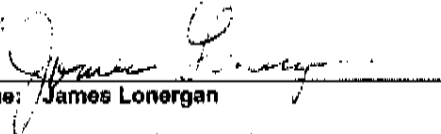
2. We have a built-in contractual two-year guarantee for materials and workmanship in the JOC contract which covers most of our job order work. We require hard copy guarantees and warranties only for products where the manufacturer's warranty is greater than the contractual coverage period; e.g., air conditioner compressors and hot water heaters. This requirement is also an obligation of the sureties that provide mandated performance and labor and material payment bonds for the JOC vendors. Thus, were a contractor to become financially unviable after performing a JOC-related project, any defect that would have been covered by the warranty provisions of the contract would become the responsibility of the surety.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date



Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 3 OF 24

RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

3. The Department should approve in writing the use of subcontractors to be employed by contractors on JOC projects.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**


3. The Division implemented a subcontractor approval process beginning in April 2004 to qualify subcontractors. The JOC contractors must use these approved subcontractors or have an unapproved subcontractor qualified.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
\_\_\_\_\_  
Print Name: James Lonergan

6-16-06  
Date

Print Title: Executive Director, Division of School Facilities

Audit Implementation Plan Form C

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 4 OF 24

RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**C. RECOMMENDATION WHICH THE AGENCY  
AGREES WITH BUT IS PENDING IMPLEMENTATION**

4. The Department should implement an effective system of administration to record, collect, file, and properly maintain all required documentation in Departmental files.

**RESPONSE TO RECOMMENDATION**

4. We agree and will issue guidelines for better documentation collection and maintenance by September 2006. The guidelines will include electronic inspection tracking reports as well as before and after project photographs.

**TARGET IMPLEMENTATION DATE**

September 2006

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form C

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 5 OF 24

RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**C. RECOMMENDATION WHICH THE AGENCY**  
**AGREES WITH BUT IS PENDING IMPLEMENTATION**

5. The Department should ensure that JOC contractors are assigned work within their designated regions. In those cases where work must be assigned to a contractor in another region, written justification must be included in Department files.

**RESPONSE TO RECOMMENDATION**

5. We agree that the Division will document instances in the PassPort database when job orders are assigned outside a specified JOC contractor's region.

**TARGET IMPLEMENTATION DATE**

July 2006

**RESPONSIBILITY CENTER**

Signature:



Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06

Date

Audit Implementation Plan Form D

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 6 OF 24

RESPONSE DATE: June 2006

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AUDITING AGENCY: NYC Comptroller's Office

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DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**D. RECOMMENDATION WHICH THE AGENCY  
DISAGREES WITH AND WILL NOT IMPLEMENT**

6. The Department should develop and implement written guidelines that stipulate the circumstances and monetary threshold under which the use of job order contracts would be appropriate. In this regard, the use of job order contracts should be limited to the performance of repairs, maintenance work or minor construction.

**RESPONSE TO RECOMMENDATION  
(ALTERNATIVE SOLUTIONS ON CURRENT SITUATION CITED IN AUDIT REPORT)**

6. The Regional Facilities Managers and Planners are knowledgeable about the needs of this agency and the use of available procedures for facilities maintenance/repair/renovation. The managers determine how best to utilize the ROC's maintenance budgets for ensuring prompt and cost effective work completions either through skilled trades, requirement contracts or use of JOCs. As discussed in the Department's response, DSF's levels of review ensure that services are procured and implemented appropriately.

**RESPONSIBILITY CENTER**

Signature:

  
\_\_\_\_\_

Print Name: James Lonergan

6-16-06

Date

Print Title: Executive Director, Division of School Facilities

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

7. The Department should ensure that it adheres to unit prices in its "Construction Cost Catalog" when determining the cost of proceed order work. For items whose price cannot be determined by established unit prices, ensure that contractors obtain competitive bids.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

7. Our current standard procedure is to utilize the Price Book for job orders. When it is necessary to use materials that are not pre-priced, we solicit a minimum of three bids.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
\_\_\_\_\_  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form C

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 8 OF 24

RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**C. RECOMMENDATION WHICH THE AGENCY  
AGREES WITH BUT IS PENDING IMPLEMENTATION**

8. The Department should implement inspection procedures for Division inspectors consistent with procedures required for The Gordian Group inspectors. Ensure that all inspections of proceed order work adhere to procedures and are adequately conducted and documented.

**RESPONSE TO RECOMMENDATION**


8. We will require our inspectors to better document their field inspections of job order work and track the information electronically. This procedure will be supplemented with photographs by September 2006.

**TARGET IMPLEMENTATION DATE**

September 2006

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

9. The Department should instruct Division staff to review inspection reports submitted by The Gordian Group to ensure compliance with required procedures.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**


9. We have been performing quality control reviews of The Gordian Group documents to ensure compliance with our requirements and will continue to do so in a more aggressive manner.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form C

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**C. RECOMMENDATION WHICH THE AGENCY  
AGREES WITH BUT IS PENDING IMPLEMENTATION**

10. The Department should maintain all required inspection reports and supporting documentation in Department files.

**RESPONSE TO RECOMMENDATION**


10. We agree and will expand our inspection files to incorporate electronic tracking and photos of project inspections.

**TARGET IMPLEMENTATION DATE**

September 2006

**RESPONSIBILITY CENTER**

Signature:

  
\_\_\_\_\_  
Print Name: James Lonergan

6-16-06  
Date

Print Title: Executive Director, Division of School Facilities



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NEW YORK CITY DEPARTMENT OF EDUCATION  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

11. The Department should review file documentation to determine if The Gordian Group inspected the work discussed in this report. If the Department cannot verify that inspections were properly conducted, the Department should seek to recoup any payments made to The Gordian Group for that work.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

11. DSF reviewed the audit findings and conducted field visits of the work locations cited in the Report. Based on that review, it was determined that it was done to specification or that a credit had already been taken for any incomplete work by the contractor. The Gordian Group therefore complied with its obligations under their contract.

**IMPLEMENTATION DATE**

Implemented May 2006

**RESPONSIBILITY CENTER**

Signature: \_\_\_\_\_

Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06

Date

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

12. The Department should ensure that JOC contractors complete all work satisfactorily.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

12. The Report's findings are addressed in the Department's response. The Department already takes steps to ensure that all work is done completely and satisfactorily, including work performed by JOC contractors.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06

Date

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

13. The Department should ensure that inspectors certify the worthiness of surface preparation work before finish paint coatings and plaster are applied.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

13. We will continue to enforce our existing requirements concerning paint and plaster work to ensure compliance consistent with all contract specifications including those related to lead-based paint and painting on surfaces that have suffered problems with leakage. Contractors who do not follow job specification guidelines are directed to return to finish the work.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
\_\_\_\_\_  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06

Date

Audit Implementation Plan Form A

PAGE 14 OF 24

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

14. The Department should compel the contractors mentioned in this report to immediately perform all necessary remedial work to correct noted deficiencies.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

14. Consistent with procedures that are already in place, we have taken credits for work where we deemed that contractors failed to perform satisfactorily.

**IMPLEMENTATION DATE**

Implemented

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

15. The Department should ensure that JOC contractors complete work on schedule.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

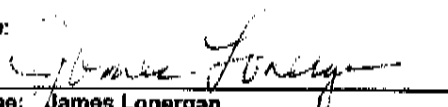
15. Overall, we agree that contractors should complete work on schedule. However, the original job order schedule is only an estimate and should be updated by the inspector to reflect conditions at the school and time of year. This information will be better documented in the project files.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:



Print Name: James Lonergan

6-16-06  
Date

Print Title: Executive Director, Division of School Facilities

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED

16. Ensure that contractors complete any incomplete work.

RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN

16. We require contractors that have not completed work satisfactorily to return to the job site to fulfill their obligations. Failure of compliance may also result in monetary penalties.

Two contractors that were cited by the auditors for incomplete work were ordered to return to the projects and have now completed the jobs.

IMPLEMENTATION DATE

Current Procedure

RESPONSIBILITY CENTER

Signature:   
\_\_\_\_\_  
Print Name: James Lonergan

6-26-06  
Date

Print Title: Executive Director, Division of School Facilities

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

17. The Department should ensure that proceed orders contain provisions for liquidated damages. Assess liquidated damages when contractors fail to complete work in accordance with scheduled timeframes.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

17. We have sufficient provisions in our contracts concerning the assessment of liquidated damages where appropriate.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form C

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**C. RECOMMENDATION WHICH THE AGENCY  
AGREES WITH BUT IS PENDING IMPLEMENTATION**

18. The Department should review the unit prices in the "Construction Cost Catalog," and make any necessary adjustments to ensure that the prices are consistent with industry standards.

**RESPONSE TO RECOMMENDATION**

18. The competitive bidding process provides assurance that "Construction Cost Catalog," prices reflect market conditions. However, as an additional check, we will conduct an annual sample review of unit prices of commonly used materials in the "Construction Cost Catalog" and will recommend changes as appropriate.

**TARGET IMPLEMENTATION DATE**

October 2006

**RESPONSIBILITY CENTER**

Signature:

  
\_\_\_\_\_  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date



Audit Implementation Plan Form D

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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PAGE 19 OF 24

RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 18, 2006

AUDIT NUMBER: FR05-139A

**D. RECOMMENDATION WHICH THE AGENCY**  
**DISAGREES WITH AND WILL NOT IMPLEMENT**

19. The Department should recoup \$63,482 in overpayments to the Gordian Group.

**RESPONSE TO RECOMMENDATION**  
**(ALTERNATIVE SOLUTIONS ON CURRENT SITUATION CITED IN AUDIT REPORT)**

19. The Department paid the Gordian Group a construction management fee in accordance with the contract terms in effect at the time the fee accrued.

**RESPONSIBILITY CENTER**

Signature:   
\_\_\_\_\_  
Print Name: James Loneragan

6-16-06  
Date

Print Title: Executive Director, Division of School Facilities

Audit Implementation Plan Form B

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**B. RECOMMENDATION WHICH THE AGENCY  
HAS PARTIALLY IMPLEMENTED**

20. The Department should verify that all work included in The Gordian Group's December 2004 invoice was actually completed in the period before December 2004.

**WHAT HAS BEEN IMPLEMENTED?**

20. In response to the finding, a DSF manager reviewed whether the work overseen by The Gordian Group and invoiced in December 2004, was actually completed. The results of that desk audit indicates that the work was completed satisfactorily.

**WHAT HAS TO BE IMPLEMENTED?**


20. We will subsequently determine the dates when the work was completed.

**EXPECTED IMPLEMENTATION DATE**

August 2006

**RESPONSIBILITY CENTER**

Signature:

  
\_\_\_\_\_

Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06  
Date

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

21. The Department should implement internal controls to ensure that invoices are properly reviewed and approved.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

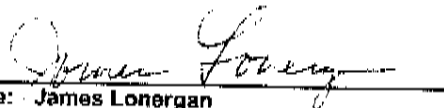
21. Before the release, and independently of the Comptroller's draft audit report, DSF implemented additional internal controls which became effective with the Gordian Group's new contract. A senior DSF manager has been assigned to review, on a post-audit basis, Gordian's construction management fees to verify that work has been completed before payment is made.

**IMPLEMENTATION DATE**

Implemented January 2006

**RESPONSIBILITY CENTER**

Signature:



Print Name: James Lonergan

6-16-06

Date

Print Title: Executive Director, Division of School Facilities

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

22. The Department should implement adequate controls, as required by Comptroller's Directive 18, to ensure that databases are complete and accurate.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

22. DSF has established an Enterprise Reporting Unit (ERU) to report on the information contained in PASSPORT; to provide database management quality control; and to ensure that data protocols are established and properly maintained. The ERU is comprised of information technology staff and construction and maintenance professionals who have a background in database management. Their day-to-day review of the data allows them to identify, on a very granular level, issues involving data input and integrity. With the ERU taking the lead, a "best practices" working group has been established.

**IMPLEMENTATION DATE**

Ongoing Procedure

**RESPONSIBILITY CENTER**

Signature:



Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06

Date

Audit Implementation Plan Form A

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2006

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

23. The Department should create an electronic interface that would allow information to be sent between PROGEN and PASSPORT and also allow for system reconciliation.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

23. Since early 2006, the PROGEN and PASSPORT systems have been utilizing a work order field that allows the Division to reconcile project information contained in both data bases.

**IMPLEMENTATION DATE**

Current Procedure

**RESPONSIBILITY CENTER**

Signature:

  
Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-06

Date

Audit Implementation Plan Form A

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NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
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RESPONSE DATE: June 2008

AUDIT TITLE: Audit Report on Job Order Contracting  
By the Department of Education

AUDITING AGENCY: NYC Comptroller's Office

DIVISION: School Facilities

DRAFT REPORT DATE: May 19, 2006

AUDIT NUMBER: FR05-139A

**A. RECOMMENDATION WHICH THE AGENCY  
HAS IMPLEMENTED**

24. The Department should correct all database deficiencies identified in this report.

**RESPONSE TO RECOMMENDATION - IMPLEMENTATION PLAN**

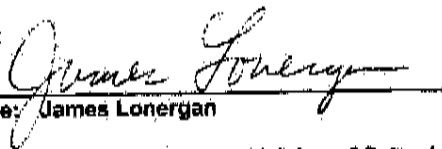
24. The updating of databases is an ongoing process for DSF and has already resulted in improvements as discussed in the Department's audit response.

**IMPLEMENTATION DATE**

Ongoing Procedure

**RESPONSIBILITY CENTER**

Signature:



Print Name: James Lonergan

Print Title: Executive Director, Division of School Facilities

6-16-08  
Date