

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONTRACTS

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April 30, 2013
Start: 1:33 pm
Recess: 2:00 pm

HELD AT: 250 Broadway
Hearing Room, 16th Fl.

B E F O R E:
DARLENE MEALY
Chairperson

COUNCIL MEMBERS:
Council Member Letitia James
Council Member Melissa Mark-
Viverito
Council Member Michael C. Nelson

A P P E A R A N C E S

COUNCIL MEMBERS:

A P P E A R A N C E S (CONTINUED)

Lisa Camillo
Mayor's Office of Contracts

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2 CHAIRPERSON MEALY: Committee on
3 Contract is starting today. Good afternoon, my
4 name is Darlene Mealy. I am the Chair of the New
5 York City Committee on Contracts. Today, the
6 Committee is holding a hearing on resolution 1739
7 which would increase the micro purchase limits
8 from \$5,000 to \$20,000. I would like to recognize
9 the other Council Member who is present today,
10 Mike Nelson. I would also like to thank the
11 Committee staff, Sharon Mantigo [phonetic] and Tim
12 Mataso [phonetic] thank you very much, and all of
13 you today. Generally state procurement law
14 requires that contracts are competitively bid in
15 order to ensure that tax payers get the most for
16 their money and to prevent favoritism and
17 corruption. However, the bidding process can be a
18 long and complex so the State allowed
19 municipalities to forgo this process in the case
20 of small contracts where the benefits of
21 competitive bidding are outweighed by the
22 additional costs. Thus, under current city
23 procurement rules purchases under \$5,000, known as
24 micro purchases, do not require any competition.
25 While agencies do not have to competitively bid

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2 the contract, city purchasing agents must still
3 ensure that prices are reasonable and that
4 contracts are distributed appropriately among
5 vendors. Earlier this month the Procurement
6 Policy Board, which sets the rules for the city
7 purchasing voted unanimously to increase the micro
8 purchase limit to \$20,000. Expanding micro
9 purchases would streamline the purchasing process
10 and provide agency with greater flexibility.

11 Under the charter before the rule amendment can go
12 into effect it must be approved by this City
13 Council. Contracts between \$5,0000 and \$20,000
14 comprise about five percent of city contracts and
15 are only one tenth, one tenth of one percent of
16 the total contracting budget. Thus, an increase
17 to the micro purchase limit may present an
18 opportunity to improve agency operations without
19 significantly increasing financial risk.

20 Nonetheless, we must be cautious when we consider
21 increasing the number and size of City's non
22 competitive contracts. The Council wants to
23 ensure that City continues to be vigilant and
24 exercise tight controls so that micro purchasing
25 is not abused. To that end, we look forward to

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2 hearing from about this rule and its
3 implementation from the Mayors' Office of
4 Contracts, and I thank you. But before that, [off
5 mic] Colon? Lisa Camillo [phonetic] from the
6 Mayor's Office of Contracts, she will be answering
7 a few questions at a short time span. And thank
8 you for coming and sorry for the mishap. So, just
9 to ask some questions that I know I would like to,
10 oh, you would like to make a statement or you
11 just? Okay. One of the questions, how did you
12 select the \$20,000 as a new micro purchase and why
13 couldn't it have been \$50,000?

14 MS. LISA CAMILLO: I believe that
15 the \$20,000 limit was agreed upon between, by the
16 members of the PPP Board, they were the body that
17 agreed or, and discussed the limit. I don't,
18 there was no mechanism by which to, that they came
19 up with that number. It could have been
20 introduced at \$50,000 but it wasn't. What we had-
21 -

22 CHAIRPERSON MEALY: [interposing]
23 So, how did they come up with any amount? It
24 could have been \$10,000.

25 MS. CAMILLO: It could have been

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2 \$10,000. Honestly I'm, there's, that's, I'm not
3 sure that there was a mechanism by which to select
4 the amount. When we, when the PPP ruled, voted
5 the rule into the capa process and we had the
6 public hearing, we certainly reached out and
7 expected some feedback in terms of limit but we
8 received none. So, \$20,000 was the level that it
9 remained.

10 CHAIRPERSON MEALY: \$20,000 was not
11 recommended by MOCS [phonetic] or by the Law
12 Department?

13 MS. CAMILLO: I have no personal
14 knowledge or they can't, I don't know where they
15 came up with that number. It might have come from
16 the Law Department, or MOCS, I'm not, I can't
17 speak to that particular number.

18 CHAIRPERSON MEALY: So, really it
19 was no public participation, yeah.

20 MS. CAMILLO: No, we provided the
21 ability for the public to comment when we had the
22 public hearing.

23 CHAIRPERSON MEALY: But you said no
24 one?

25 MS. CAMILLO: No one provided any

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feedback.

CHAIRPERSON MEALY: So, they just put it on the website and asked the public to come?

MS. CAMILLO: Both. So we, a part of the capa process requires that rules that are proposed to be changed like this one be posted in the website of the New York City rules. There's a process by which the public can provide written comments through the website but there was also a public hearing where, much like this, where it's publically noticed, everyone's invited, anyone who would like to testify in person can also do that and we did that last year and no one provided any testimony. So, we did not, though we provided the opportunity for written comments and verbal comments none were provided.

CHAIRPERSON MEALY: Could you, and we've been joined by Letitia James of the Contract Committee, what was the most typical kind of contracts could you explain a contract for \$5,000 and what significance would it be to our agency to have it \$20,000 now? Could you just, like, give a little example?

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2 MS. CAMILLO: So, there can be,
3 it's any contract that would be valid under
4 \$5,000, right? So, it could be goods, it could be
5 services, primarily, and it depends on the agency
6 that is, that has the need. If, you know, we have
7 a lot of goods - - depending on what the needs
8 are. We provide all of that information, I
9 believe, in our procurement indicators report or
10 at least the micro, the small purchase report, I
11 believe, that we report to the Council. I can't
12 speak to specifically to what those contracts look
13 like but we it could run the gamut between goods
14 and services.

15 CHAIRPERSON MEALY: Okay, we've
16 been joined by Mark-Viverito and Mike Nelson of
17 the Contract Committee. Do anyone have any
18 question? As of yet? One thing I wanted to ask,
19 do you have any concern that this limit will
20 increase a risk of corruption or the City will not
21 get the best value for its money?

22 MS. CAMILLO: I believe that MOCS
23 and the Law Department and the Policy Board, did,
24 you know, discuss this matter and the benefits
25 outweigh any risk. Every agency has to look into

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2 the vendor that they are awarding to and if there
3 is a, you know, a responsibility issue that comes
4 to light then the City is not, the City is barred
5 from awarding any contracts including micro
6 purchase.

7 CHAIRPERSON MEALY: But you say the
8 City is barred. How many times--

9 MS. CAMILLO: [interposing] I'm
10 sorry, not barred.

11 CHAIRPERSON MEALY: Oh.

12 MS. CAMILLO: The City, you know,
13 there are rules regarding who the City can do
14 business with and if there are responsibility
15 issues with regarding a vendor regardless of
16 contract value it--

17 CHAIRPERSON MEALY: [interposing]
18 But sometimes the City still give them the
19 contract. So, what is?

20 MS. CAMILLO: Well, we monitor all
21 of the awards and we do see that the list of
22 awardees of contracts. And if you see that the
23 same particular vendor is getting repeat awards
24 from the same vendor, from the same agency over
25 and over again, you know, that's when MOCS would

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2 step in and say perhaps we should think about
3 doing a larger contract in order to bid out during
4 the, for the competitive procurement of it's
5 [crosstalk] if it's awarded over and over again.
6 So, there is oversight by our office to make sure
7 that that happens.

8 CHAIRPERSON MEALY: That's a good
9 lead in to what, my next question. So, why didn't
10 they, this is an open and competitive bid. You
11 could just say, I want this contract. Is there
12 any way we can put safeguards in regarding,
13 whereby one agency get \$20,000 micro purchasing
14 non competitive bids. What safeguards do we have
15 in order for them to not do that? That's just
16 going around the back door. So, you have to give
17 me something that we can say that we're stopping,
18 we're not going to have one contract and get 20 of
19 these micro?

20 MS. CAMILLO: We have that type of
21 oversight now if we see--

22 CHAIRPERSON MEALY: [interposing]
23 With Local Law 9 or which? I'm sorry.

24 MS. CAMILLO: No, just in the,
25 during the course of reviewing the procurement

1 reports that our office keeps track of. This, for
2 example, happens in the small purchase price,
3 which is \$100,000. If we see that the same agency
4 is procuring things over and over again to make it
5 under the \$100,000.
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7 CHAIRPERSON MEALY: What do you do?

8 MS. CAMILLO: Well, we, first of
9 all we step in and we meet with the agencies to
10 work on changing their procurement plan.

11 CHAIRPERSON MEALY: Have you ever
12 done that to an agency?

13 MS. CAMILLO: Personally, not. Not
14 me, but MOCS, yes. We review the small purchases
15 from all agencies to make sure that that happens.
16 Also, the Comptroller will, during the course of
17 registration, and that's another check where they
18 would, you know, they have bounced back contracts
19 that have been sent to registration when they feel
20 that there is an issue with the splitting
21 contracts, artificially dividing.

22 CHAIRPERSON MEALY: So, we have
23 stopped agencies from doing that?

24 MS. CAMILLO: Yes.

25 CHAIRPERSON MEALY: What was the

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2 recourse of it? Do they get barred for a year or
3 do they just - - ?

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MS. CAMILLO: The agencies?

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CHAIRPERSON MEALY: Yes. Do they

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have--

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MS. CAMILLO: [interposing] No, the

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agencies don't get barred if there is a service or

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a good that they have to purchase. But, like I

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said, I haven't done it, I haven't personally done

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this. I know that we do have oversight. We look

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at the award and if there is something that rises

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to the level of an issue we meet with the agencies

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and address it in that realm.

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CHAIRPERSON MEALY: Okay. What

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steps, if any, do you take to ensure that

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contracts appropriately distribute among vendors.

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Could, is there anything to put in place to maybe

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have a process, maybe three contracts for one

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vendor not over three, \$20,000, is \$20,000, could,

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is there anyway we can have maybe safeguard with

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at least three agencies and you have to pick out

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one from that agency in regards to this one bid?

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'Cause if it's non bidding, anybody can just put

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in for that bid, right?

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2 MS. CAMILLO: Well, it's not a
3 bidding process so if the agency has to purchase
4 something that is valued under \$20,000 they can go
5 out and awarded that, make that award without any
6 bids. They have to make sure that the price is
7 reasonable and fair and they also are required to
8 make sure that they're not awarding the same, to
9 the same bidder over and over again. So, there's
10 a requirement that an analysis take place before
11 award.

12 CHAIRPERSON MEALY: See, that's the
13 whole thing. If it's a lower bid and a next
14 vendor gets the same bid again, what safeguards
15 are there?

16 MS. CAMILLO: Well, there's no bid
17 in this scenario. So, if the agency in the
18 process of trying to award a micro purchase
19 discovers that the price that was given by the
20 selected vendor is not reasonable then they are
21 not, they can't award it to the vendor. There
22 first has to be a determination that the price is
23 reasonable and they also have to ensure that it's
24 not, that all of the contracts - - I think what
25 you're getting at is that all of the contracts

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2 aren't being awarded to the same vendor over and
3 over again.

4 CHAIRPERSON MEALY: Right.

5 MS. CAMILLO: That's a requirement
6 of the rule.

7 CHAIRPERSON MEALY: Okay, we
8 definitely have to think about that question. [off
9 mic]

10 COUNCIL MEMBER NELSON: Okay. If
11 there's, say, six owners of a business and they
12 all have a different name but they're really
13 partners and they continuously put through
14 contracts. And if one or two of the same company
15 goes by, I guess, it's not a red flag, I would
16 think. But between the five or six or whatever
17 number there are there could, in fact, be a dozen
18 or two dozen going through so it would be the same
19 people profiting. Do you know if MOCS has a
20 guideline or system to, sort of, like, weed that
21 out?

22 MS. CAMILLO: Well, there's not
23 that in the, under your scenario that wouldn't be
24 able to happen. Every vendor has one EIN and one
25 vendor number. So, we know what vendors are being

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2 awarded. So, you can't split, you can't, even if
3 they have multiple owners the awards aren't based
4 on the owner but on the vendor number and the EIN.
5 But we, like I said, we do keep track, we know who
6 all of the micro purchase awardees would be. In
7 our reporting I believe we submit those to the
8 Council. We undertake our own review. And so if
9 we do see that we're getting multiple or
10 unreasonably high awards to a particular vendor
11 from one particular agency then that would be, we
12 would step in and, you know, discuss that with the
13 agency to try to address that issue.

14 COUNCIL MEMBER NELSON: There would
15 be a red flag?

16 MS. CAMILLO: Absolutely.

17 COUNCIL MEMBER NELSON: Even if
18 there was one big umbrella ownership, incorporated
19 and there were about, again, six, seven, eight,
20 ten owners and they all have different EIN's or
21 each different name?

22 MS. CAMILLO: Well, if they're,
23 they have different EIN's they're different
24 entities, they're different businesses.

25 COUNCIL MEMBER NELSON: Mm-hmm.

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MS. CAMILLO: So--

COUNCIL MEMBER NELSON:

[interposing] That'd be tough, yeah.

MS. CAMILLO: --there'd be no way, we wouldn't be able to find that relationship. They're all separate entities. [crosstalk]

COUNCIL MEMBER NELSON: No, that would take a really investigative situation to see if the same owners have their fingers in different pots. And they just, they don't come out as one of the main owners. They come out as a General Manger or Secretary or something. Okay, just food for thought, okay.

CHAIRPERSON MEALY: Thank you.

With respect to the MWBE's, how will you ensure that agencies won't disproportionately resort to micro purchasing to fulfill their MWBE's goals?

MS. CAMILLO: Well, there were, we wouldn't be able to--

CHAIRPERSON MEALY: [interposing]

This is a chance for them to do.

MS. CAMILLO: --we, the change to the rule was to, will certainly, one of the reasons to change the rule as the notice of

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2 purpose implied or actually stated during the capa
3 process was to increase the utilization from
4 MWBE's at the micro purchase level. You know, we
5 don't foresee that overutilization as a problem.
6 Right now we're doing well in the micro purchase
7 area under the \$5,000 and we're at a, I believe a
8 25 percent utilization. So...

9 CHAIRPERSON MEALY: A 25?

10 MS. CAMILLO: The, approximately,
11 so, which we think is a good rate. We hope that
12 that continues with the change in the micro
13 purchase to \$20,000. But we don't have any reason
14 to believe that there's going to be an over
15 utilization on the for the micro because it
16 doesn't happen now.

17 CHAIRPERSON MEALY: [crosstalk] - -
18 does overutilization happen now, happen with micro
19 purchasing to fulfill their MWBE goals? What
20 safeguards do we have in place? 'Cause people
21 will utilize this as to make sure their goal - - .

22 MS. CAMILLO: Well, remember the
23 agency goal is for overall procurement. So, the
24 agencies--

25 CHAIRPERSON MEALY: [interposing]

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So, you say they could use this to meet their MWBE goal?

MS. CAMILLO: I don't, I'm not very good at math but I don't think that even at 100 percent utilization for, on a micro level can an agency--

CHAIRPERSON MEALY: [interposing]
Well, five percent is big, though.

MS. CAMILLO: Right, but for, as a portion of their overall procurement it probably doesn't fulfill them.

CHAIRPERSON MEALY: [off mic] Well, at least it will, can't these purchases help them build their capacity for WMBE?

MS. CAMILLO: Absolutely, absolutely. What we hope to see is--

CHAIRPERSON MEALY: [interposing]
[crosstalk] So, it will help meet their goal?

MS. CAMILLO: --we always, not meet their goals. It would help agencies, certainly, what we hope is that the increase in micro purchase results in a higher utilization from MWBE's at the micro purchase level and we hope that the larger, you know, the \$5,000 to the

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2 \$20,000 micro purchase will be another stepping
3 stone for MWBE's to increase their capacity,
4 they're performing in larger contracts. So,
5 hopefully that will be, and then be better,
6 become, have more capacity to bid for and win with
7 a lower bidder on the contracts between \$20,000
8 and \$100,000. So, yes, we do hope that MWBE's
9 utilize this opportunity to increase their
10 capacity for growth.

11 CHAIRPERSON MEALY: Okay. Have you
12 examined the procurement practice of other large
13 municipalities as well as State and Federal
14 agencies and if so, do they have the similar micro
15 purchasing rules and limits? And what steps do
16 they take to limit waste and eliminate corruption
17 in regards to these micro purchases?

18 MS. CAMILLO: Unfortunately I'm not
19 prepared to answer that question. I have no idea,
20 personally.

21 CHAIRPERSON MEALY: Okay. Do you
22 know of any other rules and guidelines, practices
23 pegged to the micro purchasing limits? And if so,
24 how would these, no, you don't have any agency,
25 any other agency would use this State, not even

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State, you know, of their micro purchasing limit?

MS. CAMILLO: I'm not sure what their micro purchasing is.

CHAIRPERSON MEALY: Have you, have MOCS spoken to any State officials in regards to this, whether they are comfortable with the increase?

MS. CAMILLO: I don't believe that any State agency has an opinion on what we do as a city. They have their own--

CHAIRPERSON MEALY: [interposing]
Just trying to compare it to--

MS. CAMILLO: --I can't speak to whether to now we've reached out to them. I - - .

CHAIRPERSON MEALY: I hope we do 'cause I notice half the - - with this State and Federal, they have micro purchasing also, right?

MS. CAMILLO: I don't know.

CHAIRPERSON MEALY: Yes, they have to.

MS. CAMILLO: I'm sure they do but I don't know what those are.

CHAIRPERSON MEALY: - - the City and the State and the Federal start looking at

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2 this that it doesn't become a pattern to make the
3 small micro purchasing just a way out for MWBE's
4 and to create more corruption in regards to the
5 bigger these micro purchasing that they don't have
6 to go through a bid process can become the next
7 best gravy train. So, I just hope that we start
8 looking to that and ask maybe and see if other
9 agencies from my Committee to start looking at
10 State and Federal to compare and make sure that
11 there is a limit to, theirs could be \$100,000 and
12 they could now change theirs to more, \$200,000.
13 So, I just hope that we look into that and I hope
14 that agencies are not using the MWBE as a goal for
15 filler also. And I just want to see, I'd like the
16 ideal of the \$20,000, it's a lot of people do not
17 get some of the big city contracts. This will
18 help a lot of people but we just don't want to
19 make it the norm just to get it, just to fulfill
20 or help the MWBE's. it should be able to stand on
21 its own and this was just a brief hearing to make
22 sure that we get some tightness of it to see if we
23 have real safeguards right now. They okay. So,
24 but I just think MOCS, any other questions?

25 MS. CAMILLO: I would just want to,

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2 quickly before I, before we end that there are,
3 MOCS does have safeguards to prevent the types of
4 issues that you're raising. We do have oversight.
5 We do see who these contracts are being awarded to
6 and there is going to be a lot of training from
7 MOCS to all of the agencies about how to
8 effectuate the new requirements.

9 CHAIRPERSON MEALY: Well, there's
10 no penalties if someone get, well, get caught
11 doing about 20 micro purchasing contracts,
12 splitting up the contract. What is the?

13 MS. CAMILLO: Well, if they, if an
14 agency inappropriately tries to award a micro
15 purchase to any vendor for, whether it be
16 splitting contracts or otherwise, not only will,
17 you know, will we be taking a look at the awards
18 but also, like I mentioned before, at the
19 Comptroller level I know that, at least for the
20 small purchase, there's another check.

21 CHAIRPERSON MEALY: But we just
22 look at them. What recourse is there really?
23 That's really stealing City money if they doing,
24 splitting micro contracts like that.

25 MS. CAMILLO: Well, no, like I, if

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we see that pattern we will intervene and we will work with agencies--

CHAIRPERSON MEALY: [interposing]

When we intervene how much leverage do we have to intervene?

MS. CAMILLO: Well MOCS has--

CHAIRPERSON MEALY: [interposing]

As MOCS?

MS. CAMILLO: MOCS has a lot of leverage. We have to approve all of their larger contracts. So, they're--

CHAIRPERSON MEALY: [interposing]

But for some reason they still get the contracts, even if they get caught. I don't know what's going on. MOCS was still award the same vendor a bigger contract, so there I something wrong with the process. What leverage do we have to really stop it where it starts? If you get caught what is the recourse? It's either you get a fine, you go to jail? What recourse do we really, MOCS really implement?

MS. CAMILLO: MOCS has a number of, and this is just for procurement generally, agencies are not doing, if they're not following

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2 the rules there are a number of recourses that
3 MOCS can do in terms of not approving, their
4 ability to contract. I mean, you know, all of
5 these rules are intertwined as sort of
6 jurisdiction and oversight over the procurement
7 process overall. This is one of the many
8 different types of procurements that MOCS has the
9 ability to come in and intervene at. If there is
10 wrongdoing or inappropriate action taking place at
11 the agencies.

12 CHAIRPERSON MEALY: That's still
13 not answering. But I think this is, we will come
14 back to this micro purchasing 'cause I definitely
15 want to know what the State and the Federal is
16 doing. I thought you would give us some insight
17 on that.

18 MS. CAMILLO: Sorry.

19 CHAIRPERSON MEALY: But we'll try
20 to have another meeting and I thank my colleagues,
21 Mr. Nelson, for coming out and I want to thank you
22 also and this meeting is now here adjourned.
23 Thank you.

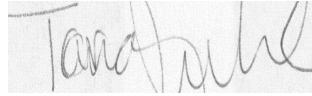
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C E R T I F I C A T E

I, Tara Juhl certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A rectangular box containing a handwritten signature in cursive script that reads "Tara Juhl".

Date 5/14/13