

State Oversight of Hurricane Sandy: Some Problems and Questions

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by Janice Fine, Associate Professor, Rutgers School of Management and Labor Relations

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Introduction

In December 2013, the Christie Administration terminated the largest contractor hired to provide Hurricane Sandy relief services, HGI (Hammerman & Gainer) which had a 3 year, \$67.5 million contract to manage the Renovation, Reconstruction, Elevation and Mitigation (RREM) program¹, and more recently, the URS Corporation, which had a \$20 million contract to supervise the rebuilding of homes destroyed in the hurricane². What went wrong?

These companies, that were awarded multi-million dollar contracts and charged with administering millions in Sandy Recovery funds, were supposed to be overseen by the Department of Community Affairs (DCA). Their failures have had far-reaching consequences for Sandy victims. Recovery centers frequently lost applications or provided misleading advice on what documentation was needed. Ultimately thousands of homeowners were wrongly found to be ineligible and the process they could utilize to appeal these decisions was also poorly publicized.³ Documents released by the Fair Share Housing Center paint a disturbing portrait of what happens when oversight is neglected. From what we have come to understand after studying the state's oversight policies and practices for close to three years, this was not an isolated problem due to emergency circumstances but rather a consequence of a deep, systemic problem many years in the making.

While many state governments are actively engaging in government contracting, research strongly suggests that government capacity to provide adequate and effective oversight has dwindled—and New Jersey is no exception.⁴ The two keys to contract oversight are (1) well-written contracts adequately defining the responsibilities of the contractor and the protections of the state and (2) strong, experienced, well trained managers with a deep knowledge of the activities they are monitoring and time to do the job well. Unfortunately, between 2004 and 2011, the size of the state workforce in New Jersey shrank by 36,319 while the total value of contracts held steady and in some years especially 2013, increased quite significantly⁵.

¹ Colleen O'Dea, "Botched Process Denied NJ Residents Millions in Sandy Relief," *NJ Spotlight*, Feb. 7, 2014.

² Matt Katz, "NJ Quietly Fires Second Contractor Hired to Help Sandy Victims," *NJ Spotlight*, Feb. 14, 2014.

³ Fair Share Housing Center, et al., "The State of Sandy Recovery: Fixing What Went Wrong with New Jersey's Sandy Programs to Build a Fair and Transparent Recovery for Everyone," Housing and Community Development Network of New Jersey, January 2014, <http://www.hcdnnj.org/assets/documents/report%20state%20of%20sandy.pdf> (accessed Feb. 2014)

⁴ Van Slyke, David M. "The mythology of privatization in contracting for social services," *Public Administration Review* 63, no. 3 (2003): 296-315.

⁵ Despite our best efforts to arrive at comprehensive numbers, we have only been able to obtain figures regarding Department of Purchasing and Property contracts. The state Office of Management and Budget generally

Contract management involves both people who maintain relationships with contractors and clients, and systems that facilitate the work of those people. Our research project looked at the capacity of the current state workforce to conduct contract oversight and analyzed the overarching institutions – laws, regulations and policies - governing the entire contracting process. Below we summarize best practices in contracting as documented in scholarly literature on public administration and supply chain management. Next we describe how the state of New Jersey conducted contracting in the aftermath of Hurricane Sandy. We conclude with a discussion of the consequences of New Jersey’s approach to contracting and oversight and provide a list of questions that merit further investigation.

Best Practices

When employment is shifted to another party that is paid to provide services, the lead employer is simply “less able to monitor performance, since those doing the work are now potentially hidden within another organization.”⁶ Best practices in the business literature⁷ suggest that lead firms maintain quality in services delivered by their subcontractors, by providing for 3 things:

- Clear and explicit guidance on what is expected
- A system of monitoring and auditing to ensure that those standards are followed
- Significant penalties in the face of failure to meet goals

In terms of conducting oversight, best practices therefore include thorough contract costing and design, transparent and competitive bidding, and strong performance management. The latter involves ongoing communication and cooperation between contract managers and contractors and strategic contract monitoring with clear performance requirements and standards. These in turn require adequate staffing and training of contract managers who are responsible for the process. The challenges ordinarily posed by contracting to provide services are exacerbated in emergencies, which can dramatically increase the demand for oversight in a very short period of time. Details regarding the three best practices are summarized below, including qualifications relating to emergency relief.

1-Thorough Contract Costing and Design -> Transparent and Competitive Bidding

Typically, the contracting process proceeds in three stages: RFP generation, bidding, and contract management. The RFP generation stage is critical because it is here that the terms of the contract are created. Prospective contractors bid on the RFP and the terms of that RFP largely become the terms of the contract between the state and the winning bidder. Given that the RFP essentially becomes the contract, it also effectively defines what the state can demand of the contractor and what remedies are available if the contractor fails to live up to its duties. Best practices suggest that contract design and contract oversight are closely linked and contracting units should develop and communicate, during the RFP process, clear and detailed performance measures, specifications and contract monitoring requirements.

The bidding process offers another opportunity to exercise control over contractors. This is where the State gets to choose its partners. However, for the State to have a choice, and for bidders to have an

estimates that these contracts account for approximately 50% of all state contracts. We have no data about the other 50%, which includes all human service contracts.

⁶ Weil, *The Fissured Workplace*, 59.

⁷ *Ibid.*, 63-73.

incentive to maximize quality and minimize cost, there must be multiple bidders who compete on a level playing field. Information is key to this competition. The more information the State has on what is being offered, the better a consumer the State can be. Likewise, transparency helps level the playing field by offering competitors and other interested parties the information needed to hold the State accountable for its decisions.

As these practices suggest, the process is very intensive and can be extremely time consuming. It is difficult under the best of circumstances. In emergencies – including one of the most destructive natural events to hit New Jersey – temporarily relaxing some best practices relating to contract creation and bidding is understandable. It provides the State flexibility to immediately respond to human needs. The increased flexibility is exemplified by DCA using the less detailed RFQ process as opposed to the more extensive RFP process. This does not, however, absolve the State of all due diligence in designing contracts or choosing contractors. The State can, for example, identify obvious flaws in past performance and conduct desk reviews of capacity and competence. Moreover, strongly institutionalized oversight – discussed further below - can make it far easier to conduct these analyses on short notice.

2-Contract Management

Expediency cannot justify a complete relaxation of contract management best practices. On the contrary, less stringent contract creation and bidding procedures impose a heightened burden on the contract management process to compensate for any increased scope for abuse. Best practices suggest that States should have:

- a corps of highly qualified contract managers with the expertise and resources to engage intimately with the contractor
- systems, and especially data systems, that make the process more efficient and more transparent

3-Strong Institutions

In all circumstances, good oversight requires strong overarching institutions. The laws, regulations and policies governing the process provide the foundation for oversight. The need for strong institutions is especially acute in emergencies because they exacerbate the already significant challenges of contract administration. Strong institutions ensure that the state has the capacity and competence to handle ordinary oversight and absorb sudden spikes in demand that come with emergencies. Creating strong institutions involves the following:

- Laws ensuring that contracts are managed by qualified individuals with sufficient capacity to engage intimately with the contractor
- Laws providing mandates and resources for meta-oversight of the contracting process
- Laws requiring and providing appropriations for integrated and standardized data systems and regulations detailing technical requirements to ensure compatibility across units
- Laws making transparency, including the publication of all key documents and details, non-negotiable and providing mechanisms for interested citizens to act on that information

How New Jersey Responded to Hurricane Sandy:

In our in-depth review of New Jersey's capacity to oversee its contractors, we found significant issues that may provide insight into why the State has struggled to handle the contracts associated with Sandy

Relief. In general, where legal and administrative structures for contract oversight exist, they are not being effectively implemented. Where they do not exist, people and systems are not sufficient to compensate. Our brief review of Sandy relief suggests that both issues may be at play. In particular, there are executive orders and documented plans that on their face should have enhanced oversight. How they were executed in practice may be one key to the failure of oversight. Similarly, despite the additional orders and plans, they were not likely sufficient to fill the existing holes in New Jersey's oversight capacity.

New Jersey has significant structural and practical flaws that make it extremely difficult for it to conduct ordinary oversight, let alone handle the sharp increase in demand created by the administration of a massive disaster-relief grant. In particular we found large institutional deficiencies and significant neglect of on-the-ground oversight. These led predictably to significant consequences for taxpayers and clients.

Many of the most significant oversight decisions and processes are subject to few if any formal rules. Only the bidding process is well-regulated and only for about half of all State contracts. There are few central institutions governing contracts for services provided directly to residents.

There are no institutionalized mechanisms within state government to ensure that sufficient resources exist so that individuals responsible for the majority of oversight are able to do the job well. Simply put, the budgetary process does not build in the cost of oversight of contractors at individual state agencies.

There does not appear to be any agency within the state with the capacity or competence to monitor the overall efficiency or effectiveness of resources allocated to contractors. OSC and the Office of Management and Budget (OMB) are prime candidates, with relevant competencies, but neither currently has a mandate or the resources to do so.

Attrition is a predominant problem, depriving every contracting unit we studied of practical expertise while simultaneously increasing the burdens on those workers that remain. This is not surprising, given the structural lack of priority given to oversight. It occurred in all four of the departments for which we were able to obtain such information.

No contract costing and minimal specification of contract terms prior to the issuance of RFP's. Every official we asked confirmed that, to their knowledge, costing was not done in any systematic way.

Contract Managers are not always qualified or properly trained to fulfill their roles effectively. According to officials from every department studied, there are not enough human resources being assigned to oversight and effective oversight is not being fulfilled by many of the individuals who are being designated as contract managers.

Contracts had weak performance requirements and standards. Only a minority of contracts had outcome-based performance measures and there was little evidence of performance targets being integrated into a comprehensive oversight system. Only the Department of Mental Health Services (DMHS) had clear, outcome-based performance measures in contracts combined with a comprehensive system of oversight.

Very few contracts required specific data collection and reporting, outcomes-based benchmarks with clear performance measures and milestones tied to payment despite these being widely accepted best

practices. Similarly, very few contracts had automatic sunset provisions and requirements that contractors would have to reapply in a competitive bidding process.

There are substantial impediments to transparency. The biggest of these is that data for many contracts is simply not kept in any systematic way. As a result, it is nearly impossible to gather and analyze information.

Prior to Sandy, lack of oversight had already had significant consequences for vulnerable people and for New Jersey taxpayers and was continuing to place assets at risk

- A lack of contract monitoring at DCF's Division of Child Protection and Permanency (DCPP) leaves children vulnerable to being served by inadequate providers
- Lack of oversight at DHS's Department of Developmental Disabilities led to substantial waste of taxpayer money with little assurance that services for which the state has contracted are being provided
- Lack of oversight at DOC's Residential Community Release Program (RCRP) led to assaults and deaths in the facilities as well as in communities
- businesses

Given our findings regarding the State's lack of capacity to oversee ordinary contracts, it is not surprising that it has struggled to handle the massive relief program. The State's response required the coordinated action of various organizations, each providing services to New Jersey citizens and each with long lists of detailed responsibilities. On the surface, the State's Action Plan and Executive Order 125 - signed by Governor Christie appear to enhance oversight under special circumstances. However, our prior findings and the stories that are now coming to light suggest that these paper requirements were insufficient, not followed well, or both.

The core of New Jersey's effort to enhance oversight capacity to handle the demands of Sandy relief are Executive Order 125, the creation of a special management Division within DCA and the use of an Internal Auditor within DCA. The latter two come directly from New Jersey's Action Plan.

Executive Order 125 offered three potential enhancements to the existing systems and requirements. First, it mandated that the Comptroller pre-clear all RFP's prior to bidding. This effectively subjects all 100+ contracts to the process that was already in place within the Department of Public Purchasing (DPP) for contracts in excess of \$10,000,000. However, it requires only that the Comptroller ensure that all laws are followed and therefore would not necessarily enhance programmatic review. Moreover, insofar as it would impose a much greater burden on Comptroller staff, to be effective it should come with an increase in staff or some reallocation. *We do not know if any additional capacity within the Comptroller's office was created.*

The second enhancement of E.O. 125 was the appointment of Accountability Officers in each unit responsible for Sandy relief contracts. The qualifications and specific duties of these officers, beyond liaising with the Governor's office to ensure success, are not specified. Likewise, there is no indication that these would be new staff positions, rather than just titles added to already swamped staff members. If our research is any indication, the latter is far more likely to have occurred.

Finally, E.O.125 had a transparency provision that required the creation of a website to post contract information on all Sandy contracts. This website does in fact exist and provides both contract documents and some nominal aggregate data. The HGI contract is available on the Sandy website, however, when searching the site for the contract manager, clicking on the HGI contract link leads to an error page.

New Jersey's Action Plan promised further enhancements. Two keys were the creation of a 50+ person special division to manage the grant and the use of a special audit plan by the DCA's Internal Auditor. The special division was created and some documents suggest it may have as many as 95 employees. It is not clear, however, what roles they are tasked with. Moreover, even if they were all newly hired contract managers⁸, each one would be responsible for more than one contract. Given the sheer complexity and size of many of the contracts, the HGI contract being a prime example, it would seem that no one contract manager could have adequately handled the process alone.

There is little readily available information on the Internal Auditor. We do not know how many audits were conducted, by whom, how diligently they were done, what they found, or whether there were consequences. These are key questions.

The State's response to Hurricane Sandy required the coordinated action of various organizations, and these organizations needed to be properly vetted to ensure they had the expertise, capacity and legitimacy to support the State in recovery efforts. Certainly best practices suggest that contracting units must perform their due diligence and gather information on contractor past activities to serve as a basis for contracting decisions and to ensure that potential contractors do not have a prior history of poor performance. Again, on the face of it, New Jersey appeared to have made this part of the RFQ process. For example the state's solicitation to Hammerman and Gainer (HGI), specifically states the "bidder should have significant proven experience and a history of successful professional engagements in disaster recovery" (RFQ774882S, p. 33). Media reports suggest however⁹, that the state of New Jersey did not thoroughly vet HGI's performance during Hurricane Katrina. Nine years after Katrina devastated New Orleans claims and issues from HGI's services remain unresolved.

Moreover, best practices literature¹⁰ stresses that contracting units compare potential contractor costs with the cost of providing the service in-house. In the context of Sandy Recovery efforts, it is unclear if the State engaged in this comparative process. We cannot determine from available records if state contracting units found that it was not in their best interest to ramp up internal HR capacity to hire additional staff and therefore chose to rely on private contractors instead. For example, the State should have compared the internal costs for managing the Superstorm Sandy Housing Incentive Program, with

⁸ State law requires the assignment of a contract manager to every contract let through DPP. However, we found that in general, state contract managers were employees with other primary duties assigned as state contract managers merely to meet this requirement. The specialized training required to manage contracts came down to a three-hour web tutorial.

⁹ Haddon, Heather, Sandy Contractor Draws Fine in Home-Reconstruction Effort, *Wall Street Journal, NY Region*, September 22, 2013, <http://online.wsj.com/news/articles/SB10001424127887323808204579087420937630290> (accessed Mar. 2014)

¹⁰ See Sclar, Elliott D. *You don't always get what you pay for: The economics of privatization*. Cornell University Press, 2001

the proposal submitted by Hammerman & Gainer, Inc. Similarly, it is not clear how the state determined that 95 staff could adequately handle the work for the Sandy Recovery Division¹¹.

Successful contract monitoring and oversight requires significant managerial competence and aptitude¹², including ability to assess costs and benefits, identify needs, and critically analyze vendor strengths. No organizational chart is available on the Sandy Recovery Division's website, therefore we cannot determine whether the 95 staff were actually hired, whether they are contract managers and what their qualifications and experience are. We can surmise that the Division is still without the required oversight capacity given the numerous employment vacancies at the department. From what we can see, all of the current vacancies in the Sandy Recovery Division are for compliance and monitoring positions. These include: Chief Financial Officer, Assistant Director of Compliance and Monitoring, Administrative Analyst—Procurement, Program Specialist, and Network Administrator.

Our review of RFQ 774882S for the Management & Other Related Services of the "SSHIP" program indicates that the State is "*developing* an MIS system and related interface for DCA for aggregating data for financial management, production reporting, compliance reporting and auditing." It remains unclear if the MIS system has been adequately developed and if personnel have been trained on the system. This is particularly important to aid in monitoring and compliance, since contractors were required, per the RFP, to have data collection and storage systems that were compatible with the State's MIS and SSHIP HP-CMIS systems.¹³

To bolster state capacity to oversee contracts, on March 27, 2013, The Integrity Oversight Monitor Act (P.L.2013, Chapter 37) was enacted. This legislation authorized the deployment of oversight monitors in the implementation of recovery and rebuilding contracts, resulting from Superstorm Sandy and other major storms in NJ, in order to prevent, detect, and remediate waste, fraud, and abuse. *However, the state spent ten months training the monitors and to date no reports on the work of integrity monitors are publicly available.* A companion bill (A61) that would have strengthened oversight by requiring the state to "maintain a public website dedicated to the dissemination and transparent administration of Hurricane Sandy recovery funding" was approved by both the Assembly and the Senate but was vetoed by the governor who contended it would, "produce unnecessary redundancies and waste government resources" (http://www.njleg.state.nj.us/2012/Bills/A0500/61_V2.PDF).

Additionally, although the state required Sandy contractors in its RFP to submit weekly reports on their progress towards recovery response and HGI promised it would "generate and submit a weekly report" and also provide a monthly "Program Status Report" which would provide "an accounting of progress

¹¹ State of New Jersey Department of Community Affairs, Sandy Recovery Division, CDBG Disaster Recovery Action Plan and Reports, "*Superstorm Sandy Performance Reports 4Q 2013*", p. 6, <http://www.state.nj.us/dca/divisions/sandyrecovery/pdf/4th%20Qtr%202013%20Submitted%20QPR%20Submitted%20for%20Approval.pdf> (accessed Mar, 2014).

¹² See Brown, Trevor, and Matt Potoski. "Contracting for management: Assessing management capacity under alternative service delivery arrangements." *Journal of Policy Analysis and Management* 25, no. 2 (2006): 323-346; Romzek, Barbara S., and Jocelyn M. Johnston. "Effective contract implementation and management: A preliminary model." *Journal of Public Administration Research and Theory* 12, no. 3 (2002): 423-453; Chen, Yu-Che, and James Perry. "Outsourcing for e-government: Managing for success." *Public Performance & Management Review* (2003): 404-421.

¹³ *Ibid.*, p. 27

towards major Program milestones,” *it did not do so for eight months. When Fair Share Housing requested copies of the reports promised in the bid they were advised by the state that they do not exist.* These were essential tools necessary for the state to engage in oversight and they were ignored. As Fair Share has pointed out, along with the failure to provide the integrity monitors required by state law, allowing HGI not to submit reports amounted to another major missed opportunity to correct mistakes before they led to widespread systemic failure of the state’s recovery programs.

A key component of the RREM program, is the establishment of two categories of contractors – those who administer the program and those who monitor the program.¹⁴ Even though the RFQ for the management of the RREM Program states that the State Contract Manager is responsible for the overall management and administration of the contract¹⁵, RREM contractors are required to “perform management, file review, reporting and document management for compliance with all program policies and procedures. File documentation, document management, quality control, reporting, program and federal compliance, and issue tracking are also embedded requirements for this functional area” (RFQ for the Management of the RREM Program, 2013, p. 25). This ultimately means that RREM contractors remained at the forefront of contract monitoring and compliance. The DCA did identify an internal monitoring agent.¹⁶ However it is unclear if the internal monitoring agent was provided with the requisite training, financial resources, and additional staff required to engage in effective contract oversight.

Finally, the partitioning of the RREM program into two categories of contractors – those who administer the program and those who monitor the program further distanced the DCA from the service being provided. The DCA’s ability to monitor and oversee the performance of a contractor is directly related to their ability to identify the actor who is responsible. Similar to a situation where a contractor subcontracts a service, DCA’s already limited capacity to monitor contractors was further strained. In this context, DCA essentially outsourced a core governmental function – contract monitoring and oversight.

Consequences and Questions for Further Investigation:

Contracting out under emergency circumstances is challenging and complex, but there must be protocols in place to ensure that those at risk are treated carefully and equitably. A 2014 analysis by the Fair Share Housing Center found that 79% of residents who appealed denials of funds for housing recovery were successful which raises questions about how well the firm hired to determine eligibility did its job. The report also found troubling racial and ethnic disparities. African Americans were rejected for RREM and resettlement grants at two and a half times the rate of whites. Latinos were also disproportionately rejected.¹⁷ Moreover, numerous media reports suggest that those applying for, or those in the process of receiving, RREM funding lacked access to the feedback mechanisms required to voice their concerns and

¹⁴ State of New Jersey, Department of Community Affairs, *Reconstruction, Rehabilitation, Elevation and Mitigation Program and Procedures (RREM)*, 2013, Number 2.10.36, p. 6

¹⁵ State of New Jersey, Division of Purchase and Property, *Request for Quote for Management of the Reconstruction, Rehabilitation, Elevation and Mitigation Program (“RREM”) for the State of New Jersey* Department of Community Affairs, 2013, RFQ775040S, p. 53

¹⁶ New Jersey Department of Community Affairs, *“RREM Program and Procedures,”* 2013, p. 6

¹⁷ Fair Share Housing Center, et al., *“The State of Sandy Recovery,”* 2014, p. 8

issues.¹⁸ ¹⁹ All of these problems are in direct contradiction to the process stated in the DCA’s Community Development Block Grant Action Plan.²⁰ Finally, documents analyzed by the Fair Share Housing Center suggest that even after contracts were let, program details and policies continued to be amended without going out for public comment.²¹ Worse, in many cases, there were no policies in place until after the program started.

Despite the deeply flawed service being provided, in less than eight months, we now know that HGI billed the state over \$51 million--although it had proposed a three-year contract for a *total* of \$67 million. There is an ongoing dispute over at least \$18 million that HGI claims it is owed, but the State has not paid; this number may grow significantly depending on the payments HGI claims are due between the December 6 termination and the January 20 date when all of HGI’s activities ceased. While HGI claims that the State demanded far more work than the contract originally anticipated and that it received “express representations from State contracting officials that HGI would be paid for the work,” the lack of reporting makes all of this extremely difficult to assess. There were also apparently no written amendments to the contract to account for the additional costs, which again raises troubling questions about how the State managed this contract and led to the current dispute.

Overall, our analysis suggests that New Jersey lacked the capacity to oversee the contracts involved in such a large and complex natural disaster recovery program. This lack of capacity was compounded by a lack of transparency. In other words, we don’t have adequate staffing to “police” the contracts and citizen watch dogs cannot obtain the information necessary to sound the “fire alarm.” We conclude here with a list of questions that merit further investigation.

Questions

- 1.** Who are the state contract managers assigned to each contract? How many contracts are they responsible for? Are they specially qualified or just allocated from other staff as we found in general? A look at any one contract, for example the HGI contract, highlights the enormity of the task facing even a highly qualified individual.
- 2.** Who are the accountability monitors (required under E.O. 125)? Are they qualified? Do they have real knowledge of contractor performance? How are they integrated with other staff responsible for oversight?
- 3.** The state action plan involved the creation of a new division within DCA with 50 staff to administer the program. The state website mentions 95 employees. What are their job descriptions? To what extent

¹⁸ *ibid*

¹⁹ Katz Matt, New Jersey Quietly Fires Second Contractor Hired to Help Sandy Victims, *NJ Spotlight*, February 14, 2014, <http://www.njspotlight.com/stories/14/02/13/amid-criticism-nj-quietly-fires-2nd-sandy-contractor> (accessed Feb. 2014)

²⁰ State of New Jersey, Department of Community Affairs, *CBDG Disaster Recovery Action Plan*, 2014, p. 6-12.

²¹ “Documents Obtained from Christie Administration Through Litigation Raise Questions of Mismanaged Sandy Relief Funds”, Fair Share Housing, press release, November, 2013, on the Fair Share Housing Website, <http://fairsharehousing.org/media/> (accessed Feb. 2014).

has that division fully staffed up? Are they state contract managers? What do the staff do? There are current postings for CFO and Assistant Director positions. Were these ever filled? Are they open because of the fallout from press.

4. E.O. 125 adds a requirement that all RFQs be pre-cleared by OSC. That effectively has every Sandy Contract treated like a \$10,000+ contract. There are over 100 contracts over a short period of time. Did OSC increase staff to handle the dramatic increase in workload? What was the review process to determine compliance “with all applicable public laws etc.” To the extent that the laws were relaxed, how meaningful was it really?

5. Who is responsible for ensuring contractors provide reports and for reviewing the quality of those reports? Contracts such as the HGI contract grant the contractor millions (\$3,006,864) for internal oversight. Who ensures that the state gets anything out of this? [Note that this is mainly for fraud by program participants, not the program administrator.]

6. The Action Plan (s6.6.5) refers to DCA's Internal Audit office and several procedures that it will conduct to ensure compliance. To what extent were these procedures actually followed. Was the Internal Audit office staffed up to handle this?