



September 29, 2011

To: Rose Gill Hearn  
Commissioner  
NYC Department of Investigation  
80 Maiden Lane, 17th Floor  
New York, N.Y. 10038

### INVESTIGATE RYAN WHITE CONTRACTING

We are requesting that the Department of Investigation thoroughly investigate the process through which the New York City Department of Health and Mental Health has been “re-contracting” federally-funded Ryan White Services over a period of years. As you may be aware, the city receives some \$110 million a year in federal funding for these services which are supposed to provide improved care, treatment access, counseling and support services for high need populations with HIV/AIDS, including the poor, minorities and those who have various other complications (co-morbidities) in addition to HIV/AIDS.

In New York City, 45% of the 110,000 people with HIV/AIDS live in the Bronx and Brooklyn and 67% of people with HIV/AIDS who are on public assistance—that is, the very low-income populations for whom these services are intended—live in the Bronx and Brooklyn. The city receives this large funding from the federal government based on its overall caseload and level of high need populations, which means that people with HIV/AIDS in the Bronx and Brooklyn “generate” over half this federal money. Yet, the entire thrust of New York City contracting under the current Administration has been to close down dozens of previously existing AIDS programs supported by these federal funds in the Bronx and Brooklyn and massively shift millions of dollars to Manhattan organizations. In a 2006 report on the first stage of “re-contracting”, the City Comptroller underscored the alarming disparities in the funding distribution and pointed out that Manhattan organizations had received 55% of the \$10,300,000 in funding even though Manhattan only had 31% of overall HIV/AIDS cases (and only 21% of the high need cases for whom these funds are intended); meanwhile, Bronx organizations only received 12.5% of the funds and Brooklyn organizations 17.6%.

In the second stage of re-contracting, for contracts starting in March 2007, Manhattan organizations received 59% of the \$28,282,729 in federal

funding, Bronx organizations received 17% and Brooklyn organizations 12%! (Please note virtually all these contracts—more than 100— are still in place, meaning these funding inequalities have now prevailed for years.) Finally, the city's bias reached a point where the city decided that it didn't have to give any of this federal money meant to help poor people with AIDS to the Bronx, the city's poorest borough. In the fall of 2010, when another \$8,507,000 was re-contracted, the city at first refused to give one penny to any Bronx AIDS organization or service; finally it gave a few pennies. For example, some \$5,890,000 of the 2010 federal funds were assigned to provide food and nutrition services for poor people with AIDS; but, the Bronx with 34% of the city's poor people with AIDS was finally allotted only \$255,000 of the \$5,890,000, an outcome beyond reprehensible. The medications used to treat HIV must be taken with food. While the federal government was willing to provide extensive emergency food funds to assure that people could regularly take their medications, New York City was unwilling to provide this money to the very borough whose high poverty level meant that AIDS patients there were the most likely to require such help to maintain the regular food intake necessary for their medical treatment.

How was it possible that, as these funds were “re-contracted” during the Bloomberg Administration, millions of federal dollars which for years had been properly distributed throughout the city based on local needs were suddenly concentrated in Manhattan? Based on materials obtained over a long period of time through Freedom of Information Law, and other data and materials, we will present evidence of the City Charter and procurement law violations and evidently fraudulent practices that resulted in this biased distribution of federal monies.

Medical Health and Research Associates (MHRA)—now renamed Public Health Solutions—is a large, “nonprofit” grant administrator which the city uses to administer multi-millions in city grants, including its some \$150 million in federal AIDS Ryan White money and prevention funds. Publicly, Public Health Solutions/MHRA, which receives some \$25 million a year for administering the city's various federal AIDS funds, had the main responsibility for issuing the requests for proposals (RFPs) for these Ryan White AIDS funds, reviewing all the responses from hospitals, agencies and community groups, and forwarding funding recommendations to the Department of Health. In this un-transparent process, the Health Department and Public Health Solutions/MHRA are both able to disclaim responsibility when complaints arise; at the same time major funding decisions occur outside of ordinary public scrutiny. Nonetheless, both are clearly responsible for the results.

### Violations of City Charter

In the case of this contracting of millions in federal Ryan White AIDS funds, the biased funding distribution depended on a process of clear violations of the New York City Charter. The New York City Charter

S556 b. (4) requires that all decisions regarding delivery of services to mental health populations reflect “an inclusive citywide planning process” which incorporates participation “at the borough and local community level.” The purpose of this requirement, obviously, is to try and assure that services are fairly distributed among the boroughs. The city, itself, in its “Comprehensive Strategic Plan for AIDS Services 2005-2008,” which it was mandated to prepare for HRSA, the federal Ryan White funding administrative agency, defined **90%** of New Yorkers with HIV/AIDS using these Ryan White Services as having mental health disabilities within the definition of the New York City Charter. In sum, these services clearly came under the Charter mandate for “inclusive” planning at the borough and local level.

Nonetheless, in its clear intent to maximize AIDS funding in Manhattan, the city violated that requirement of the City Charter—and its process was the opposite of inclusive; although the city used to hold an annual Ryan White planning meeting in each borough, it has not done so for at least six years. Most critical, as documented through Freedom of Information Law requests, what was called a “Coordinating Panel”, consisting **only** of representatives of Manhattan AIDS and social service organizations, and government representatives, made the final recommendations to the Health Department for agencies and contracts to be funded. The other boroughs were **completely** excluded from final decisions about where in the city Ryan White services would be located. (Neither the Department of Health or Public Health Solutions could supply any written guidelines about how this “Panel”, which so openly violated City Charter requirements, was appointed).

### Systematic Fraudulent Practices

Procurement regulations (S 319) under the City Charter forbid any material changes to be made after sealed bids, or proposals, for grants are submitted for review—or even for city officials to discuss proposals with bidding agencies unless all are “accorded fair treatment with respect to any opportunity for discussion and revision of proposals.”

The prohibition against a government agency changing parts of a proposal or “bid” for selected potential contractors after all proposals have been submitted is not only part of the New York City Charter; it is the bedrock of ethical public contracting, a standard that provides fairness to all.

Yet, the Health Department/Public Health Solutions, in violation of both the City Charter and recognized ethical contracting, systematically made material changes for chosen contractors/agencies who were then given funding. As shown in the accompanying attachments, the city’s first reallocation RFP (for Supportive Counseling/Family Stabilization, Treatment Adherence and Legal Services) and second reallocation RFP (for Mental Health, Harm Reduction and Early Intervention Services)

required potential service providers to select their target areas from 4 categories (Neighborhood-based, Borough-Wide, Multi-Borough and Citywide); yet, in 2006 and 2007, when some 110 programs for these services were contracted, strangely, the city does not appear to have issued a single neighborhood-based contract. Materials obtained under Freedom of Information law show that, in instances where a preferred agency/provider had applied as a neighborhood-based provider, the city changed their category **after** the review process, now designating any self-defined neighborhood-based organizations selected as Borough-wide or even Citywide (!) in their contracts and then requiring the selected agency to accept the “new” service area description. For the 2006 contracts alone, based on contradictions between the submitted proposals and the announced contracts, it appears that, **after** the official process for review, scoring and the selection of agencies to provide services, in the case of at least 7 out of some 33 final contracts, the contracted agencies’ target geographic areas were changed by the Health Department/Public Health Solutions from neighborhood-based to a different geographic target area. This unallowable action negated the whole official scoring process where target areas and need were an essential part of judging and scoring the proposal. The RFP on which the chosen 2006 contracts were supposed to be judged, for example, contained a scored section (10 points) where agencies applying for funds had to “demonstrate the need for the proposed services for the target population **in the target geographic area.**”

The systematic alteration of target geographic areas which DOH/Public Health Solutions undertook when issuing contracts undermined the scoring system, violated the City Charter and was so pervasive that it can only be said to have rendered the outcome fraudulent.

The refusal to issue Neighborhood-based contracts, despite these services being an invited category in the RFP, also acted mainly against agencies in the other boroughs. These boroughs, compared with Manhattan, had more small, neighborhood based agencies providing AIDS services; while Manhattan tends to have larger agencies and institutions, serving larger geographic areas. But agencies that correctly described themselves as Neighborhood-based clearly did not have an equal chance to compete and retain their AIDS programs; the few that were selected even had to change their designation to complete a contract—an unallowable bias that left outer borough AIDS services devastated.

#### Violation of Civil Rights Law

The city is obligated to follow federal civil rights law, especially in contracting for federally-paid services. The contracting process which violated the City Charter, by its very nature, not only blocked neighborhood organizations in minority areas, many of which are minority-run, from competing fairly for funds, but was inherently biased on many levels.

The federal Civil Rights Act states that “no person in the United States will, on grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any provision or activity receiving federal financial assistance...”

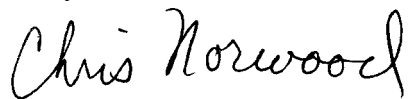
The city’s steering of these millions in federal dollars, generated by HIV/AIDS cases in the Bronx and Brooklyn, to Manhattan organizations has resulted in denying the benefits of millions in federal AIDS funding to the poorest, most minority New York boroughs in myriad ways. These boroughs were denied the benefit of maintaining their own infrastructure to fight AIDS and building the local response key to fighting AIDS in highly impacted communities. Literal hundreds of minority people in the poorest areas, who had trained and educated themselves to become AIDS educators and counselors, lost their employment—or any equal opportunity for employment—because AIDS programs in their neighborhoods were disproportionately shut down. Patients were denied the local support services well proven to promote the routine, ongoing clinical care critical to successful AIDS treatment.

The poorest, sickest people in New York were exploited and millions of dollars brought to the city by their illness was used to expand organizations, provide jobs, and build health elsewhere. Finally, the city’s systematic bias, Charter violations and evident fraudulent practices denied people with HIV in the Bronx and Brooklyn an equal chance at life. Indeed, as the Bronx, the city’s poorest borough repeatedly lost services, its portion of city AIDS deaths steadily climbed every year.

The contracting process that had these dire consequences deserves the most serious investigation.

Please, feel free to call me at my direct number 718-585-1064 if you wish any more information.

Sincerely,

A handwritten signature in black ink that reads "Chris Norwood". The signature is written in a cursive, flowing style.

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Chris Norwood  
Executive Director