

**Testimony of Andrea Glick, City Chief Procurement Officer and Director of the Mayor's Office of Contract Services, before the New York City Council Contracts Committee**

**Oversight: Bottlenecks in the Contracting Process**

**May 29, 2013**

Good afternoon Chairperson Mealy and members of the Contracts Committee. My name is Andrea Glick, and I am the City Chief Procurement Officer and Director of the Mayor's Office of Contract Services ("MOCS"). On behalf of the Administration, I would like to thank you for this opportunity to testify today. We look forward to working with the Council to find ways to further streamline the procurement process, which has significantly improved over the past several years.

The basic legal framework of the City's procurement system is primarily to further two policies: to assure the prudent and economical use of public money for the benefit of all City residents and to guard against fraud, corruption and favoritism, as codified, for example, in New York State General Municipal Law Sections 100-a, 103 and 104-b. The basis of that framework alone leads to a procurement system with many requirements but we at MOCS have been successfully working with agencies to ensure that the procurement process moves smoothly and as quickly as possible. The testimony I am presenting today is based primarily of procurement data from Fiscal Year 2012, which will be updated once we complete our Indicators Report for Fiscal Year 2013, which will be complete by the end of the summer.

**Increased Competition**

One factor that informs the success of a procurement is the quality of the vendor selected for award. Increased competition in procurements is a primary indicator of the

City's ability to obtain the best deals for the City – increased competition generally yields better goods and services at a lower cost. The City's rate of highly competitive procurements (defined as one with at least three responses) for competitive sealed bids and proposals has steadily increased, from 80% in Fiscal Year 2008 to 95% in Fiscal Year 2012. Most notably, 100% of architecture and engineering procurements in Fiscal Year 2012 were highly competitive.

### **Vendor Enrollment**

We have made it easier for vendors to enroll to do business with the City, and to be notified of procurement opportunities, by moving vendor enrollment online. Through the Payee Information Portal, available online at NYC.gov/PIP, vendors can enroll online and can select vendor commodity codes used to determine which procurement opportunities they will be informed of. Vendors can now maintain their contact information and commodity codes online, which will help to ensure that they remain current. This new functionality makes it easier for vendors to enter into the competition pool for City work, and continue to receive relevant opportunities as their business develops. Since December of 2012, more than 500 new vendors have enrolled with the City through this new portal, and more than 400 existing vendors have used PIP to adjust their commodity codes. In total, these vendors have enrolled in 15,783 commodities and de-enrolled from 2,346 commodities that were no longer relevant to them.

### **Subcontractor Tracking**

Prime contractors are required to have their subcontractors approved by the City before those subcontractors begin work and to report on payments to their subcontractors. In December, the City became the first municipality in the country to establish a comprehensive subcontracting database. Prime vendors now have to disclose subcontractor information on the City's Payee Information Portal, including the names of subcontractors hired which requires agency approval, as well as each and every payment to those subcontractors. This new system makes it easier for prime contractors to remotely provide this information, and for agencies to track and approve it. It also strengthens the City's capacity to detect and address potentially fraudulent billing practices, further ensure the timeliness of payments from contractors to subcontractors and more seamlessly track the utilization of minority- and women-owned businesses on subcontracted City work.

### **Contractor Payments**

A top priority for City agencies is to ensure that vendors get paid as quickly as possible for quality work. Payment delays to contractors can disrupt their business operations, and delay the provision of services that New Yorkers need. In order to encourage timely payment by agencies, PPB Rule 4-06 requires agencies to pay interest to contractors when payment delays occur. MOCS tracks the amount of interest each agency is obligated to pay as a result of the prompt payment requirement and the indicators show a significant improvement. In Fiscal Year 2012, the net interest paid by agencies citywide totaled only \$808, a negligible figure relative to overall procurement volumes, compared to \$10,049 in Fiscal Year 2011.

## **Change Orders**

Change orders are amendments to construction or architecture/engineering contracts that authorize additional work necessary to complete a project, or to add work that does not amount to a material change to the original contract scope. There are a number of specific reasons an agency will decide to move forward with a change order, such as field condition, design omission, or administrative change. Many times there are multiple concurrent reasons that an agency must proceed with a change order. The City strives to maintain low processing times since delays in change orders result in project and payment delays and may thus contribute to higher bid prices. In 2012, the City reduced design change order processing time by 25% and construction change order processing time by 16%.

## **Executive Order 159 of 2011**

The City has successfully worked to streamline the contracting process, particularly, by eliminating onerous and unnecessary contracting requirements that take time and resources away from contractors. Specifically, Executive Order 50 of 1980 required contractors to submit an Employment Report to the Department of Small Business Services' Division of Labor Services (DLS) every 24 months, which monitors equal employment opportunity compliance by City vendors. The Mayor issued Executive Order 159 of 2011, which changed the DLS filing requirements by: 1. exempting client services contractors from such filings because they are already required to file similar and extensive state and federal documentation concerning their compliance

with equal opportunity and principles; and 2. extending the frequency of the reporting requirement for all vendors to every 36 months. In Fiscal Year 2012, the change to the DLS filing requirements exempted more than 400 nonprofit vendors that were awarded over 600 client services contracts valued at more than \$850 million.

### **MOCS Meetings**

To proactively assist agencies with their contract processing, MOCS frequently meets with a number of agencies. On either a monthly or biweekly basis, MOCS reviews and discusses pending contract actions to determine areas in which we can assist the agencies to process expeditiously. MOCS assists in coordinating efforts with other oversights such as the Law Department and OMB when needed and appropriate.

### **VENDEX**

As you know, vendors are required to file VENDEX questionnaires once they win City contracts totaling \$100,000 within a 12 month period. The forms are filed with MOCS. Over the past year MOCS has implemented a number of improvements to speed up the processing of VENDEX forms, so that key vetting information will be available to agencies quickly, accelerating the contracting process: these improvements have more than doubled the average number of submissions processed per day and has cut the average number of days required to process submissions by more than half.

In addition to these improvements, we support making legislative changes to improve the VENDEX statute. The VENDEX form can be simplified by accepting

information that is already available through other forms that vendors are required to file with other government entities. The City could eliminate redundant questions by relying on forms, such as the 10K for publicly-traded companies that must be filed with the Securities and Exchange Commission and the 990 for non-profit organizations that must be filed with the Internal Revenue Service. Accepting this information will make it easier for potential City vendors to submit their questionnaires completely and correctly, and processing times for these questionnaires will further decrease.

Another improvement that can be realized through legislation is to increase the VENDEX filing threshold. The \$100,000 threshold was established in the early 1990's when the VENDEX statute was passed, and has not been revisited since. The size of City contracts has gone up significantly since that time, and the threshold of \$100,000 has not been raised accordingly. Increasing the threshold would eliminate filing requirements for vendors with low contract values and would reduce the number of VENDEX filings the City receives each year further improving VENDEX processing speeds.

Finally, VENDEX is paper-based and requires MOCS staff to data enter information into our database system. MOCS is currently working to develop online forms. The creation of an online portal that will allow vendors to fill out and submit their VENDEX questionnaires directly is still necessary, and would allow vendors to maintain current information online and eliminate the need for MOCS to be in the data entry business, and, most importantly, would significantly reduce the processing backlog.

### **Local Law 63**

Local Law 63 of 2011 (LL63) has caused some processing delays as well. We understand the policy behind the legislation is to encourage agencies to perform services in-house when it is more cost effective than contracting out those same services to private companies. We also understand that it is advantageous for agencies to plan and post future contracting opportunities. Adequate procurement planning by a City agency means that it will obtain the appropriate level of goods and services it needs to fulfill its mission in a timely manner. However, the requirement that an agency must wait 60 days to begin the contracting process for any procurement not listed on the annual contracting plan has proven to lengthen the procurement process. Very-often, unforeseen service needs arise, which require agencies to wait the 60 days prior to beginning the contracting process. For example, after Hurricane Sandy, the Parks Department had to procure supervision of storm-related capital reconstruction at many of the City's beaches. These services were necessary so that the beaches would be ready to open by the start of summer. As they were not included in the plan and they were not emergency procurements, Parks was required to wait the 60 days before beginning the procurement process. This delay led to a rushed construction schedule for the Memorial Day opening of the beaches, not to mention administrative challenges to make sure the deadline was met. We would like to see this 60-day waiting period reduced to a posting requirement analogous to posting requirements for other procurement actions. For example, agencies are required to have competitive sealed bids out on the street for 15 days and request for proposals open for 21 days prior to opening. That is the time vendors have to prepare their responses to these types of solicitations. Like other notice requirements related to procurement, this would still give ample notice to outside parties and to the public that an

agency is moving forward with a procurement that is not listed on the annual contracting plan and schedule, but would also streamline the process for agencies. A shorter waiting period would strike the right balance between the goals of Local Law 63 and the goal of eliminating delays in procurement.

Another aspect of Local Law 63 that constrains the contracting process is that the law applies to sole source procurements and task orders from master agreements. Agencies should not be required to conduct displacement determinations when engaging in a sole source procurement. Per PPB Rule 3-05, sole source procurements can only be used when there is only one source for the required good or service - by definition they cannot be performed by any other source, including City employees. That source may have the patent on the service or the only legal authorization for maintenance.

### **Master Agreements**

Agencies enter into master agreements in order to facilitate and streamline the procurement process for all other City agencies. In the master agreement model, one agency administers the procurement for the good or services that other agencies may issue task orders from. It was developed to improve efficiency in contracting as individual agencies are not required to do individual solicitations for the good or service. The contracting agency takes advantage of volume-based price reductions when entering into master agreements because the quantity of such services are unknown at the time the master service contracts are procured and there is an anticipated large amount of task orders that are generally purchased off of these master agreements. In FY 12, Mayoral and non-Mayoral agencies used 1,075 requirement contracts, placing orders valued at just

under \$1.6 billion. MOCS has been working with the Department of Citywide Administrative Services (“DCAS”) to increase the number of Citywide shared master services agreements that it enters into which range from enterprise print management to translation services. The increased number of DCAS shared services contracts will continue to save the City considerable money and speed up the procurement process. Task orders are issued by agencies on an “as-needed” basis. If at the time of the contracting plan the need is unknown and the task order is inadvertently left off the plan, the 60 day waiting period and the displacement analysis add delays to a process that was designed to make procurement more efficient. We would like to work with the Council to reduce the length of time the LL 63 notice must be posted, which would expedite the procurement process and therefore reduce delays in procurement.

### **Micropurchase**

I have been discussing the sources of some of the delays in procurement but I would also like to mention some changes that would reduce them. We have been working with the Council to increase the micropurchase limit from \$5,000 to \$20,000. Raising the micropurchase limit will considerably streamline the contracting process for all procurements that fall between \$5,000 and \$20,000. The PPB held a public hearing and two public meetings on the matter and recently voted to adopt changes to the micropurchase limit. In order for the change to become effective, the Council must pass a conforming resolution which we hope will happen soon.

After the limit is raised, MOCS will provide effective oversight on agencies’ use of the micropurchase method. MOCS will monitor micropurchases to ensure integrity in

the City's purchasing process. MOCS will obtain and review reports of all micropurchases made by City agencies on a quarterly basis to make sure that agencies do not artificially break up larger procurements in order to get them below the micropurchase limit. If we find inappropriate use of the micropurchase method by an agency, MOCS has a number of actions that it can take to address it, including removing an agency's ability to make micropurchases.

### **Best Value**

We have also been working with the PPB to codify the best value legislation that was recently passed by the New York State Legislature. The use of awarding contracts through best value, instead of low straight bid, will allow agencies to look more holistically at solicitation responses and award contracts to the vendors that give the City the best overall value. We are in the process of amending the PPB Rules to codify the State's new best value rule, and this should result in City agencies purchasing goods that are higher-quality, thereby reducing agencies' need to do as many procurements as they currently do due to reasons like longer warranties or longer life cycles. The PPB has already approved the changes to the Rule.

### **Minor, Non-substantive Non-Responsive Bids**

Another procurement rule that the PPB has approved which will expedite the contracting process is the amendment to PPB Rule 2-07, which currently mandates that all non-responsive bids or proposals be rejected by agencies. A non-responsive bid or proposal is one that does not comply with all the material terms and conditions of the

solicitation and/or all the material requirements of the specification. Some findings of non-responsiveness for minor, non-substantive infractions that do not affect the competition add to procurement delays. For example, if a bid requires for mistakes to be crossed out and initialed in pen but a vendor who is the lowest bidder does so in pencil, under the current PPB Rules, the vendor must be found non-responsive. Our change to this PPB Rule allows agency chief contracting officers (“ACCOs”) to overlook a minor error in form on a bid response or proposal as long as that minor error will not affect the competition. This rule change will help to decrease the large number of non-responsiveness findings that occur due to minor and insignificant errors by vendors in bid responses and proposals. The change will also reduce agencies’ administrative processes as vendors have a right to appeal non-responsiveness determinations; with fewer findings of non-responsiveness, a decrease in appeals will also result. Overall, the change to PPB Rule 2-07 will allow agencies to choose winning bidders or proposers faster and to make those awards to the vendor with the lowest price or best proposal, thereby saving the City both time and money.

As you can see, the Administration is looking into causes of delays in the City’s contracting process, and we are attempting to, with the assistance of the Council, reduce as many of those delays as possible in order to speed up the contracting process.

I am now available to answer any questions you may have.

Thank you.

**FOR THE RECORD**

**WRITTEN TESTIMONY OF**  
**THE CITY OF NEW YORK**  
**DEPARTMENT OF INVESTIGATION**

**BEFORE**  
**THE NEW YORK CITY COUNCIL**  
**COMMITTEE ON**  
**CONTRACTS CITY HALL**  
**COUNCIL CHAMBERS**  
**NEW YORK, NEW YORK**

**MAY 29, 2013**

**WRITTEN STATEMENT OF THE DEPARTMENT OF INVESTIGATION  
BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CONTRACTS**

Pursuant to Section 2-08(f) of the PPB rules, prior to making a responsibility determination, every agency must request the Department of Investigation (“DOI”) conduct a Vendor Name Check (“VNC”) on a proposed vendor to determine if the vendor has the requisite responsibility to receive public contract dollars. The PPB Rules mandate that this VNC consist of a review of the names on the VENDEX Questionnaire and other information to determine if a vendor seeking to do business with the City, or any affiliated business, has ever been the subject of a DOI investigation. Where DOI determines that a prospective vendor or an affiliate has been the subject of a DOI investigation, it provides a copy of any final report of findings to the vending agency. These reviews must be completed in 30 days. Where they take longer, DOI must provide an explanation to the vending agency. DOI complies with the 30-day turnaround requirement in all cases with the exception of those few where we must do further investigation; in such cases we notify the agency. Compliance with the 30-day rule has been a top priority in this administration. The Commissioner and the Executive staff regularly Compstat this function in order to ensure that the high volume keeps moving with no deviation.

As required by the PPB rules, DOI completes its Vendor Name Checks expeditiously. In FY 2011 and 2012, DOI performed 98% of its VNCs in 30 days or less. So far in FY 2013, when the work of the DOI Central VENDEX Unit was significantly disrupted due to Hurricane Sandy, 91% of the checks have been performed in 30 days or less. However, by the end of the fiscal year, we expect the total annual figure for VNC turnaround to be closer to the 98% we have previously achieved.

DOI receives a significant number of VNC requests every year. In FY 2011, DOI conducted 5173 VNCs of prospective City vendors which included checks on 15,452 principals, 2728 AKAs, and 35,068 affiliated companies, resulting in a total of 58,421 checks done by DOI’s Central VENDEX Unit. In FY 2012, DOI conducted 4527 VNCs of prospective City vendors, which included checks of 13,486 principals, 1994 AKAs and 24,862 affiliates, and resulted in DOI conducting a total of 44,869 checks. While FY 2013 is not yet over, as of the end of April, DOI had conducted 3771 VNCs which required 10,959 principal checks, 1519 checks of AKAs and 17,591 checks of affiliates, resulting in 33,840 checks so far this year.

As contemplated by the PPB Rules, a relatively small number of vendors have integrity issues that require further investigation. In these few cases, DOI informs the vending agency that the VNC is under review thereby alerting the agency that the VNC will take more than 30 days, while the integrity issue is fully vetted or investigated. That process enable DOI to provide the vending agency more information about the “responsibility” of the prospective vendor. DOI keeps in close contact with the vending agencies to provide them with what information we can

as soon as we get it so as to minimize any delay in the contracting process. While a different topic, the result of such an extended review may be the requirement of a monitor for a vendor.

Under this current administration, DOI centralized its VNC response function in order to insure maximum quality and efficiency of our processes. The benefits of that reorganization are reflected in the rapid turnaround times for the voluminous requests we receive annually. We understand that our role is vital to insuring the responsibility of City vendors and working effectively to support the City's procurement process continues to be a high priority for DOI.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Andrea Glick, Commissioner

Address: 155 Broadway

I represent: MUCS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

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Name: Ersette Camillo

Address: 125 Broadway

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

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in favor  in opposition

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Name: John F. ...

Address: 125 Broadway

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms.