A Ship Without a Captain: The Contracting Process in New York City

New York State Commission on Government Integrity

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A Ship Without A Captain:
The Contracting Process In New York City

New York State Commission On Government Integrity
December 1989
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New York City

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Government Contracting Resource List
I. INTRODUCTION

The problems facing New York City's contracting system have reached a state of crisis, no less real and no less serious than the more conspicuous problems facing the City. A 12-month review has convinced this Commission that the City's labyrinthine contracting system wastes millions of taxpayer dollars -- dollars which otherwise could be spent fighting crime, drug abuse and homelessness. It is mired in red tape, scares away vendors and remains vulnerable to corruption.

Contracting is the lifeblood of the City's operations. Each year, the City spends more than $6.5 billion on contracts for a panoply of supplies, equipment, services and construction. The City buys two-way radios, unmarked cars and bulletproof vests for police officers who patrol City streets. It buys food to feed homeless families and finds contractors to paint and repair City-run homeless shelters. It hires security guards to protect City buildings, contractors to repair City streets, and construction firms to renovate City housing.

To take the measure of the City's giant contracting system, the Commission has interviewed more than 60 City employees from 25 agencies responsible for contracting on the City's behalf. We have reviewed thousands of pages of contract documents, questioned over 70 vendors, consulted contracting experts, studied the work of the State-City Commission on Integrity in Government, the Institute for Public Administration and the Mayor's Private Sector Survey, and held two days of public hearings.

The Commission has found that the City's contracting system is fragmented and chaotic. The City's contracting operations are awash in a sea of paper, plagued by inordinate delays, and clouded by unclear and inconsistent rules and procedures which slow City business to a crawl and discourage vendors from stepping forward to bid. As a result, the City often pays far more than it should for goods and services, wasting millions of taxpayer dollars. At the same time, the widespread reluctance of vendors to do business with the City offers opportunities for bid-rigging and corrupt side-deals.

Over the past several years, scattered attempts at reform have been made. Often working in isolation from one another, well-meaning City workers have tinkered with the system, trying here and there to fix the small piece of the contracting maze which falls within their control. But New York City's contracting operations are too big and too complex to be reformed piecemeal.

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1 In deference to the work of other groups like the New York State Organized Crime Task Force, a decision was made not to include the City's construction operations in the Commission's study.

2 The transcript of the Commission's hearings on October 24 and 25, 1989 is cited as "Tr." Exhibits introduced at those hearings are referred to as "Commission Exhibit."
Meanwhile, the key to real reform of its contracting system has been available to the City for many years. Over the course of the past several decades, government contracting has emerged in cities and towns across the country as a distinct body of knowledge and expertise. Faced with common problems and common concerns, state and local governments around the nation have developed common standards and procedures for maximizing competition, negotiating contracts and monitoring contractor performance.\(^3\)

Unfortunately, advances in the field of government contracting have been ignored by many New York City agencies. While other governments have streamlined their contracting procedures, simplified their contract documents, developed professional training and certification programs for their buyers and devised the kinds of computerized information systems which allow them to manage their contracting operations effectively, the City has remained wedded to outmoded and inefficient ways of doing business.

In 1986, the State-City Commission on Integrity in Government ("the Sovem Commission") conducted an overview of the City's contracting problems. In a report foreshadowing this Commission's work, the Sovem Commission warned that New York's failure to address the fragmentation and complexity of its contracting operations was an open invitation to corruption.\(^4\) "Corruption and abuses of trust," the Sovem Commission warned, "shun the bright light of day and thrive in the confusion and opacity of procurement laws and practices that lack clarity, consistency and uniformity."\(^5\)

What the City needs, the Sovem Commission found, is a comprehensive re-examination and reorganization of the City's far-flung contracting operations. Instead of each City agency developing its own contracting policies and its own contracting documents, the Sovem Commission urged the creation of one central authority responsible for all aspects of the City's contracting policies and procedures, if not for the City's actual day-to-day purchasing decisions. New York City needs someone to orchestrate the entire contracting system, setting procurement policies and overseeing their implementation Citywide by individual agencies.\(^6\)

Since the Sovem report was issued, a chorus of voices has sounded the same theme. The Institute of Public Administration ("the IPA"), commissioned by Mayor Edward I. Koch to

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\(^3\) Information on modern government contracting practices is available from organizations like the National Institute of Government Purchasing, the National Association of Purchasing Management and the General Services Administration's Training Institute. Pertinent details are included in the Appendix.

\(^4\) State-City Commission on Integrity in Government, Report and Recommendations Relating to City Procurement and Contracts (November 19, 1986) at 67. This report is cited below as the "Sovem Commission Report."


\(^6\) Sovem Commission Report at 70, 92-93. The idea of a central authority responsible for setting procurement policy is a long-standing one. As early as 1979, the American Bar Association's Model Procurement Code for State and Local Governments included a recommendation for a central procurement policy body.
examine New York City's contracting operations, called on the City in November 1987 to establish a central procurement panel to assist in developing Citywide procurement guidelines and to propose Citywide policies to the Mayor. The IPA stressed the City's urgent need to draw on the kind of government contracting expertise that is available to other cities and states around the country.

The IPA also took the Sovern Commission recommendations one step further, focusing on how to implement new, uniform procurement policies. The IPA rightly foresaw that the development of the new policies would be in vain if the City did not take steps to improve the skills of its existing contracting personnel. The City, the IPA warned, suffers from a "serious shortage" of staff with experience and expertise in the technical and managerial aspects of contracting. The City needs to make a sustained effort to recruit and to train contract staff and to improve their contract negotiation, contract management and contract monitoring skills.

Two years have gone by since the IPA issued its recommendations. Yet, as recently as September 1989, the Mayor's Private Sector Survey was dismayed by the lack of clear Citywide contracting guidelines and the absence of City-wide training programs.

The City's failure to date to take the steps prescribed by the Sovern Commission and the IPA is all the more perplexing given the City's current fiscal bind. The modest investment necessary to implement these reforms will result in the saving of tens of millions of dollars each year. Dr. Annmarie Walsh, the author of the IPA study, testified that $60 million a year was a "very conservative" estimate of what the City could save by remedying the flaws in the City's contracting operations. On the capital budget side, the Mayor's Private Sector Survey estimated that the City stood to save $3.8 billion over the next 10 years by streamlining the contracting process. Quite simply, the City has reached a point where it can no longer afford "business as usual."

Fortunately, the new Charter adopted by the voters on November 7, 1989 sets the City on a new course. A new 5-member Procurement Policy Board, to be appointed by the Mayor and the Comptroller, is charged with developing uniform, Citywide rules for soliciting bids, selecting vendors and managing contracts. It also has the power to impose deadlines aimed at cutting back on

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7 Institute of Public Administration, Contracting in New York City Government, Final Report and Recommendations (November 1987) at 13. This report is cited below as "the IPA Report."

8 IPA Report at 5.

9 IPA Report at 7-9.

10 The Mayor's Private Sector Survey consists of a group of senior private sector executives loaned by their firms to the City to help streamline the management of City operations. Their work is summarized in The New York City Service Crisis: A Management Response (September 1989), cited below as "the Private Sector Survey." See id. at 32, 36.

11 Tr. at 425-26.

12 Private Sector Survey at 37.
the delay which is currently choking the City's contracting system. Simplifying and standardizing the contract language which now confuses and discourages potential vendors is also on the Procurement Policy Board's agenda.

Sweeping though the changes called for by the Charter are, they are not self-executing. Implementing the Charter changes will require the time and careful attention of both the new Mayor and the new Comptroller, as well as persistent oversight by the City Council. At the same time, the Charter alone cannot restore vitality to the City's contracting operations. Additional measures are needed if the promise of reform held out by the Charter is to be realized.

II. SUMMARY OF RECOMMENDATIONS

As more fully discussed below, the Commission urges the City's new leaders to take the following steps to bolster the new Charter changes:

1. The new Mayor and the new Comptroller should undertake a nationwide search for the most knowledgeable and experienced procurement experts to serve as the five members of the Procurement Policy Board. The taxpayers of this City deserve the advice of a top-flight Board composed only of those with a national reputation in the field of procurement. Similar care should be given to the selection of the Board's staff.

2. To oversee the Citywide implementation of the new contracting procedures, the City needs a deputy mayor for whom the reform of the City's contracting operations would be his or her sole responsibility for a transition period of at least two years. He or she must have a clear, unambiguous mandate to address contracting problems Citywide.

3. Each City agency must be required, as the IPA recommended two years ago, to appoint at a senior management level a chief contracting officer with professional procurement background. The reforms to be proposed by the Procurement Policy Board will come to naught if the expertise is lacking at the agency level -- where the actual purchases are made -- to implement those reforms.

4. Similarly, the new Mayor must heed the IPA's warning that the City suffers from a desperate shortage of experienced contracting staff and must take steps to train the hundreds of employees who spend billions of taxpayers' dollars on contracts each year. Too much money is at stake to entrust this responsibility to purchasing staff who
lack the skills and the tools necessary to get the best possible deal for the City.

5. Instead of trying to police each contract before it is awarded, the City needs to develop a system for reviewing contract decisions after the fact, on a selective post-audit basis, to make sure that contracts are awarded in accordance with the City's rules and procedures and that the City gets the best value for its dollars.

The time has come for a comprehensive re-examination and reorganization of New York City's entire contracting operations in the light of the government contracting expertise available to other cities and states around the country. As witness after witness testified at our Commission's hearings in October 1989, the overhaul of the City's contracting system "is not a big deal." All that is required is "a captain at the head of the ship" with a vision and the political will to say "this is our objective, this is our timetable, let's go to it."14

III. THE CITY'S CONTRACTING OPERATIONS ARE A CRAZY QUILT OF INCONSISTENT POLICIES AND PROCEDURES

Contracting is big business in New York City. In fiscal year 1989 alone, the City's contracting expenditures accounted for approximately 25 percent of the City's entire budget. Yet, to date, no one person has been ultimately responsible for, and thus no one person has been ultimately accountable for, the way in which the City spends that money. The Board of Estimate, which has historically played a key role in the City contracting process, has contributed to the lack of accountability. As Frederick A. O. Schwarz, Jr., chairman of the Charter Revision Commission, testified in October:15

> In terms of integrity, one of the problems [the Board of Estimate] leaves for the City is, if something does go wrong, nobody can be held responsible because each [of the Board members] can say, "Well, I don't know, we all did it," and then they point to each other. Specifically, it lets the Mayor off the hook, and I think that is a severe fault from an integrity point of view . . . .

13 Tr. at 57. See also Tr. at 107, 241-42.

14 Tr. at 57.

15 Tr. at 462-63.
Responsibility for the City's purchasing operations varies depending on what is purchased, how the contract is awarded, and the dollar amount spent. The lion's share of the City's supplies and equipment is purchased centrally by the Department of General Services' Division of Municipal Supplies, although small purchases under $5,000 may be made by individual agencies. In contrast, the purchase of services (such as security guard services, car services, repair services and the like) is decentralized, with each of the City's agencies responsible for its own purchases, regardless of dollar amount. Contracts over $10,000 awarded by methods other than sealed bidding (such as sole source contracts and contracts awarded based on requests for proposals), on the other hand, have required the approval of the Board of Estimate before individual City agencies can finalize the award.

Over the years, the City has developed a crazy quilt of contracting practices and procedures which vary from agency to agency or even bureau to bureau, a source of confusion and frustration to vendors trying to do business with the City. Because there are few channels for contracting personnel in one agency or bureau to communicate with their peers in other agencies and other bureaus and to discuss common problems and common solutions, City contracting personnel often reinvent the wheel to solve common contracting problems, wasting time and, even worse, wasting money.

In late December 1987, in response to the IPA's recommendations, Mayor Koch announced the appointment of the first director of the Mayor's Office of Contracts. Many observers hoped that that office would serve as the energetic "mastermind" for the City's contracting, carefully reviewing and evaluating all aspects of the City's contracting operations with an eye toward simplifying and coordinating each of those aspects. In practice, the Office of Contracts has turned out to be an "Office of Some Contracts," with a primary focus on the $1.3 billion the City spends on sole source and RFP contracts.

From the outset, the Office of Contracts lacked a mandate for a comprehensive approach to the City's contracting problems. Executive Order 114, which formally established the Mayor's Office of Contracts, was narrower in scope than the IPA report which it purported to implement. Missing from the list of the Office of Contracts' responsibilities is any reference to the need to solve what was, to the IPA's mind, perhaps the single greatest obstacle to improved City

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16 In the case of a request for proposals ("RFP"), the selection of a vendor is not based solely on price. Rather, the vendor's background, experience and approach to the problem posed in the RFP are also considered. Tr. at 274-76.

17 Tr. at 411.

18 At the Commission's October 1989 hearing, Joel Copperman, Director of the Mayor's Office of Contracts, explained that he focused first on RFP contracts because he understood that to be the focus of the IPA report. Tr. at 318. Accordingly, the first -- and, to date, only -- set of uniform contracting guidelines issued by his office deal with procedures for preparing RFPs and awarding an RFP contract. See Mayor's Office of Contracts, Guidelines For Mayoral Agency Contracting (September 1989).

contracting -- the lack of systematic training programs for City contracting personnel. Nor does Executive Order 114 mention the need to standardize and simplify City contract language, another key IPA recommendation.

Meanwhile, huge chunks of the City's contracting operations have fallen outside the purview of the Office of Contracts. The Department of General Services' Division of Municipal Supplies ("DMS"), for instance, enters into approximately $550 million worth of contracts each year for equipment and supplies. Although both the State Comptroller and the New York City Auditor General have warned that DMS' operations need closer scrutiny, DMS' performance has not been examined by the Office of Contracts.

Similarly, the City spends hundreds of millions of dollars each year on competitively bid services -- which run the gamut from car services for children to roof repair services and management of City parking garages. Each agency purchases services on its own, subject to its own rules and its own procedures. For the most part, these contracting activities have taken place outside the purview of the Office of Contracts. The Office of Contracts has yet to complete uniform guidelines to govern the award of these contracts and has yet to specify what background and experience City buyers of these services must have.

Even in areas to which the Office of Contracts has turned its attention, it has often concentrated on isolated pieces of the problem and has not developed a comprehensive approach. For instance, the Office of Contracts has led the Voluntary/City Taskforce on Human Services Contracts, aimed at improving the City's contracting relationship with not-for-profit firms providing human services to the City. But it has not yet dealt in any systematic way with the difficulties faced by hundreds of ordinary, commercial businesses struggling to find their way through the labyrinth of the City's contract documents and procedures. It has not studied the effect of the City's insurance and bid security requirements on competition for City business and has not urged the

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20 IPA Report at 10.

21 Office of the New York State Comptroller, Office of the State Deputy Comptroller for New York City, New York City Department of General Services, Division of Municipal Supplies: Procurement Procedures and Practices, Report A-24-87 (July 27, 1988); Auditor General's Report to the Mayor on Prompt Payment (October 23, 1987) at 11-12 ("a comprehensive review of DOS (DMS') procurement function must be undertaken to investigate some of the troubling contentions made to us by numerous agency personnel").

22 Tr. at 272.

23 See Commission Exhibit 31 at 5 and Tr. at 348.

24 Several witnesses at the Commission's October 1989 hearing testified that the City's insurance requirements are excessive and out of line with insurance requirements of other jurisdictions. One witness told of being asked to supply $1 million worth of liability insurance for a three-day training session in contracting procedures. Tr. at 219-20. Another testified that HRA had to reject the low bidder on a car service contract because it was unable to meet the agency's $5 million insurance requirement. Tr. at 127-30. Similarly, witnesses interviewed by the Commission expressed the view that the City's bid security requirements effectively shut many small firms out of the bidding process.

(continued...
Department of Personnel to design career paths for City contracting staff based on reasonable professional training and certification requirements.

The Office of Contracts has devoted substantial resources to the design and development of a computer system -- known as VENDEX\textsuperscript{25} -- to capture information on the background of contractors seeking to do business with the City.\textsuperscript{26} Little planning seems to have been done to answer the question frequently posed by agency contracting personnel: "What will we do with this information?" No guidelines have been prepared to govern the agencies' use of this data.\textsuperscript{27}

In short, the fragmentation to which the City's contracting operations as a whole are prone is mirrored in the Office of Contracts. Unless the City's new leaders seize the initiative and forcefully insist on a comprehensive approach to contracting reform, their efforts will be frustrated.

IV. THE CITY'S CONTRACTING SYSTEM DETERS COMPETITION AND WASTES TAXPAYERS' DOLLARS

A. The City Has Trouble Attracting A Reasonable Degree Of Competition For A Wide Range Of Services

The problems of the City's contracting system have been compounded by the City's reaction to the municipal corruption scandals which began to unfold in late 1985 and early 1986. As a result, the contracting process has been saddled with an ever increasing burden of paperwork requiring review and approval by many different oversight agencies.

\textsuperscript{24}(...continued)

Recognizing that these issues are complex, the Commission does not take a position on them, but urges the City to include them in a comprehensive review of the City's contracting process.

\textsuperscript{25} VENDEX is designed to insure that the City does not do business with companies who have criminal records, a history of poor performance or are in arrears on City taxes. The focus is on excluding "bad" vendors. But an even more pressing problem facing the City, as set forth below, is the need to attract more vendors. If there were a greater degree of competition for City business, the City would be less likely to find itself faced with the Hobson's choice of contracting with a "bad" vendor.

\textsuperscript{26} Firms bidding on City contracts over a certain dollar threshold must fill out a 26-page VENDEX Business Entity Questionnaire calling, among other things, for detailed information on who they share office space with, whether anyone in a management capacity has ever worked for the City, and what their past contracting history with the City and other government entities has been. See Commission Exhibit 12.

Information from these questionnaires (together with information culled from evaluations of a vendor's performance on past City contracts, lists of vendors who have been debarred from City business or against whom other administrative action has been taken, and data from contract information systems at DMS and the Mayor's Office of Construction) is scheduled to be stored in a computer to which City contracting personnel will have access. Tr. at 285-86. Currently, a printed version of some of this information -- known as the VENDEX Caution List -- is periodically circulated to the agencies.

\textsuperscript{27} Tr. at 338-39.
To be sure, each added layer of oversight originates in a well-intentioned response to a particular scandal or crisis. Together, however, they add up to a blueprint for paralysis. Instead of a clear vision of what constitutes good contracting practice, the City has pieced together a patchwork of checkpoints and barriers. Their cumulative effect is to slow the City's business to a crawl and to deter vendors from bidding on City business.

It is difficult to measure precisely the impact this "nightmare of red tape" has on competition for City business. Depending on the circumstances, experts consider five bids or three bids the bare minimum necessary for adequate competition. But the City as a whole keeps no records on the extent of competition for City contracts. A brand new computerized contract reporting system jointly developed by the City Comptroller and the Mayor's Office of Management and Budget is incapable of generating statistical information on the degree of competition for City business and could not provide us with information on the number of City contracts awarded on the basis of fewer than three bids.

1. Multi-Million Dollar Contracts Go Begging For Bidders At HRA

Because the City lacks uniform rules governing the computerization of each agency's contract records, the availability of key contracting information -- and the ability to evaluate an agency's contracting performance -- varies from agency to agency. The Commission asked four City agencies (Corrections, Transportation, Human Resources Administration and the Department of General Services' Division of Municipal Supplies) whether they maintained a computerized database of contract information. Only the Human Resources Administration ("HRA") kept the kinds of computerized records from which information on the degree of competition for sealed bid contracts could be readily extracted.

28 Tr. at 107.

29 Tr. at 228.

30 The Integrated Comprehensive Contract Information System ("ICCIS"), the City's new contract reporting system, is only capable of distinguishing between contracts for which a single bid was received and contracts for which more than a single bid was received. Because ICCIS cannot differentiate contracts awarded on the basis of two bids from contracts awarded on the basis of ten bids, ICCIS cannot provide a breakdown of City contracts based on the number of bids received.

ICCIS was developed in response to a local law passed by City Council in 1987, which mandated the creation of a computerized contract information system for the City. See Local Law 57 (1987); Commission Exhibit 26. Those charged with implementing that law candidly acknowledged that they did not attempt to find out what sorts of data other jurisdictions found useful to include in their computerized contract tracking systems. Tr. at 358-59. As a result, ICCIS is capable of generating less information than New York State's contract tracking system, which can readily supply statistics on the degree of competition for various categories of state business.
The Commission examined data on 798 competitively bid service contracts awarded by HRA at a cost of $67,804,025 in fiscal year 1989. Of these, 389 contracts totalling $51,015,294 were awarded on the basis of fewer than three bids. In other words, 49 percent of HRA’s competitively bid service contracts -- accounting for 75 percent of $67 million in spending -- were awarded with fewer than a bare minimum of three bids.

HRA was unable to attract more than two bids for a wide range of services. For instance, only two vendors stepped forward to bid on a $5.2 million contract to provide cooked meals for the homeless in City shelters, although 30 companies had been invited to bid. Only one vendor out of 41 was interested in an $850,000 contract to provide frozen meals to homeless shelters.

In July 1988, HRA invited 535 car service companies to bid on four contracts to drive children in Manhattan, Queens and the Bronx to and from foster homes, hospitals and court appointments. HRA received just one bid per contract, each from the same vendor, Big Apple Car Services. Its bids ranged from $422,910 on the smallest contract to $3,191,666 on the largest. Altogether, from March 1988 through July 1988, Big Apple Car Services was awarded nearly $9 million in car service contracts for which it was the sole bidder.

The same pattern emerged when HRA sought bidders to install and maintain burglar alarms throughout the City. In April 1988, HRA invited 30 vendors to bid on eight separate contracts to install and service burglar alarms. Each contract attracted just one bid. All eight contracts, totaling over $2.1 million, were awarded to the only firm that bid.

2. Other City Agencies Have Experienced Difficulty Attracting Vendors

Other agencies, unlike HRA, could not generate statistics for the Commission on the degree of competition for contracts they awarded. The Department of General Services’ Division of Municipal Supplies, for instance, buys the bulk of the City’s equipment and supplies, and awards contracts worth over half a billion dollars annually. DMS, however, was unable to produce any statistics on the degree of competition for DMS contracts, since its bid tabulation process was not

31 The Commission was advised that these 798 contracts comprise virtually the entire universe of competitively bid service contracts awarded by HRA’s Office of Purchasing and Materials Management in FY89. They include, for instance, contracts for guard services, exterminating, painting, food services, transportation, asbestos removal, plumbing and roof repair. They do not include human services program contracts for day care, foster care and the like.

32 Human Resources Administration, Temporary ID nos. 9-0010 and 9-0082.

33 See Commission Exhibit 6, p.2.

34 Id.

automated until May 1989 and its computer, as of October 1989, had not yet been programmed to generate such statistics.\footnote{DMS did maintain a handwritten log, later computerized, of contract solicitations in response to which a single bid had been received, reflecting bids which had been referred to the Comptroller's office for a "second look" before awarding the contract.}

When the Commission asked the Department of Transportation to furnish a list of its contracts awarded upon the basis of fewer than three bids, the Commission was told that only one bureau -- the Bureau of Highway Operations -- kept the kind of computerized records that could generate that information. This lone contract bid data base was created by an employee who brought in his own computer from home to get the job done. He had never been asked to set up a similar data base for any of DOT's other bureaus or divisions (let alone any other City agency) and, indeed, it did not appear that anyone outside his immediate unit was even aware of what he is capable of doing, let alone how they could benefit from it.

Other agencies lacked any effective computerized contract bid data base. The Department of Correction, for instance, generated a list of contracts awarded on the basis of fewer than three bids but advised the Commission that the information had to be gathered manually, since none of the data was available on any computer system.

Despite a lack of precise computerized data, there is ample evidence that competition is scant for millions of dollars worth of City business. As Dr. Annmarie Walsh, the author of the IPA study, testified at the Commission's recent contracting hearings, "there is no decent competition for a very large part of the City's purchases."\footnote{Tr. at 454-55.} All too often, the City is faced with a small number of "niche" bidders, firms whose expertise lies in threading their way through the City contracting maze and who have adapted themselves to its peculiar and confounding logic.

A few examples illustrate the magnitude of the problem, which is not limited to any one agency or any one type of commodity or service:

* * When the Department of Correction sought to replace the repair company responsible for maintaining the elevators in City prisons, it split the contract job into five separate components and put each one out to bid separately. Only one company stepped forward to bid -- the very same company the City was seeking to replace.\footnote{Department of Correction contracts 2CBP88 (8001479), 13CBP88 (8001481), 14CBP88 (8001508), 15CBP88 (8001480) and 16CBP88 (8001482).}
** Between October 1987 and June 1988, the Departments of Sanitation and Transportation awarded five security guard contracts worth $6.8 million to a single firm, the only one to have submitted a bid.  

** Fewer than three vendors have bid on the Division of Municipal Supplies' contracts for basic food items such as macaroni, spaghetti and egg noodles, infant formula, frozen pizza and tuna salad.

** In April 1987, the Department of Transportation awarded a $980,000 contract to manage a City parking facility near City Hall to the only company to bid in response to a public advertisement. Over the preceding three years, that same firm and its parent company were awarded an additional $3.9 million worth of contracts to manage City parking facilities. In each instance, they were the only one to submit a bid.

3. Vendors Describe Doing Business With New York City As Unusually Time-Consuming, Expensive And Exasperating

To learn what deters companies from bidding on City business, Commission staff interviewed more than 70 vendors, representing companies ranging in size from "mom and pop" operations to firms with national reputations and national clienteles, who had recently declined invitations to bid on City contracts. Uniform throughout the interviews was the theme that doing business with New York City is a time-consuming, expensive and often exasperating experience.

By far, the top vendor complaint is late payment. Notwithstanding the City's publicly announced commitment to prompt payment, the City retains its reputation among the business community as a very, very slow payer. The problem is of such proportion that many vendors make a City agency's payment track record a major consideration in their bidding. If their past experience with an agency has been to wait for six months before a check arrives -- or if that is the agency's

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39 Department of Sanitation contracts G89G0491, G89G0492, G89G0592 and Department of Transportation contracts G89G0882, G89G0152.

40 Division of Municipal Supplies bid numbers 9600, 11281, 13480, 14154, 14360, and 14891.

41 Department of Transportation contracts G8901609, G89G0417, G89G0192, G89G0138, G89G1000, G80M1952.

42 The director of the Mayor's Office of Contracts testified that he has received "numerous complaints" from vendors who have not been paid. Tr. at 350.
reputation -- they will not bid. The payment issue scares away potential bidders and creates crippling cash flow problems. While many larger companies may be able to wait out the delay, smaller companies are left struggling to meet a payroll.

Vendors trying to chase down payments tell of being bounced from division to division, dealing with City employee after City employee who cannot find their invoices. One witness testified that it took her almost 40 calls to locate the right person to call about a late payment.\(^{43}\)

Once the vendor's invoice is submitted, then the waiting starts. One painting contractor took out a $50,000 loan to meet his payroll until the outstanding City check arrived.\(^{44}\) Another painting contractor has worked out an arrangement with another company to "buy" his finished jobs which the City had not yet paid for. He does the work and then "sells" the contract at a discount. That way, the vendor gets paid on the spot and another company collects from the City. Without this arrangement, the vendor said that he would have to turn down City work since he does not have the cash to bridge the payment gap.\(^{45}\)

The perception that payment will be late in coming is often factored into a vendor's bid price. For instance, in June 1988, one vendor agreed to give HRA a four percent discount, in exchange for HRA's promise to pay within 30 business days.\(^{46}\)

Vendors also complained about the sheer volume of City paperwork, which adds to their overhead and which, for a small company, can be forbidding. One witness described picking up an 8"-thick stack of contract documents from the Department of General Services and tying them up with a rope to cart them back to his office.\(^{47}\)

Compounding the problem of the volume of the City's paperwork is the lack of standardized contract language. Since each City agency writes its own contracts, several different agencies trying to purchase an identical service may use several different sets of terms and conditions. Vendors complain that this means that there are no clear rules for dealing with the City. As a result, they and their lawyers must wade throughout several different sets of fine print to make sure that

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\(^{43}\) Tr. at 84. Her experience at HRA, which was "the worst ordeal [she] went through at any agency," contrasted sharply with her experience at the Department of General Services, where "at least you know an assigned person in each department that's going to be responsible for something. They call you back and treat you like you're human." Tr. at 86.

\(^{44}\) Tr. at 125-26.

\(^{45}\) HRA's Executive Deputy Administrator took issue with vendors' complaints about late payment and testified that "HRA now pays 90 percent of all its purchases within 30 days of receiving the invoice." Tr. at 182. At the same time, he acknowledged that his agency had done nothing to disseminate that information to potential bidders. Id.

\(^{46}\) See Commission Exhibit 14. Similarly, the Mayor's Private Sector Survey found that many construction firms "feel constrained to cover their extraordinary risks with often substantial contingency factors." Private Sector Survey at 36.

\(^{47}\) Tr. at 94-95.
there is no hidden term or condition which will come back to haunt them after the contract has been signed. As one vendor graphically described the situation:

Every agency is different. My biggest problem with the City agencies is that every one of them requires a different piece of paper. You would think that you were dealing with Gimbel's and Macy's and Sterns.

Most City contracts are difficult for vendors to decipher without the help of a lawyer. Many small vendors cannot afford to seek legal advice for every contract they are considering bidding on. Rather than spend the money it would take to retain a lawyer to review the City's bid documents, they simply decide to pass up the opportunity to bid. Vendors who routinely do business with other jurisdictions cannot understand why the contracting process is so much more complex and cumbersome in the City.

B. The Lack of Competition Leaves City Taxpayers Vulnerable To Higher Prices

The shrinking pool of vendors willing to do business with New York City is a clear warning signal which the City ignores at its peril. The lack of competition leaves the City vulnerable to higher prices, wasting tax dollars that could be used to hire more police officers or teachers, repair more bridges or house more homeless.

For instance, before a contract is put out for bid, HRA commonly prepares a rough estimate of what the contract should cost. The Commission found that the price of contracts where competition was limited to fewer than three bids was more likely to exceed the City's cost estimate than contracts where there was a reasonable degree of competition. For example, among the 798 sealed bid service contracts HRA awarded in fiscal year 1989, the City paid more than its estimated contract price 29 percent of the time when HRA received fewer than three bids. In contrast, only 13 percent of the contracts cost more than the City's estimate when HRA received three or more bids.

For contracts over $10,000, the cost to the taxpayer of a lack of competition was even more striking. HRA paid more than its estimated contract price 46 percent of the time when it received fewer than three bids, as opposed to 22 percent of the time when it received three or more bids. As a former Deputy Commissioner of the Department of General Services testified, "when you have only got one competitor, it's easier to know that competitor's pricing structure. What you'll gradually see is a moving up of prices."

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48 Tr. at 83.

49 Tr. at 95-96, 107-08, 135, 151-52, 224.

50 Tr. at 259.
Interviews conducted by Commission staff confirmed this statistical picture. Technical staff at HRA estimated that elevator maintenance work costs the City three to four times as much as such work costs the private sector.\textsuperscript{51} Installers of burglar and fire alarms told Commission staff that "City work goes for a premium because of the bureaucracy and red tape."\textsuperscript{52} Likewise, a roofing contractor acknowledged that his bid prices on City work were inflated by two to ten percent to take into account the "aggravation and late payment."\textsuperscript{53}

Vendors are often acutely aware of the degree to which they face competition and may structure their bids to reflect the presence or absence of competition. Contracting staff at the Department of Housing, Preservation and Development told the Commission that the winning bidder on a contract to supply handymen to City-owned housing attended a bid opening, bringing with him two bid envelopes, one containing a high bid and one containing a low bid. Spotting the representative of a major competitor in the bid room, the bidder put in his low bid envelope. When the bids were opened, he was dismayed to learn he could have bid the higher amount, since his major competitor put in a "no bid."\textsuperscript{54}

A security guard contract awarded by HRA provides a dramatic case study of the hidden costs borne by taxpayers when the contract process is poorly managed. In December 1987, HRA solicited bids for a two-year contract to provide unarmed security guards to government offices throughout the City. Six companies submitted bids. The low bidder was Ogden Allied Services, a Fortune 200 company which regularly contracts with the federal government and with states and municipalities across the country. Ogden's winning bid of $7.97 per hour per guard came to a total bid price of $6.5 million over the life of the contract.\textsuperscript{55}

Ogden's experience with this contract was fraught with delay and confusion. Ogden had agreed with the City that it would be ready to start work on Monday, January 18, 1988. Ogden went out, recruited security guards, and set up training classes for them. Suddenly, late on the afternoon of Friday, January 15, 1988 -- just before Ogden was to start work -- Ogden received an unexpected phone call from HRA, advising the company that the start date had to be postponed for several weeks. The entire class of security guards, whom Ogden had recruited and trained at a cost

\textsuperscript{51} Tr. at 146. Similarly, the Department of Transportation received a single bid on an elevator maintenance contract which was three times the agency's cost estimate for the job. DOT's staff decided that the bid price was unacceptably high and put the contract out for bid again. Again, there was only one bidder, the same one as before. This time, the bid price exceeded the agency's cost estimate by 70 percent. Tr. at 139-40.

\textsuperscript{52} Tr. at 135-36.

\textsuperscript{53} Tr. at 135.

\textsuperscript{54} Tr. at 147-48.

\textsuperscript{55} See Commission Exhibit 5.
of $50,000, had to be replaced and retrained, since Ogden could not keep its security staff idle for an indefinite period without pay.56

Ogden's contract with the City originally estimated that Ogden would be assigned approximately 280,000 hours of security guard work over the course of the first six months of the two-year contract.57 In practice, that figure was slashed in half. When Ogden finally started work on February 11, 1988, its guards were assigned fewer than half the hours anticipated in the contract documents on which Ogden had premised its bid.58 As the weeks went by, and Ogden lost more and more money, the situation became untenable. In the early spring of 1988, Ogden reached an agreement with HRA allowing the company to walk away from the job, 18 months before its two-year contract was due to expire.59

The City's delay in starting the contract and the inability of HRA's staff to predict with accuracy the number of hours to be assigned to the winning bidder cost taxpayers over a million dollars. When HRA sought to replace Ogden in May 1988, only two companies submitted bids, down from six bidders in December 1987. The low bidder, Professional Security, bid $11.38 an hour per guard, $3.39 more per hour than Ogden had bid in December and $2.39 more than Professional Security's own prior bid just five months before.60 Overall, from June 1988 through September 1989, the City paid $1.2 million more to Professional Security than it would have paid Ogden under the terms of Ogden's two-year contract with the City.

Ogden experienced similar delays on other contracts.61 As a result, this Fortune 200 firm has withdrawn from competition for New York City business altogether. Ogden's vice-president for municipal services testified at the Commission's October hearings that his firm had no plans to bid on future New York City contracts,62 although his firm continues to do business with state and federal government agencies in the New York City area.

56 Tr. at 17-19.
57 See Commission Exhibit 5A and Tr. at 20-21.
58 Tr. at 21.
59 Tr. at 23, 26.
60 See Commission Exhibit 5.
61 Although Ogden was the winning bidder on a contract to install venetian blinds, it took the City ten months to issue a start work order. See Commission Exhibit 5B and Tr. at 33.
62 Tr. at 35-36.
V. THE CITY’S CONTRACTING SYSTEM IS CRIPPLED BY DELAY

The levels of review and approval -- from the Board of Estimate on down -- which overlay the City's contracting operations cause normal contracting activities in the City to take far longer than would be acceptable anywhere else. The Mayor's Private Sector Survey was dismayed to learn that:

*Equipment procurement processes frequently drag on for years, often double or triple the time taken by commercial organizations. For example, the recent purchase of 12 personal computers by one department (a $75,000 expenditure) took 30 months at a processing cost of $65,000 in management and clerical time.*

The Private Sector Survey was equally disturbed to find that the purchase of supplies costing between $10,000 and $50,000 takes as long as two and a half months; purchases over $50,000 take an average of five months, "months longer than in the private sector."

An ordinary consultant contract is now subject to ten separate layers of review and approval, not counting either the layers of internal review within the agency awarding the contract or the Board of Estimate. First, the solicitation documents, and/or additional related forms and paperwork, are reviewed by the Mayor's Office of Operations, the Mayor's Office of Management and Budget, and the Mayor's Office of Contracts before the contract is publicly advertised or disseminated. Then, when a vendor has been selected, the contract is reviewed again by the Mayor's Office of Operations, the Mayor's Office of Management and Budget, and the Mayor's Office of Contracts.

In addition, the contract must be approved as to form by the Corporation Counsel. For contracts over $50,000, detailed information on the breakdown of the vendor's workforce by sex, race and national origin must be submitted to the Bureau of Labor Services for review; and the

63 Private Sector Survey at 77. See also Commission Exhibit 20 at 77.

64 Id. at 99. DMS representatives informed the Commission that as of October 1989, their procurement cycle was, on average, 65 days long. However, that figure included purchases under $10,000 which are made in accordance with a simplified, streamlined procedure involving far fewer levels of review and approval and therefore much less time-consuming than the procedures for purchases over $10,000. Tr. at 223.

As of October 1989, DMS was incapable of generating statistics on the length of its procurement cycle for contracts between $10,000 and $50,000 and contracts over $50,000, although DMS was hopeful that its computer would be programmed to do so in the near future.

65 See Mayor’s Office of Contracts, Guidelines for Mayoral Agency Contracting, Appendix C ("Oversight Review and Approval Requirements"), section C1 and Commission Exhibit 19.
vendor's name, applicable holding companies and principals must be checked by the Department of Investigation to determine whether they have been or are about to be investigated by the City.66

Finally, the contract must be registered by the City Comptroller. There, the Office of Contract Administration reviews the final contract documents, as well as a cover sheet needed to instruct the City's computer to set aside the funds to pay for the contract. The paperwork is then shipped to the Financial Information Services Agency ("FISA") where the actual encumbrance of City funds for the contract occurs. Statistics compiled by DMS, the Department of Transportation and the Comptroller's Office indicate that the registration process alone may add three to four weeks to the contract award process.67

Throughout the City, contracting personnel interviewed by the Commission voiced their frustration at their inability to get their jobs done more expeditiously. They told the Commission that, if all goes well, it takes a minimum of four to six months to award a consultant contract requiring approval by the Board of Estimate. It takes a minimum of three or four months to award an ordinary service contract for work and labor, which does not require Board of Estimate approval.

Many of these contracting employees were at their wits' end. They realize that the sluggishness of the City's contracting operations impairs vital City programs. They realize too that vendors are overwhelmed by the delay which afflicts every aspect of the contracting process, from contract approval to payment. Yet there is little that any one employee, alone and isolated, can do about the problem.

So crippling are the delays inherent in the City's contracting process that the need to proceed with dispatch leads the City, on occasion, to take shortcuts. For example, in October 1988, the Board of Estimate approved the award of a $6.3 million consultant contract to a naval architecture firm, John J. McMullen Associates, Inc., to oversee the construction of an 800-bed floating prison for the City. How McMullen was selected illustrates the dilemma which the City's antiquated contracting system routinely poses for City employees: do you break the rules in order to get the job done quickly? Or do you follow the rules and risk taking months to implement vital City programs? In the case of the jail barge, the City opted for the first alternative.

According to the findings of the New York City Department of Investigation ("DOI"), this multi-million contract was never publicly advertised. George G. Sharp, Inc., a naval architecture firm with experience in converting ferries into floating prisons for the City, was not even invited to bid on the job. Of the three naval architecture firms the City contacted by telephone, only one

66 Review by Corporation Counsel is required for City contracts over $10,000. Tr. at 268, 273. Submission of the BLS forms is required for contracts over $50,000. Tr. at 268-69. The DOI name check is required for consultant contracts over $10,000 and for competitive sealed bid contracts over $100,000. Tr. at 269, 334-36.

67 See Commission Exhibit 16. In April 1990, the City is planning to set up a pilot project at HRA aimed at accelerating the registration process. Tr. at 375-76.
firm -- McMullen -- was invited to meet privately with City officials to discuss the contract. The two other naval architecture firms received brief telephone calls, which gave them no inkling of the magnitude of the contract.

Once the $6.3 million contract was negotiated with McMullen, City officials cut corners and skirted normal contract review and approval channels. Ordinarily, consultant contracts of this nature are reviewed by the Mayor's Office of Contracts before submission to the Board of Estimate. Here, the Office of Contracts was simply bypassed. The director of the Office of Contracts did not even hear about the contract until it was a fait accompli and had been reported in the newspapers.

Finally, as determined by DOI, senior City officials, on three separate occasions, provided misleading information to the members of the Board of Estimate who voted to approve the contract. In DOI's words, "the process used to select [McMullen] was misrepresented to the Board of Estimate in the resolution submitted in support of the contract; during testimony given before the Board on October 20, 1988; and in response to inquiries made by Board of Estimate members following the publication of the Daily News article [in December 1988]."

In hindsight, City officials explain the corner-cutting which lies at the heart of the McMullen contract -- the failure to publicly advertise the contract or even to disseminate information about the contract evenhandedly, the failure to clear the contract through the Mayor's Office of Contracts -- as necessary to get an important job done as quickly as possible. The need for such corner-cutting is striking evidence of the ineffectiveness of the City's existing contracting system.

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68 New York City Department of Investigation, Memorandum from Allan Morofsky and Thomas F. Brennan, Award of Contract to John J. McMullen Associates, Inc. by the Department of Correction (Case #0117/890), April 12, 1989 ("the DOI Jail Barge Report") at 12.

69 Id. at 12, 14. Only one of these two firms received a short follow-up letter which also failed to fully describe the magnitude of the prospective contract.

70 Tr. at 342-43.

71 DOI Jail Barge Report at 8-9. See also id. at 23 ("to the extent the resolution indicates that personal interviews with the finalists preceded the selection of [McMullen], the resolution was drafted with a disregard for accuracy"); 24 ("the evidence substantiates that the selection process used to select [McMullen] was misrepresented to the Board of Estimate in the language of the resolution and in the testimony . . ."); 25 ("this investigation has substantiated that the information given to the Board with respect to . . . two [related] contracts [awarded to McMullen] was inaccurate and misleading").

72 DOI Jail Barge Report at 37, Tr. at 344. The Mayor's Office of Contracts has subsequently included in its guidelines for RFP contracts a one page set of rules for "Expedited RFPs", designed to ensure a minimum degree of competition even where, as in the McMullen case, the RFP process is accelerated. See Guidelines for Mayoral Agency Contracting, Part VI, Chapter 1, p.1.
VI. THE CITY'S CONTRACTING SYSTEM IS VULNERABLE TO CORRUPT INFLUENCE

The refusal of respected and qualified companies to do business with New York City is a warning the City cannot afford to ignore. Prosecutors have long recognized that where municipal contracts are let to a narrow group of firms, opportunities for corruption abound. Indeed, a questionnaire developed by the U.S. Department of Justice to assist citizens in assessing "whether official corruption or an atmosphere that is conducive to official corruption might exist in their state or city government" asks as its first two questions:73

1. Do respected and well-qualified companies refuse to do business with the city or state?

2. Are municipal contracts let to a narrow group of firms?

Witnesses at the Commission's October 1989 hearings warned that competition is essential not only to keep prices down but to "keep the system honest".74

[\text{T}\text{he less competition, I think, the more room there is for corruption. Where you have a lot of people vying for a particular piece of business, they'll pretty much keep each other honest. When you have very limited competitors, then I think you have more of an opportunity, if you will, to decide how to split up that business.}

An absence of competition not only leaves the City vulnerable to bid-rigging and other forms of collusive behavior on the part of vendors, but sets the stage for collusion between City contracting personnel and vendors.75

The difficulty vendors have in finding their way through the bewildering maze of the City's contracting procedures is in itself a potential corruption hazard. The Sovern Commission cautioned the City three years ago that "corruption and abuses of trust shun the bright light of day and thrive in the confusion and opacity of procurement laws and practices that lack clarity, consistency and uniformity."76 As the Sovern Commission warned, "when rules are obscure, confused or unavailable, they can be manipulated for corrupt ends. Clear and accessible rules not only make it


74 Tr. at 227.

75 Tr. at 252-60.

easier for decent contractors to do business with the City; they also make it less likely that corruption will go undetected. 77

Ironically, the red tape with which the City has cloaked the entire contracting process threatens the very integrity of the system it is designed to protect. As the City's Auditor General testified at the Commission's October hearings, unless the City commits the resources necessary to clarify and simplify the City's "byzantine" contracting procedures, it is "doomed to [repetitive] cycles of corruption, of terrible waste and abuse in government." 78

The McMullen jail barge contract illustrates some of the hazards inherent in a contracting system overburdened with red tape. DOI, which reviewed in detail the process by which McMullen was selected, concluded that the deal itself was not corrupt and that there was no evidence that any City officials personally benefited from the award. 79 But the steps taken by senior City officials, even though not in fact corrupt, were consistent in outward appearance with a corrupt deal. And a deal that looks corrupt can and does undermine the confidence of the public and competitors in the integrity of the City's contracting process.

The award process for the jail barge consultant contract sends an dangerous message to the public and to City contracting employees. To the public, and particularly to the business community, it sends the message that City business is not open to all comers, that only those with an "inside track" can successfully gain access to lucrative City contracts. To City contracting employees, it sends the message that corner-cutting is acceptable, that playing fast and loose with the rules and the facts is permissible. This may not be a case of "corruption" in the literal sense that no City official personally benefited from it. But the message it sends is deeply corrosive of the integrity of the contracting process, which depends on the appearance as well as on the reality of fairness and evenhandedness among vendors.

VII. THE NEW CHARTER PAVES THE WAY FOR REFORM

The new City Charter adopted by the voters on November 7, 1989, requires a radical reshaping of the contracting process in New York City. The Board of Estimate, which has had final approval over all contracts awarded by other than competitive sealed bids, has been eliminated. Procurement is now plainly and unambiguously an executive function, one for which the Mayor is now clearly accountable.

77 Id. at 91.

78 Tr. at 417, 427.

79 DOI Jail Barge Report at 37.
The Charter creates a new 5-member Procurement Policy Board, similar to the panel of experts recommended by both the Sovern Commission and the Institute for Public Administration in their earlier studies of weaknesses in New York City's contracting system. The Procurement Policy Board has Citywide authority over both mayoral and non-mayoral agencies (such as the Board of Education and the Health and Hospitals Corporation) and is charged with establishing a Citywide set of rules for awarding and administering contracts to which individual agencies must adhere.

To address the problems of delay which have plagued the City's contracting system, the Procurement Policy Board has been given the power to set deadlines which agencies must meet in awarding contracts and to impose deadlines for payment. Agencies which fail to meet payment deadlines will, like state agencies, have to pay interest to vendors they have kept waiting.

Written into the new Charter is an ambitious timetable for drafting and promulgating the new contracting rules. Members of the Procurement Policy Board are to be appointed by January 15, 1990. By June 1, 1990, drafts of the proposed rules must be ready for public comment and debate. The goal is for the new rules to take effect September 1, 1990, the date set for the demise of the Board of Estimate.

VIII. THE CITY NEEDS AN ACTION PLAN TO MEET THE CHALLENGE POSED BY THE NEW CHARTER

Sweeping as the Charter changes are, they amount to only a partial blueprint for reform. Much remains for the new Mayor, the new City Comptroller and the City Council to do.

A. The City Must Undertake A Nationwide Search For Procurement Experts To Serve On The Procurement Policy Board

The broad powers the new Charter gives to the Procurement Policy Board are the key to contracting reform in New York City. The taxpayers of this City deserve nothing less than the advice of the most knowledgeable and experienced procurement experts available in this country. To

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80 New York City Charter, §311(a).
81 New York City Charter, §311(b).
82 New York City Charter, §§311(b)(6) and 332.
83 New York City Charter, §332.
84 New York City Charter, §1152(d).
find them, the Mayor and the Comptroller must look conduct a nationwide search for Board members and staff with a national reputation in the field of procurement.85

At the Commission's October 1989 hearings, the author of the IPA study described the parochialism of New York City's contracting staff and contracting operations:86

[F]or an employee organization with over a quarter of a million employees, [New York City] is . . . incredibly insulated. Reinventing the wheel drove us crazy in our work . . . They say [they] don't want to recruit somebody from the outside because [outsiders] don't know how the City works. [But] if the City isn't working in certain areas, you have to break that open.

Because so many of the City's contracting personnel are not familiar with advances in the field of government contracting, the City as a whole has lost the benefit of fresh ideas and new approaches that have worked well elsewhere.87 At this critical juncture, the City cannot afford to continue to turn its back on national developments in public contracting. Each of the five members appointed to the Procurement Policy Board, as well as senior staff hired to assist the board members, must have a proven track record in the procurement area.

Adhering to the tight schedule laid out in the Charter for the appointment of the Procurement Policy Board and for the promulgation of new contracting regulations is essential. Taxpayers are ill-served by the City's present contracting system and are entitled to expect their leaders to meet the Charter-imposed deadlines for its replacement. Only by selecting people with professional experience in the contracting field can the City hope to do so.88

B. Procurement Reform Must Be Made A Top Administrative Priority, Under the Aegis Of A Deputy Mayor For Procurement

The new Mayor needs to appoint a Deputy Mayor whose sole responsibility is the reform of the City's contracting operations. The City urgently needs one individual who has a bird's-eye view of the City's entire $6.5 billion contracting system. Currently, responsibility is so diffuse that

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85 The Charter itself is silent on whether the five members of the Procurement Policy Board are to be full-time salaried board members or, like directors of a corporation, are to be part-time advisors.

86 Tr. at 441 (emphasis added).

87 Included in the Appendix is a short list of organizations which provide resource material and/or training in the field of government contracting.

88 It took the Mayor's Office of Contracts nearly 18 months to issue its contracting guidelines for RFP contracts. Witnesses at the Commission's October 1989 hearings testified that contracting guidelines could be rapidly prepared if the task is made a high priority and assigned to personnel "with real procurement experience." Tr. at 57-58, 236-37, 241-42.
coordinated reform is virtually impossible. As the New York City Auditor General remarked in her testimony:

> It's as though we were building a bridge and instead of giving someone responsibility for the entire bridge, it's "you put this rivet in," "you go inspect the rivet" and by the time all of that is done, the bridge has never gotten built, because everybody was so focused on the one rivet.

New York City urgently needs a comprehensive, top-to-toe re-examination of its contracting operations. The City can no longer afford to tinker with pieces of the system, implementing changes and imposing new requirements without carefully analyzing how they effect the system as whole. The City needs to take stock of the personnel -- at every level, from buyers to deputy commissioners, in every agency -- presently responsible for the City's contracting operations and consider whether they have the background, training and support necessary to get the job done.

The City needs to examine thoroughly the extent of competition for each segment of City business and carefully consider how to attract more bidders and expand the pool of vendors willing to do business with the City. The City also needs to re-visit each and every clause in its contract documents, standardize and simplify its contract language, review its insurance and bid security requirements, accelerate the contract registration process and take a hard look at the various computerized contract data bases which are being developed throughout the City, often in isolation from one another, to make sure that they are capable of generating the kinds of information necessary to manage the contracting process effectively.

C. Every Agency Must Appoint A Chief Contracting Officer

The new Mayor must heed the IPA's warning that every agency with contracting responsibilities needs a senior level chief contracting officer with professional experience in contract design, vendor selection and contract management. It is unthinkable that any agency Commissioner would wish to confront the thicket of laws governing municipal behavior without the advice of the agency's general counsel. It should be equally unthinkable for Commissioners who preside over the expenditure of millions of dollars in contracts to do so without the advice of a Chief Contracting Officer who knows how to attract better contractors, increase competition, forecast costs, improve specifications, negotiate contracts and monitor vendor performance.

The passage of the new Charter makes the appointment of chief contracting officers all the more important. Within the framework of the uniform contract rules to be laid down by the Procurement Policy Board, individual agencies will gain increased contracting autonomy. Although

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89 Tr. at 430.

90 IPA Report at 7-8, 20.
the Mayor must certify for each contract awarded by means other than competitive sealed bids that all procedural requirements have been met in awarding the contract, the Mayor may delegate that certification function to the agencies, provided he has adequate assurance that the agency is adhering to the Procurement Policy Board's rules.

The way to insure that agencies adhere to those rules is not for the Mayor's office to police every single contract. The City can no longer afford to diffuse accountability among layers of checkpoints and controls. Rather, the Mayor must see to it that every agency has in place staff with sufficient knowledge and training to understand and implement the new contracting rules.

The key to making sure that agency contracting staff have the necessary background and training is for each agency to appoint a Chief Contracting Officer, equipped with the specialized skills and experience necessary to make sure that the City gets the most for its contract dollars. He or she would have primary responsibility for all aspects of the agency's contracting functions and could be held accountable if mistakes occur. Beside advising the Commissioner on specific contract actions and developing internal guidelines and information systems consistent with new Citywide regulations, a key responsibility of the Chief Contracting Officer would be the development of training programs and career paths for agency contracting personnel.

Although Mayor Koch publicly endorsed the IPA study and its recommendations at a press conference in late 1987, no directive was ever issued requiring each agency Commissioner to appoint a single high-level contracting professional to oversee the agency's contracting operations. On the contrary, some agency contracting personnel have complained that their requests for funds to create and staff an agency-wide chief contracting officer position have been turned down by the Mayor's Office of Management and Budget.

Instead, the contracting function remains, in most agencies, an organizational stepchild. Lawyers from an agency's legal staff or personnel from an agency's budget office have been called upon to shoulder contract responsibilities. A recent set of guidelines issued by the Mayor's Office of Contracts allows agencies to choose to appoint either one chief contracting officer with agency-wide responsibility or several chief contracting officers, each responsible for one or more divisions or bureaus within the agency. While there is certainly a need for experienced contracting professionals at the division and bureau levels, they are no substitute for a senior contracting person at the highest level in each agency to serve as the Commissioner's right hand on contract matters. The present arrangement, by fragmenting responsibility for agency contracting operations, virtually

91 New York City Charter §327(a).
92 Id.
93 For a detailed description of the role of the Chief Contracting Officer, see IPA Report at 7-8, 60.
94 See Mayor's Office of Contracts, Guidelines for Mayoral Agency Contracting, Part I, Chapter 1, p.1.
guarantees that contracting problems will not receive the high-level attention and management resources they deserve.

For the City to persist in ignoring the IPA's recommendation is "penny wise and pound foolish." Dr. Annmarie Walsh, the author of the IPA study, testified at the Commission's hearings that the appointment of a Chief Contracting Officer in each agency -- coupled, among other things, with upgrading the experience and training of City contracting staff and improving the City's data collection -- would save the City a minimum of $60 million dollars in the first year alone. These are savings which the City simply cannot afford to pass up.

D. The City Must Overcome Its Acute Shortage Of Skilled Contracting Personnel

The City must devote serious attention and resources to training its contracting staff. Over and over again, witnesses at our October 1989 hearings testified that there is an urgent need to upgrade the skills of City contracting personnel who, compared with their peers in other major cities, lack exposure to modern government contracting practices. Although professionalism "is the key to both improving the quality of [the City's contracting] performance and minimizing opportunities for corruption," the IPA found that the City suffers from a "crisis-level shortage of technically skilled contracting officers" and that "professionalization in contract management is inadequate at all levels in City government." Training is especially critical for contracting personnel, scattered throughout the City, who purchase hundreds of millions of dollars worth of services. Services are often harder to buy than goods and the employees who are responsible for buying them are even less likely to have received any professional training than the City's employees who buy commodities, equipment and supplies.

Indeed, the lack of competition for City business can be partly attributed to the inexperience of some City contracting staff, who are often ill-equipped to attract new vendors to the

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95 Tr. at 425.
96 Tr. at 425-27.
97 Tr. at 50-51, 237-40, 423-24, 441, 446, 454. See also IPA Report at 5 ("many of [the City's contracting] problems stem from a serious shortage in City government of staff and managers with broad and deep experience and expertise in the technical and managerial aspects of contracting").
98 IPA Report at 6, 37, 60 (emphasis added).
99 Tr. at 240.
City. For instance, to supplement public advertisements in the City Record, agency contracting personnel often fall back on the simple expedient of mailing bid invitations to anyone listed in the Yellow Pages or other directory under a relevant heading, without regard for their business experience or qualifications. Even this limited outreach often amounts to too little too late. The Department of Correction, in one instance, began combing contractor directories for elevator repair firms shortly before vendors' bids were due, even though the agency had known for over six months that there was a need to expand the pool of potential vendors in order to replace a vendor with whose performance the agency was dissatisfied. It was hardly surprising that the solicitation effort netted just two bidders -- and that the low bidder was the very firm the agency was seeking to replace.

The City's bid solicitation efforts are often seriously misdirected. In a study of responses from 2,031 vendors who declined invitations to bid on 720 sealed bid contracts awarded by HRA between September 1987 and June 1989, the Commission found that nearly half of the vendors either received the City's bid materials too late to submit a bid or were not even in the business of providing the desired service. For instance, bid documents for elevator maintenance contracts were mailed to an artesian well company; "Island-Wide Photo" was sent bid documents for a contract to repair window sashes; one ironworks company, three asphalt paving companies, one hydrographic survey company, one water main and sewer company and six construction companies were invited to submit bids on a contract to install canvas awnings.

The problem is not restricted to HRA. When only one vendor responded to DMS' invitation to bid on a contract to supply nearly two thousand refrigerators to the City for use in renovated apartments, the Comptroller found that many of the vendors invited to bid sold "refrigeration systems," a different commodity altogether from the ordinary appliances DMS was

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100 The City Record is a little known City publication in which, by law, publicly let contracts must be advertised. It is so poorly organized that it is often difficult for businesses to identify contract opportunities in which they might be interested.

Bid opportunities are not listed in the City Record alphabetically by type of commodity or service sought -- auctioneering, burglar alarm installation, construction, data processing and so on -- but by the name of the agency advertising for bidders. The effect is the same as if "Job Wanted" ads were organized by the name of the employer, instead of by the type of situation available: the prospective vendor must comb through the entire publication to find what he or she is interested in.

To improve the way the City solicits bids, the new Charter, §325(b), gives the Procurement Policy Board the power to revise the City Record's current format.

101 The Police Department is one of the few agencies which has developed a computerized system that "tickles the file" several months before an existing contract is due to expire, so that buyers can get a head start on soliciting bids for the new contract.

102 See Commission Exhibit 7 and Tr. at 117. To say, as HRA's Executive Deputy Administrator said at the Commission's October 1989 hearings, that "you want to give every type of firm an opportunity to bid," Tr. at 174, is no substitute for the sort of careful market analysis which is necessary to insure that invitations to bid on City contracts generate a meaningful degree of competition for City business.

103 Tr. at 118-19.
looking to buy.\textsuperscript{104} As of August 1988, DMS' mailing list for bids for frozen waffles and pizza included a vendor who had been debarred the previous year, at the Department of General Services' initiative, from doing business with the City for a period of three years.\textsuperscript{105}

In large part, the City is out of touch with the entire professional field of government procurement, an area of professional competence complete with professional examination and certification procedures, a professional oath and a code of professional ethics. At present, there is no requirement that the hundreds of employees who spend billions of taxpayers' dollars on services, supplies, equipment or construction be professionally certified as proficient in buying skills.\textsuperscript{106}

Just as the City's Law Department does not entrust the litigation of millions of dollars worth of claims against the City to lawyers who have not been to law school or who have not passed the bar examination, the City cannot afford to allow billions of dollars to be spent by contracting personnel who lack the training and professional credentials which are commonplace in other jurisdictions.\textsuperscript{107} The City must give serious thought to creating a career path for the City's contracting staff, with salaries competitive with the private sector and meaningful professional certification requirements imposed as a prerequisite for initial hire and advancement.

\textsuperscript{104} See Commission Exhibit 10.

\textsuperscript{105} Department of General Services, Division of Municipal Supplies, bid number 11281. See In the Matter of Jamac Frozen Food Corp., New York City Board of Responsibility (August 10, 1987).

Although the vendor was subsequently removed from the agency's bid list, it took the agency over a year from the date of the debarment decision to do so.

\textsuperscript{106} This is in stark contrast to the U.S. General Services Administration, the federal purchasing agency, which explicitly spells out that one way to meet the minimum qualifications for a position in contracting is to have attained certification either as a Certified Professional Contracts Manager from the National Contract Management Association, as a Certified Purchasing Manager from the National Association of Purchasing Management, or as a Certified Public Purchasing Officer from the National Institute of Governmental Purchasing. See Commission Exhibit 23.

The General Services Administration's Training Center offers over 30 courses in procurement management, all of which are open to New York City employees. These courses, many of which are taught right here in New York City, range from "Basic Procurement" to "Contracting for Services," "Negotiation Styles" and "Advanced Cost and Price Analysis." Yet not one of the 24 New York City agencies asked by the Commission to describe their training programs mentioned ever having taken advantage of these training resources. See U.S. General Services Administration Training Center, Interagency Catalog and Schedule (Fiscal Year 1990).

\textsuperscript{107} Although the Commission heard testimony that professional training is especially important for those buying services (since it is even harder to buy services than goods), Tr. at 240, these are the very people who are the least likely to seek professional training or certification.

Membership records maintained by METNY, the local chapter of the National Institute of Governmental Purchasing, indicate that as of 1989, only eleven City employees had attained professional certification in procurement. Eight of those eleven employees work at DMS.
E. The City Must Shift Its Focus From Policing Paperwork
To Effective Post-Audit

Instead of hiring experienced contracting personnel and training its existing
contracting staff to make sure that contracting decisions are made in accordance with clear, well-
defined procedures, the City relies on an extensive oversight network to police contracts and contract
documents before the contract award is finalized. As described above, every RFP contract is reviewed
twice by the Mayor's Office of Contracts.108 Likewise, if only one bid is received, contracts for
equipment and supplies put out to bid by OMS are sent to the Comptroller's office for review before
the award is finalized. According to the Mayor's Private Sector Survey, multiple reviews and
approvals by City oversight agencies add as much as a year and a half to City construction
projects.109

The City needs to substantially reduce the "administrative micro-management burden"
the oversight process imposes on the City's contracting operations.110 The answer, of course, is not
to abandon controls, but to move from a system of pre-audit -- where every transaction is policed
before it is finalized -- to a system of post-audit, a spot-check system designed to make sure that
contracts have been awarded in accordance with the City's rules and procedures. Indeed, if clear
rules are in place and accountability is clearly established, the threat of this kind of post-award review
is considered a "much more cost-effective deterrent to corrupt practice than a cursory pre-review of
every contract." 111

Clear contracting guidelines of the sort the Procurement Policy Board is responsible
for drafting are the sine qua non of an effective post-audit system. They are the standards against
which the performance of City contracting staff can be measured. As the City's Auditor General
explained at the Commission's October hearings:112

There should be consistent standards for everybody in the
City of New York, and every agency will have [them] . . .
And then you have the possibility of doing the post-
auditing you're talking about, so you can remove a lot of
the internal procedures, because you now have something
you can audit for compliance against.

108 Ironically, this is true even though the Office of Contracts recently completed a comprehensive set of guidelines for
RFPs. See Mayor's Office of Contracts, Guidelines for Mayoral Agency Contracting, Part II.

109 Private Sector Survey at 35. See also id. at 20 ("excessive oversight controls, such as multiple reviews of a range of
transactions . . . impose endless and costly delays.")

110 Id. at 36.

111 IPA Report at 36.

112 Tr. at 431.
In addition to making sure that the City's contracting guidelines are adhered to, an effective post-audit function should be designed to determine whether the City got value for the contract dollars it spent or whether the City "was buying cheap but paying dear." According to contracting staff interviewed by the Commission, there is an urgent need for the City to look back and ask itself: "Did we pay more than we should?" "Did we get our money's worth?" Such questions need to be incorporated into the City's post-audit function on a routine basis.

IX. CONCLUSION

Almost a decade ago, the U.S. Justice Department warned that:113

[a] lack of management control can, all by itself, provide opportunities for corruption. In addition, it can magnify existing opportunities and minimize the risks that attend them. Paradoxically, too much control can have the same effect as too little.

New York City's contracting operations suffer from both too little and too much control: too many layers of review and control, too few rules which are clear, streamlined and accessible to everyone. It is widely recognized outside New York City that "good management is . . . the foremost antidote to corruption in government."114 Yet New York does not so much manage its contracting operations as police them, through a system of checkpoints and controls which threaten to strangle competition, efficiency and employee morale.

Good management of the City's contracting does not require the City to launch into uncharted territory. The road to reform is clearly mapped out. There is widespread agreement on what constitutes good government procurement practices, how to implement them, and what savings will result. But reform requires a political commitment which, to date, has not been made.


114 Id. at 107.
There is no longer time for half measures. The new City Charter creates an unprecedented opportunity to reform the City's outmoded and inefficient contracting system and, at the same time, to safeguard that system from corruption. The City's taxpayers deserve nothing less.

Dated: New York, New York
December 1989

STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

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Appendix
GOVERNMENT CONTRACTING RESOURCE LIST

The following agencies and organizations provide information, resource materials and/or training in public contracting:

GENERAL SERVICES ADMINISTRATION TRAINING CENTER (GSA)
The United States General Services Administration's Procurement Management Training Institute offers over 30 training courses in purchasing and procurement. Their courses are open to City employees and other local government employees and are often given in New York City.

There are entry-level courses teaching basic procurement and ethics in procurement. Intermediate and specialized classes cover topics such as construction contracting, evaluating a contractor's performance, contracting for services, and negotiating techniques. For experienced personnel, offerings include advanced cost and price analysis and advanced procurement management.

To obtain a course catalogue or for further information, call the GSA at: (703) 557-0986.

For placement on their mailing list, write:

United States General Services Administration
(9KS)
525 Market Street
San Francisco, California 94105

INTERNATIONAL CITY MANAGEMENT ASSOCIATION (ICMA)
The professional association of administrators serving cities, counties and local government. Members receive access to the MIS Inquiry Service, a library of 11,000 reference documents, including a variety of procurement-related materials such as sample procurement documents for public works projects and a variety of goods and services.

Phone: (202) 626-4600

Address: International City Management Association
1120 G Street
Washington, D.C. 20005
NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT (NAPM)
A national organization with over 160 affiliated associations across the country for people with primary responsibility for purchasing or materials management. Programs and activities include classes, professional purchasing manager certification, library service and conferences.

For information call: 1-800-888-6276 (toll free) or (602) 752-6276.

Address: National Association of Purchasing Management
P.O. Box 22160
Tempe, Arizona 85285-2160

NATIONAL INSTITUTE OF GOVERNMENTAL PURCHASING (NIGP)
A not-for-profit educational and technical organization of government contracting personnel. NIGP offers a range of services including seminars, professional certification, technical assistance. The NIGP library contains more than 20,000 specifications, publications and reports.

For information call: (703) 533-7300 or FAX (703) 732-0915

Address: Nita March
Membership Manager
National Institute of Governmental Purchasing
115 Hillwood Avenue, Suite 201
Falls Church, Virginia 22046

METROPOLITAN NEW YORK CHAPTER OF NATIONAL INSTITUTE OF GOVERNMENT PURCHASING (METNY)
New York City area NIGP chapter. METNY offers training and hosts speakers on a variety of procurement-related topics.

Phone: (718) 271-7323

Address: Carla Lallatin, Executive Director
METNY
61-15 97th Street, Suite 7A
Rego Park, New York 11373
PURCHASING MANAGEMENT ASSOCIATION OF NEW YORK (PMA)

PMA is the New York affiliate of the National Association of Purchasing Management (NAPM). PMA seeks to foster the development of essential skills and knowledge in the field of purchasing and materials management.

Phone: (718) 739-4900

Address: Abate Kassa
Executive Director
Purchasing Management Association of New York
161-01 84 Road
Jamaica Hills, New York 11432