10-24-1989

Public Hearing on New York City Contracting Practices

New York State Commission on Government Integrity

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PUBLIC HEARING ON
NEW YORK CITY CONTRACTING PRACTICES
[OCTOBER 24, 25, 1989]

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STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY
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PUBLIC HEARING

on

NEW YORK CITY CONTRACTING PRACTICES

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Fordham University Law School
140 West 62nd Street
New York, New York

October 24, 1989
9:00 o'clock a.m.

BEFORE:

JOHN D. FEERICK,
Chairman
RICHARD D. EMERY
PATRICIA M. HYNES
JAMES MAGAVERN
CYRUS R. VANCE
BERNARD S. MEYER
Commissioners

THOMAS SCHWARZ, ESQ.,
Special Counsel to the Commission

APPEARANCES:

CONSTANCE CUSHMAN, ESQ.
Deputy Chief Counsel
ALEXANDER LOWE, ESQ.
Staff Counsel

STEWART NISSENBAUM
and
HAROLD RABINOWITZ
Hearing Reporters

NATIONAL REPORTING INC.
77 HUDSON STREET
NEW YORK, N.Y. 10013
[212] 732-3120
Public Hearing

THE CHAIRMAN: This hearing is now in session.

I would like to open the hearing by making a brief statement.

The Executive Order establishing this Commission directs us to investigate, among many other things, the weaknesses in laws and practices relating to the solicitation of government business, to determine if these weaknesses foster corruption, or the appearance of improper behavior, or damage the public's confidence in the integrity of government. We do so in order to recommend systemwide reforms necessary to promote integrity and public faith in government.

Today and tomorrow, we will question witnesses about the problems that afflict New York City's mammoth contracting operation.

Contracting in New York City is a big business, with over $6 billion spent every year for various supplies, services and construction. With expense budget monies, the City buys goods and services ranging from paper and pencils to sophisticated computer equipment; from elevator...
maintenance to pest extermination; from meals for prisoners to car services for children in protective custody.

From its capital budget, the City buys what it needs to build and repair roads and bridges, jails, police stations and ferries.

One agency, the Department of General Services, buys the lion's share of the City's equipment and supplies.

The purchase of services, on the other hand, is not centralized. Every agency has its own staff, which awards and manages contracts for the services it needs.

The Commission's inquiry has focused on a few simple, yet critical, questions that relate to the integrity of the process: Is there a healthy degree of competition for City contracts, or is there a shrinking pool of interested vendors, a well-recognized invitation to fraud and corruption?

Are the groundrules governing the buying process clear, rational, and consistent from agency to agency, or is there a murky, haphazard patchwork of practices and oral traditions that
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seem to mutate from agency to agency, creating a
source of confusion to vendors and City employees
alike?

Are the City's employees equipped with the
professional know how necessary to get the best
possible deal for the City, or is contracting the
stepchild of City Government?

Additionally, we have examined the layers
of bureaucratic checks and controls added to the
contracting process since the 1986 corruption
scandals. Though intended to enhance integrity,
these layers of review and approvals, functioning
as "paperwork police", may be paralyzing the
system. Adding "paperwork police" does not solve
contracting problems if the system lacks clear and
consistent rules and procedures, internal controls
and accountability.

I want to express my appreciation, and that
of the entire Commission, to the witnesses who
have come forward to testify today and tomorrow.
I would like also to note that the City employees
who will testify today have been chosen because of
their involvement with contracting, and not
because the agencies where they work have
contracting problems that are any better or any worse than average.

There is cause for concern if City employees feel tangled in red tape, if procedures become a burden that impairs their morale, if serving the City's best interest becomes incompatible with adherence to established rules, if bureaucracy deters respected firms from doing business with the City.

Is this happening in New York City is a question we will be exploring at this hearing.

The Commission has also found cause for hope. Unlike other problems confronting the City, contracting ills are not intractable. Today and tomorrow, besides examining the problem, we will be exploring methods that allow governments to do their contracting efficiently and effectively while insuring integrity and reducing corruption hazards.

We intend to issue recommendations for reform before the end of the year and hope that the new Mayor and the new Comptroller will take them to heart.

The Commission calls as its first witness,
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Michael Rogers.

THE CHAIRMAN: Mr. Rogers, will you raise your right hand, please?

MICHAEL ROGERS, called as a witness, being first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Could you be seated?

EXAMINATION BY

MS. LOWE:

Q Good morning, Mr. Rogers.

A Good morning.

Q Could you please tell us where you work, and what your position there is?

A I work for Ogden Allied Services Corporation. My position is Vice-President of Municipal Services.

Q Just briefly, by way of background, could you tell us a little bit about Ogden Allied and the kind of services that your firm provides?

A Ogden Allied is a Fortune 200 company involved in services to governments and the private sector. An example of our market sectors includes building resource recovery plants for counties and cities around the country. That's our Ogden Martin
In our Leisure Division, we operate
convention centers, stadiums and arenas, basically for
City and State governments around the country, although
there are several privately-owned facilities that we
operate.

We provide food service in some facilities;
we may do janitorial and security service in other
facilities. In some facilities, we provide total
service, as in the contract we have with the Javits
Convention Center here in New York, where we are the
facility management company.

Q Can you give us a rough idea how your
business breaks down between government business and
private sector business?

A In our Resource Recovery Division, of
course, it's 100 percent public sector. In our Leisure
Division, since leisure facilities are mostly owned by
state or local governments, I would say we are about 90
percent of our business there is public.

Q How about in the area that you're in, Ogden
Allied Services?

A That's all in Ogden Allied Services.

Q I see.
A We are talking market sectors. In our commercial building services sector, I'll say 20 percent of our business is government. We are the largest certified facility management company for the General Services Administration of the United States Government. We provide services in federal office buildings in Washington, New York, Detroit, Chicago, Denver, Portland, Seattle, Los Angeles, Dallas, Houston; all across the country.

Q Tell me a little about your own professional background.

A I started my career in Ann Arbor, Michigan in the City Administrator's office. I'm a trained City Manager by background, receiving a master's in public policy, University of Michigan.

In Ann Arbor, I served in several positions, starting out as an Administrative Intern, moving up to Assistant City Manager.

As an Assistant City Manager, I had responsibility for supervising several departments, including Police, Fire, and overseeing the administration of the purchasing process. I also worked for the International City Management Association, which is the professional association for City Managers and Urban
At ICMA, I served in a variety of capacities, including Assistant to the Executive Director. I was responsible for the International Program, a State Associations programs, and had the opportunity to travel across the country, meeting with City Managers in their cities, and learning about a variety of city governments.

Also, I spent a year with the Commission on Financial Oversight of the District of Columbia, which was a Congressional 'commission chaired by then Senator Eagleton, whose charge was to overhaul the financial management system for the District of Columbia government. As Staff Associate there, I was responsible for assisting the District in developing its procurement regulations.

Q Did you have a subsequent position in which you were also involved in developing procurement rules and procedures?

A Yes, I was Deputy General Manager for the Washington, D.C. Convention Center after leaving the Commission.

As Deputy General Manager, I had total responsibility for day-to-day operation, and there I was
responsible, as well, for developing procurement procedures.

When I started at the Convention Center, we -- it was in July of '81 -- we were scheduled to open in December of '82. Before we could really start purchasing supplies and equipment for the Center -- some of these items require long lead time -- we had to develop procurement rules. We developed procurement rules, as an independent agency of the District of Columbia, in 90 days. We modeled the rules after the Model Procurement Code issued by the American Bar Association some time back, and, of course, making the appropriate adjustment for our type of operation.

Q Just to clarify that point, you said you developed your procurement rules in 90 days. Can you give us some idea of the categories of the kinds of rules you developed in that time frame?

A Well, we specified the standard process of, of course, publication for competitive sealed bids. We specified the purchasing of services versus commodities.

Q And you developed rules governing each of those categories?

A Right.

Q Did you develop rules on contracts developed
on the basis of proposals?

A Yes.

Q You developed that category, also, within the same 90-day period?

A Yes.

Q Turning to your present position, when did you begin working at Ogden Allied?

A I joined Ogden Allied in March of 1986. My first assignment was to be Ogden Allied's Executive Director at the Javits Convention Center. We received the management contract there, and I was responsible for working with the State and leading the staff, the Ogden staff there, in the opening of that facility.

Q Did you then go on to assume your present position, which is the Vice-President of Municipal Affairs?

A From that point, yes.

Q Tell us what you did -- what was the first project you took responsibility for as the Vice-President for Municipal Affairs?

A In 1987, Ogden decided to expand its market in the Building Services Division, principally, and market our services to state and local governments in the building services sector. As I pointed out earlier, that
we are very active in the federal sector; we had not
turned very much attention to the public sector.

One of the first things I did in that role
was to determine what cities across the country were
contracting. We conducted a survey of cities over
250,000 population, counties over 500,000 population, in
major states. Based on my own knowledge of government, I
felt that those population cutoffs were about right for
the size of contracts that we would be looking for.

Ogden being a big company, we are not in the marketplace
to operate very small contracts; we look at major
contracts.

Q One of the cities you looked at was New York
City; is that right?

A Absolutely. Absolutely.

Q Tell us, briefly, again, what you did to
survey the market in New York City for your company.

A We went to the various agencies. We asked
to see -- through a consultant, we asked to see documents
that would tell us what the agency is contracting, and
key categories, basically, in our field, in janitorial,
security and maintenance, and transportation. Those were
the key fields. And food service.

We were able to identify 75 key contracts in
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the City of New York in those fields. Those contracts were, basically, over $1 million in contract volume, on the average, and there was a total, as I recall, of $182 million worth of contracts.

Q That was the potential market for the services your company could provide to the City?

A That's right. That was the market that we identified, the market that we had decided to initially focus on, to follow those contracts, because we were able to ascertain not only the contract value, where the services were provided, but also expiration date of the contracts.

If a contract was scheduled to expire June 30th of 1988, we would assume that the agency would begin that process at least six months prior, for developing new specifications, and we would start to make contact and to ascertain when the bid would be released.

Q And you base that assumption of a six-month planning process on your experience with some of the other cities you were doing business with?

A Right.

Q Would you turn to Exhibit Book at Exhibit 5? You're welcome to use that exhibit to refresh your recollection, if it's necessary. It may not be
necessary.

Did your company, in December of 1987, bid on a contract to provide security guard services in a variety of New York City government office buildings throughout the City?

A Yes, we did.

(Continued on next page.)
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Q  Just for the record, so we can follow along with this exhibit, the contract that you bid on was the contract whose bid number was 8-0451; correct?

A  That's correct.

Q  You were the winning bidder on that contract; is that right?

A  That's right.

Q  In that instance, you had a number of competitors. I see approximately five other people, other than yourself, submitted a bid in that case; correct?

A  That's correct.

Q  And your winning price was as set forth in that exhibit, your price for the first time period was $7.97 an hour, for the next six months $9.99; and for the final year it was $9.35; correct?

A  Yes.

Q  For a total bid price of approximately 6.5 million dollars; correct?

A  Yes.

Q  There was quite a large spread among the competitors; is that right?

A  That's right.

Q  From your bid of somewhere around $8 an hour
all the way up to $18 an hour by one of your competitors; is that right?

A That's right.

Q Were you notified at some point that you had won that bid?

A Yes. Of course, we attended the bid opening, so we knew we had won. We received a letter on December 10th. The bid opening was December 8th. We received a letter upon the signature of Ray Mullen from the Department of Human Resources Administration, and they notified us that we had won the bid, and laid out our bid price times the hours that were included in the bid document, and came up with a total bid price of $6,535,000.

Q What happened after you received that notification from the City?

A We met, then, with -- we were contacted by representatives of the Security Division of Human Resources. They asked to meet with us. Since they were not familiar with Ogden as a security company, they wanted to make sure we were a real business operation.

We met in our conference room with all of Ogden's contract staff to talk about the start-up of the contract, and that was on December 12th, I believe. At
that meeting we talked about start-up.

I raised the question with Mr. Kasada, who was the Deputy Chief of Security, about whether it was really practical, given that it was December 12th, to start 350 security guards at the various locations around the City by January 1st.

My concern was the requirement of 40 hours of training, classroom training, plus 16 hours of on-the-job training to meet the contract requirements, and Mr. Kasada said, "Well, we need to start January 1st".

We said, "Fine. If you tell us to do that, we'll hustle." But it was Christmas season. Recruitment would have been very, very difficult.

As it turned out, it was agreed, after several days, that we would start the contract on January 18th.

Q And what happened after that point?

A We recruited the security guards and it wasn't 350. We started out with 90 guards. They said we could start off with 90.

Q You could phase in?

A Yes.

Q And --
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A And we had completed -- it was 3:00 o'clock on Friday, the 15th of January, and we had about two more hours before we completed our training session with those 90 guards whom we had been paying all week.

Q And you were looking toward a start date of the following Monday?

A Yes. And we received a call from HRA saying that the start-up would be delayed, so we would not start Monday.

Now, my first question was, that's not a problem if we start Tuesday or Wednesday. As it turned out, it was a more difficult problem. We actually did not start until February 1st.

Q And when you say "a more difficult problem," were you aware that it had something to do with the allocation of funding for the contract on the City's part?

A After the phone call, after a couple of conversations, we became aware that it was a problem of registration of the contract and funding, you know, budget.

Q Funding matters?

A Yes.

Q Now, so you -- what happened with the people
that you had trained and had ready to start work on the
18th of January?

A Well, people were looking for jobs then, and
we lost them. We trained 90 people. We paid consultants
to conduct the training, we acquired the facility, and
when we did not start, we could not give those people a
start date and did not have other locations to put 90
people to work at that point, and we lost them.

Q Did you go about training a new group of
security guards for the February 1st start-up date?

A Yes. We went through the whole process all
over again.

Q Do you have an estimate of what that cost
your company?

A The first round was $49,950. That included
$13,500 for personnel wages, plus the consultants and the
estimated cost of advertisements.

Q When you say personnel, you mean the people
who ran the training session?

A Yes.

Q You started training a new group of people
and you started work on February 1st. Did things go
smoothly once you started work in February?

A From my operation, as far as we could tell,
HRA was very satisfied with our performance. However, as we began to submit bills and get financial reports, we began to see that, you know, over a period of time -- I think probably over a month, six weeks, that we were falling short on the hours.

Q And what do you mean by that?

You were being assigned fewer hours than you had anticipated --

A That's correct, and the phase-in was not going as rapidly as we had anticipated.

Q Can you give us some rough idea of the extent of the shortfall of the hours?

A We met with several officials of the Human Resources Administration, after several weeks, to voice our concern about the disparity in hours that we had anticipated versus the hours we had been assigned, and to lay out the impact of that situation on our contract.

We met with Mr. Carl Trachti. In that meeting, we presented the chart, based on our projection of hours that we would actually be assigned, based on the history of the contract up to that point versus the hours that we were anticipating. We showed that we were originally anticipating, based on the original contract documents, that 282,648 hours would be
assigned during the period of January 1, '88 to 6/30/89.

Our projection was that we would actually be assigned 81,752 hours.

Q Let me just stop you there for a minute. Your projection wasn't simply pulled out of thin air. You were basing it on what happened from February 1 up to the point of your meeting?

A That's correct.

Q Can you give us an idea of what the actual fall-off had been?

Wasn't it something like 30 to 40 percent during that time period?

A During that time period, it was closer to 50 percent.

Q A 50 percent shortfall that you had actually experienced up to that meeting with Mr. Trachti?

A That's right. And let me say, that based on just the projection, we said to Mr. Trachti at this point, as business people, we are looking at, based on our projection, hours that are 71 percent less than what we were anticipating.

Q Did he dispute that that would be the future course of the contract, or --

A There was no real dispute. I think that
they were trying to understand, themselves, you know, why
there was such a discrepancy. I don't think that -- I
don't recall ever getting a satisfactory answer.

Q I mean, he didn't promise you that the hours
would be back up to what the original levels in the bid
documents would be, I take it?

A That's right.

THE CHAIRMAN: Had the City projected that
that would be the number of hours that you would
be able to provide, the numbers --

THE WITNESS: That was in the bid document.

THE CHAIRMAN: They had a contract for a
certain number of hours, and they didn't fulfill
it, is that what you're saying?

THE WITNESS: Yes.

Let me say this, too: All the City
documents are saying that the City may increase or
decrease the number of hours in the contract.

Now, our argument to HRA is, that's fine, we
recognize -- and perhaps if there was a reduction
of 10, 15, maybe even 25 percent, it wouldn't have
the impact on us, and we wouldn't have -- we
wouldn't have suffered, but when you're looking at
approximately a 50, or, based on this, a 71
percent reduction, then it was our feeling that it
was no longer reasonable; it was no longer the
contract.

If you go back to basic law school
contracts, the basis of the bargain was no longer
the same, and that was our argument.

Q What was the bottom line here?

Did you end up negotiating a release from
that contract?

A Yes. We negotiated a release from HRA.

Q Now I take it --

MR. SCHWARZ: I would like to follow up
before you leave that. What did you base the
number of hours on in the contract? What did it
say?

Do we have a contract here?

THE WITNESS: I have communications from
HRA informing us that we were the successful
bidder. I have the documents of December 10th,
which was our first indication. I have a document
of February 3rd which was the second
notification --

MR. SCHWARZ: My question is: What did the
contract say about hours and the expected number
of hours on which you made your projection of 282,000?

THE WITNESS: It says 282,000 hours. This document here, if you care to look at it --

MS. LOWE: Perhaps we can mark that as an exhibit and make you a copy and return that to you.

Can we call that Exhibit 5-A, please?

THE WITNESS: Yes. The bid documents in the contract makes specific reference to the number of hours during each of the contract periods.

(Document marked Commission Exhibit 5-A, this date.)

Q Maybe I can clarify this a little bit. My understanding is that that 6.5 million dollar figure that we talked about earlier as your total bid price, is a figure that actually appears on the City's bid sheets when you multiply your various hourly rates by the various hours that they asked you to multiply your hourly rate by; correct?

A Yes.

Q That was not your number, but the number that appeared in the bid documents?
COMMISSIONER MAGAVERN: In short, the contract was a unit-price contract, based on the estimated number of hours, and that number was, roughly, the 282,000?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: The contract indicated that the hours could vary up or down, but the variance in this case was so extreme that it was your contention that it was really in violation of the contract?

THE WITNESS: Yes.

Q Again, for the record, if we want to make this clear -- and you can correct me if I am wrong -- that figure of 282,000 hours was for six months of the contract, and they anticipated something like 174,000 hours for the next six months, and something like 346,000 hours for the final year of the contract?

A That's right.

Q You walk away from the contract, and the City still needs security guards?

A Yes.

Q Were you aware that the City then, in May of '89, went out to rebid that contract?
A Yes.

Q And how were you aware of that?

A Well, we still followed the City Record, and we were made aware of it through conversations with HRA.

Q Didn't you actually have somebody present at the bid opening in May?

A Yes.

Q When did you actually leave the job, was it sometime before May?

A No. It was actually July. Part of the negotiated settlement was, that we would not leave the job until the City had successfully selected another contractor. So, it was about July 15th.

Q I would like to go back to Exhibit 5 for a moment, where we have set out the various bid prices that --

COMMISSIONER HYNES: Can I just ask a question here?

MS. LOWE: Sure.

COMMISSIONER HYNES: What was the reason given for the disparity in hours that was estimated?

THE WITNESS: As I said -- it's not clear. We just did not get a clear answer out of the
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Department as to the discrepancy. We don't know whether the 282,000 hours that was originally estimated in the bid documents was just wrong in the first place and never should have been in there, or whether there was a change in strategy after the contract was issued, or what.

We just never got a straight answer.

COMMISSIONER HYNES: Did you find, in your experience of supplying security guards, that fewer hours were, in fact, needed by the City; was that your experience?

THE WITNESS: That's hard for me to say. We had our operating people on the front line, but at a site, say the City Income Maintenance Office somewhere, they may have required two or three guards, or something like that, and that was the City's determination. And, you know, that may or may not have been needed. I don't know.

COMMISSIONER HYNES: In other words, your organization didn't come to the conclusion, independently, that there simply was a mistake in that 282,000-hour number?

THE WITNESS: No. We assumed, in good faith, that the City had a legitimate requirement
for the specified hours listed in the bid document.

COMMISSIONER HYNES: When they rebid it, what number of hours were they putting out on the rebid?

MS. LOWE: I think I can answer that.

My notes show that there was an even larger number of hours. That the subsequent contract was bid for a two-year period, and the first year -- again, this is going by the bid prices by which the unit prices are multiplied. The first year was 905,945 hours. Total for the second year was 996,500 hours.

So, you're talking an even larger number of hours than under the contract that Mr. Rogers' firm bid on.

COMMISSIONER HYNES: One other point of clarification: You said your start-up date was moved from January 16th to February 1st. I am not clear on what the reasons were that were given. You said something about that they had some problems in registering the contract or budget?

THE WITNESS: I think -- as I recall the conversation with Mr. Kasada and the people from NATIONAL REPORTING INC. (212) 732-3120
HRA, their comments were that, we are still working out some problems with the Budget Office in terms of funds allocated for the contract that -- upon which we were successful bidder, so I think it was a closed issue.

(Continued on next page.)
Q Just to finish up on this one contract for a moment, I would like to take a look at the bid prices on the rebid, which are set forth in Exhibit 5.

This time around, as you may recall, either from your recollection of your people being at the bid opening, or from the exhibit, there were two bidders; is that correct?

A Yes.

Q Down from when you had bid several months previously?

A Right.

Q The prices are now somewhat different, as well. Professional Security, who had bid $8.88 when you were among the competition, and when you had a number of other competitors, their price is now $11.38 an hour, and $11.95 an hour for the second year; is that right?

A That's correct.

Q And the only other bidder is a firm whose price went from $8.75, when they were one of your competitors, to over $19 an hour, just a matter of six months later, five, six months later; is that right?

A That's right.

MR. SCHWARZ: Excuse me, I think the record says it's 8.99, not 8.75.
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MS. CUSHMAN: Burns International.

THE WITNESS: Burns.

Q What I would like you to do is tell me what
appears to be the bottom line here. It seems to me that,
if nothing else, this -- the way this contract was
managed, it ended up costing the City over $3 per guard
hour, when you compare your price, which was the price in
December, to the Professional Security price, which was
the winning price in May; is that correct?

A That's correct.

That's pretty dramatic. You think about our
bid price for two years of 6.5 million, and you look at
the bid price for Professional based on the $3
difference, and you're looking at a two-year bid price of
$400,000, that's a pretty dramatic difference.

THE CHAIRMAN: The difference would really
be reflected in the hourly rate, because under
your original contract, that rate would attach to
additional hours?

THE WITNESS: Sure. Sure. Absolutely, but
that's still a dramatic difference.

Q Had you anticipated that at your price,
which was $7.97 an hour, that you would have made a
profit, had you been assigned the number of hours in the
contract?

A  Absolutely, absolutely.

Q  Have you explored any other contracting opportunities in New York City besides this one contract?

A  We have not bid on New York City work subsequent to our experience with the security contract.

Q  Prior to that, had you explored any other contracting opportunities, or concurrent with your exploration of the security guard contract?

A  Yes, we bid on a number of contracts, and we were successful on two other contracts where we went through the actual contracting process.

Q  You said a moment ago that --

MR. SCHWARZ: Did you say you were unsuccessful?

THE WITNESS: We were successful on two other contracts.

MR. SCHWARZ: With the City?

THE WITNESS: With the City, in which we went through the contracting process.

MR. SCHWARZ: But you didn't sign the contract?

THE WITNESS: No, we signed the contract in one case. There is the one case where we did not
sign the contract, and as I sit here today, I'm kind of foggy on where we are with it, because we were awarded a contract for the installation of venetian blinds in February of '88, and I think I sent you a letter, Ms. Lowe, that pointed out -- let me see -- in my July 27th letter to you, I attached a letter from one of our Vice-Presidents of Fabric Care. This was for Contract IDN 8 - 4023 for the installation of venetian blinds and shades for Human Resources, Citywide.

I'll just read a couple of paragraphs that one of our Vice-Presidents included in a letter to Mr. Robert Reilly. It says, "I point out that we had not been able to commence work on this contract because of delays, delays including, but not limited to the following: Failure to receive Notice of Award letter dated May 4 until two months after the bid opening." So, the bid opening was February, and I believe -- and we received an award letter much later. "Official documents and performance and payment bonds having to be resubmitted to the Bureau because of inability to locate them." Over the course of a year, we had to resubmit contract documents
several times, because no one could locate them.

And in a follow-up meeting it says, "To an official meeting of Facilities Operations," on November 17, 1988. Mind you, again, the bid opening was February 1988, and in November we are still having meetings. "We did not receive an official start-to-work notice, dated December 19, until December 27."

This is an operational Vice-President pointing out his frustration in trying to get a contract operational with the City.

COMMISSIONER HYNES: Was there any experience that you had that was favorable, in the contract with the City?

THE WITNESS: Well, yes. We are operating, now, an exterminating contract. We were the successful bidder on that. Our Vice-President there wanted to stay in the contract, even though there were some initial start-up difficulties, such as -- we went through the same thing with having to submit documents twice or three times, but once we got started, there were occasional problems in getting access to facilities.

Under this contract, the City tells us
which facilities to provide service to and when,
and oftentimes, there was no one there to provide
us access, and that cost us money.

But, nonetheless, we are operating that
contract. That is with HRA.

Q Just for record, I see that we have a copy
of that letter you mentioned in our files, and I would
mark it Exhibit 5-B. It's a letter from Eric Reston,
Vice-President of Fabric Care Plus, Ogden Allied Services
Company to Robert Reilly of the Human Resources
Administration.

(Letter marked Commission Exhibit 5-B, this
date.)

Q Just to pick up on something you mentioned a
minute ago, Mr. Rogers. Can you tell us whether your
company presently has any plans to bid on New York City
government business in the future?

A We do not.

Q And can you tell us why that is?

MR. SCHWARZ: I thought the witness just
testified that they intended to stay in the
exterminating contract.

THE WITNESS: We have an existing contract.
The question was, do we intend to bid on future
MR. SCHWARZ: Are you saying you don't intend to bid on the exterminating contract if it's reoffered?

THE WITNESS: Well, if you want to be technical, that's a bridge we'll cross when we get to it.

MR. SCHWARZ: I want to be accurate; I don't want to be technical.

THE WITNESS: Based on the performance of that one contract, and our relationship there, perhaps we will rebid that contract, because that is a successful experience.

But, I think the real question is whether we are pursuing additional contracting opportunities with the City of New York at this time, and do we plan to in the future, and the answer at this time is no, we are not. We are looking at other opportunities around the country, but we are not pursuing New York City.

Q And you've mentioned some of the factors that have been troublesome in your dealings with New York City.

Are there any other factors, from your
standpoint as a vendor, that make it difficult to do
business with the City?

A Well, having been in government and having a
rather defined philosophy about what government should be
and how it should perform, as a vendor, I simply expect
that if there is a publication of a bid notice, and the
bid is available to be picked up, and it says the notice
should be picked up by a specific date, then, of course,
I expect that the bid documents would be ready on that
date, and not three or four days later, particularly when
the contract -- the bid opening date is not going to be
changed.

When documents are requested, we -- such as
insurance certificates -- we expect that we should have
to submit those documents, you know, one time, and not
have to go through the process of going back to our
insurer to get additional certificates.

All of these are irritations in the system
that make it undesirable, to some extent, to do business
with agencies. We think that, at least from my
perspective, that the process is so important that cities
need to invest in training the procurement staffs so
people know what it is they should be doing, and how to
do it, and I think that the City would save a lot of
money that way.

Q Can you comment at all on how your experience with New York City has differed from your experience in dealing with some of the other public jurisdictions around the country that your company deals with?

A Well, you know, New York City certainly is not the only city in the country that has a cumbersome procurement process. There are other cities as well. But our experience, generally, is that cities take the contracting process seriously, that the documents are well prepared, that the specifications are clear and unambiguous in terms of the scope of work and what is expected from the vendor, so that vendors can accurately bid a contract.

Now, that -- I'll not say that is 100 percent the case, because there are other jurisdictions in which we have been bidders where I have, shall we say, challenged the system on the manner in which the procurement process has been handled, and having been on the government side, I have an understanding of how various imperfections of the system -- how it comes about, rather, and if I think it's unfair, and is designed to favor a particular bidder, such as the
incumbent, then I certainly will make note of that to the appropriate authorities in the jurisdiction.

But for the City of New York, you know, our experience has been with HRA and Department of Housing Preservation and Development, Department of Finance, Transportation, you know, where we have bid. Now, in the other departments, we were not successful. We have been successful bidders in HRA.

Q Have you found, in your dealings with these various City agencies you just mentioned, that the rules and the procedures seem to vary from agency to agency?

A Well, actually, I think most of the contract documents in the City all look alike. They are all about that thick. And --

Q How thick?

THE CHAIRMAN: I would say about six inches.

THE WITNESS: Something like that.

A You know, I've gone through those documents from all of the agencies, and in -- some are put together very professionally, and some are just very sloppily put together. I have to say that the agency that seems to do the best job, in terms of presentation of the process, is the Department of Transportation; at least that's been my
experience.

The difference is often in the contracting personnel in the department, and how they handle the contracting process, everything from preparation of the bid documents to presentation at a pre-bid conference and answering questions, to collecting documents from the successful bidder subsequent to the bid opening, and, you know, setting up for contract administration. And the security contract and the Fabric Care contract happen to be bad experiences, but I do not believe it is simply an aberration in the system. I deeply believe that there are some fundamental changes required.

Q Can you tell us what some of those are?

This is my last question, but I would like to hear, based on your own experience, both in the public sector and the private sector, what you think New York City's priorities ought to be in this area.

A One, I think that the City needs a realistic set of procurement policies and procedures that all agencies are required to follow. When I say realistic, I think a good look needs to be taken at the current contract documents, and the question needs to be asked about every clause, what is it intended -- what interest is it intended to protect, what does the City gain from
this, and finally, is it needed, to try to simplify the
documents.

I think, too, there needs to be a clearer
contract dispute process. For instance, when we had
trained the first group of guards, and we were sitting
there with -- not able to start and having lost those
guards, that was $50,000 that we had lost, and we
approached HRA about: What can we do about this? And
there was no -- there seemed to be no remedy.

If there was a contract appeals board to
which we could present our case, then it would be more
comfortable for us. When I say contract appeals board, a
Citywide board that would consist of designated people
from agencies so that it is not just one agency board. I
don't think you need that kind of proliferation of
bureaucracy in all agencies.

I think that attention needs to be given to
the start of the process and there needs to be a trigger.
If a contract is expiring in June of a given year, you
know, somewhere in the process it should trigger, that in
order to be prepared for a July 1 startup date of this
contract that requires X number of personnel, we need to
begin much sooner.

For the contract that we won, for instance,
the bid opening date was December 8th. The expectation
originally was, according to the contract documents, that
350 guards would be trained for 40 hours, plus 16 hours
of on-the-job training, and ready to start work on
January 1.

No one keeps that many personnel in the
warehouse, okay, so people would have to be recruited.

I just think there needs to be a trigger, so
that the process starts sooner, and the agencies can make
reasonable --

Q Planning decisions?

A Right.

(Continued on next page.)
COMMISSIONER HYNES: So, what you're really saying is, since the bidding document said 350 for January 1, no one really believed that that was realistic and do-able?

THE WITNESS: We had a question about that, we did. Ogden is a big company. Just as we wanted February 1, a February 1 start-up, we hustled and met our obligations for a January 18th start-up, and I suppose that, knowing my company and our commitment to excellence, if it was the agency's position, and if they had the budget to start 350 guards on January 1st, then we would have met that test.

And as I think about it, it appears that if the agency had submitted its request for this RFP to the Budget Office in the first place, to say this is what we estimate we are going to require in funds to do this contract, we probably would not have a problem.

Q Again you're talking about a kind of planning, anticipating the process of the contract?

A That's correct. The bid process is a legal process. You don't put an RFP on the street if you don't intend to award it and you don't have the money to cover
the contract once a bidder is selected.

MS. LOWE: I have no more questions, Mr. Chairman.

THE CHAIRMAN: Thank you very much.

I just have a few brief questions to ask Mr. Rogers, myself.

Was any dissatisfaction expressed with the quality of the services rendered by your organization during that early 1989 period?

THE WITNESS: No. In fact, we checked frequently. Our evaluation -- there's an evaluation that we reached, and the evaluation was satisfactory. Out of the hours that we were assigned during that period, until our termination on July 15th, there was a small number of hours with which we were charged liquidated damages, and that was basically for, in some cases, a guard not being assigned to a particular post.

THE CHAIRMAN: You made reference to the comparison between your dealings with New York City and your dealings with other municipalities, presumably outside New York State.

I take it the dealings of your company in terms of State and local government essentially
started in 1987, if I understood your testimony, and extends up to the present time; is that correct?

THE WITNESS: In the Buildings Services Division, we have been in business a long time, and in the Leisure Division, for state and local government.

THE CHAIRMAN: How many municipalities outside of New York State have you dealt with in the period from 1987 up to the present time? I am talking about your Building Services Division.

THE WITNESS: 30, 40 public contracts.

THE CHAIRMAN: You make reference to 30 or 40. Would it be accurate to say that you are speaking of 30 or 40 other states, or is it a fewer number than that?

THE WITNESS: Probably a fewer number of states, but, you know, the contracts are dispersed throughout the country in each region.

THE CHAIRMAN: You made reference to not pursuing a contract, contract opportunities in New York City, with the exception of the extermination area. I wasn't entirely clear as to the reason why your company has expressed, through your
testimony today, a lack of interest in New York City. I didn't quite understand your testimony to be simply because of the irritations that you had.

Is there some other reason that you have?

THE WITNESS: Well, I think, very frankly, any vendor wants to participate in a process that's reasonable and predictable. I think that the HRA experience was a bad experience. It did not help the bottom line in 1989, and there's simply no enthusiasm at this point.

But, I having responsibility for municipal services, I continue to follow New York City contracts, and perhaps if there's a contract that is interesting to us and is something that fits our corporate mission, perhaps we'll take a second look, but, right now, we are not in that market.

I would point out that we do have contracts with other public agencies in New York. We have the Javits Center, which is a State facility. We contract with the Convention Center Operating Corporation. We also have a long contract with the New York Port Authority for operations at the World Trade Center, as well as multiple contracts at New York area airports operated by the Port...
So, we have successful contracting experiences with public agencies in New York State.

Our experience with the City of New York has not been successful.

THE CHAIRMAN: So, I take it, from your testimony, that your experience with HRA differs from the experience you have had elsewhere in New York State, as you have described; correct?

THE WITNESS: Yes.

COMMISSIONER HYNES: I have a follow-up question on John's question.

On a reasonable and predictable basis, are you saying that your company is not interested in pursuing additional contracts with New York because they are not reasonable and predictable, or because it's not within the corporate mission that you mentioned?

THE WITNESS: Well, at this point, it's our view that the current contracting process, based on our experience with HRA, is not reasonable or predictable.

I mean, if an RFP is issued that specifies
the number of hours that a contractor is to bid
on, and then it turns out to be a different story,
that's not predictability.

Until something changes, and the change is
the issuance of clear contracting procedures and
guidelines included, with some contract dispute
resolution process, that may get us interested
again.

MS. LOWE: Commissioner, if I can clear
that up.

When you say the process was not reasonable
and predictable, and you said it doesn't help your
bottom line, is it my understanding that you lost
money on that contract?

THE WITNESS: Sure.

THE CHAIRMAN: Commissioner Vance?

COMMISSIONER VANCE: No questions.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: Mr. Rogers, you
said you have followed New York City. Are you
aware of any area of tightening up the process?

THE WITNESS: Well, the draft contracting
procedure I have received a copy of, and I have
reviewed those procedures briefly; they look good,
generally, and they contain most of the basic provisions one would expect to find in good procurement regulations.

I still find no -- I guess this is a City document -- I still find no proposed process for contract dispute resolution, so that would be something I would certainly urge be included in any regulations.

The Charter Commission has a proposal for, I think, a procurement policy board, and the responsibilities of the procurement policy board would be to develop rules and regulations for purchases by the City, and also develop regulations for contract dispute resolution. That's in the regulation, which I think gives tremendous improvement to the system.

COMMISSIONER MAGAVERN: As a result of your loss in the security guard contract, did you seek anything regarding delays or breach of contract by the City?

THE WITNESS: We talked about that, but as a part of our release, we gave up that right.

COMMISSIONER MAGAVERN: Going back to the policies, you said you reviewed them and they were
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pretty good except for the lack of a dispute procedure.

Can you tell us what those policies were that you were referring to?

MS. LOWE: Maybe I can help you out. I think what you're referring to is a set of guidelines relating to request for proposal contracts issued by the Mayor's Office of Contracts in September of this year.

THE WITNESS: Those rules --

MS. LOWE: I think we'll hear about them a little later. They are not quite guidelines or rules. I think it's something a little in between.

COMMISSIONER MAGAVERN: If the guidelines were implemented, and a dispute of contract resolution were established, you feel the problems of the City would be mitigated, in that you would be interested in going back into the field?

THE WITNESS: Systematically, it would. I think the City needs to invest in its Human Resources Department, the people who are responsible for carrying out the charge of the rules. I think training is greatly needed in the
Procurement Division.

Systematically, yes. If you have reasonable rules and there are new rules and changes, we'll assume, initially, at least, that they are predictable and then we would --

COMMISSIONER MAGAVERN: Can you tell us what type of training you think would be needed, and where it would be available?

THE WITNESS: One, employees who are responsible for any part of the contracting process need to understand the rules. One of the things I did when I was in Washington was conduct a series of training sessions on our own procurement rules for those department heads and the purchasing staff that were involved in the purchasing process, and with admonishment that we shall follow our own rules.

So the City -- the same kind of training should be done. Now --

COMMISSIONER MAGAVERN: Could it be done in-house, in effect?

THE WITNESS: Yes, with the right people, sure. I think the City has a training division that may be equipped to do that.
THE CHAIRMAN: Judge Meyer?

COMMISSIONER MEYER: Commissioner Magavern asked my questions.

COMMISSIONER EMERY: Were there any consultants, on the City side, involved in framing the RFP and framing the needs for --

THE WITNESS: I don't know. I can't respond. In our contacts with the Department, there was never any mention of consultants.

COMMISSIONER EMERY: As far as you know, there are estimated needs derived by their own estimates and their own work?

THE WITNESS: Right.

COMMISSIONER EMERY: Would you have any explanation in the change from 282,000, when it seems that you weren't even getting that; you were getting substantially below it?

THE WITNESS: Actually, if you can imagine this, having already lost the initial sum of $50,000 and a much greater sum from the period February to July, we just weren't -- we couldn't bid on the contract. We were precluded from bidding on the subsequent contract, and I think that's right.
In fact, at the last minute, there was a clause that we would not bid on any other HRA security work for a year, which we thought was unfair, but we signed it, anyway, because we were just no longer interested.

We said we were out of this one, the City can do what it chooses to do with its contract, but I saw it as an unfortunate circumstance, and it cost the taxpayers a lot more money.

THE CHAIRMAN: Special Counsel Schwarz?

MR. SCHWARZ: Do you have any understanding as to whether or not these problems that you have testified to with respect to those vendors who do contracts with the City, whether they build into their prices an anticipation of problems?

Do you understand what I mean?

THE WITNESS: Well, that's a little hard to do sometimes. Let me tell you why. Even though the procurement process, procurement documents will say "this contract will be awarded to the lowest responsible bidder", meaning that the bidder can do the job, the fact is, that the lowest bidder usually gets the work.

So, if it's the lowest bidder and someone
who may not be as experienced in the field, they
may not include anything. They may make it very,
very, very, very tight.

So if a company like Ogden were to come
along and try to cover our past experiences and
cover liquidated damages, then that escalates the
price. And even though we are a big company, and
very solid, and we could do a fine job, we would
never have an opportunity to show it if we
factored all of those items in.

The security field is very competitive. I
think we bid across the City, in 1989, maybe 15
security contracts, and we were -- sometimes we
were number two, and we felt the person who won
the bid probably couldn't do the job, but that's
not our judgment. Sometimes we were much, much
higher, much more out of the ballpark, you know,
based on our assessment of the particular
situations.

It's very difficult to --

MR. SCHWARZ: Do you have any idea whether
the guards you hired to pay $7.97 an hour were
ultimately hired by Professional Security at the
increased rate?
THE WITNESS: I suspect some of them were, yes.

MR. SCHWARZ: Is there any difference in the characteristic of the people who were being used as guards by Professional Security or by Ogden, as far as you know?

THE WITNESS: Well, I think -- one of the things I have seen is, that some guards have been at certain agencies for a long time, and they move from contractor to contractor.

MR. SCHWARZ: As far as you know, I think you said that some of the guards may have been rehired by Professional Security.

My question is: Was there any difference in training, skill level, so far as you know, with respect to the Professional Security guards who followed the Ogden guards?

THE WITNESS: I don't know. As I pointed out, we really did not follow -- although we did attend the bid opening -- that RFP process, and we did not look at the differences, because, at that point, we weren't trying to prove anything to the City. We wanted out of that contract. We wanted to say good-bye, and we were not interested in
suing the City or proving to the City that they
were so wrong.

Something happened in our contract process,
and that's unfortunate, and we felt we were a
victim. But, you know, that's business.

THE CHAIRMAN: Commissioner Vance?

(Continued on next page.)
COMMISSIONER VANCE: One simple question.
You've had a lot of experience, Mr. Rogers, both
with the government side and with the private
side. It seems to me what you were saying, in
response to a number of the questions, was that
the overhaul of the New York system, so that it
would be in accordance with sound contracting
procedures, is not a big deal, it can be done
reasonably easily; is that correct?

THE WITNESS: Yes, I really believe that.
I have a great deal of faith in government, and I
know that any project in government can be done.

Now, we need a captain at the head of the
ship. You need someone who is going to have the
vision and the strength to say: This is our
objective, this is our timetable; let's go to it.
When I put together the procedures at the
Washington Convention Center in 90 days, I simply
said the 90-day period is non-negotiable, we have
to have it, and this is what we have to do. So I
think that the procedures, themselves, it's not a
big deal.

I think reasonable people -- certainly,
there are enough lawyers in the City, enough
people with real procurement experience to assist the City in coming up with reasonable procurement regulations that are not too cumbersome.

The implementation of those regulations is not a big deal, either, if you believe that people who work in the public service really want to do a good job. They just want guidance, they want training so that they know how to do their job, and I think, then, the job would be done and the City would be made better off.

COMMISSIONER VANCE: It's essentially the question of political will?

THE WITNESS: Yes.

THE CHAIRMAN: Thank you very much, Mr. Rogers.

THE WITNESS: Thank you.

(Witness excused.)

THE CHAIRMAN: The Commission calls as the next two witnesses, Melissa Quentin and Robert Quinlan.

Good morning. Would you each raise your right hand, please.

MELISSA QUENTIN and ROBERT QUINLAN, called as witnesses, being first
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duly sworn by the Chairman, were examined and
tested as follows:

THE CHAIRMAN: Please be seated.

At the outset, I would like to express, to
each of you, our Commission's appreciation for
your participation in these hearings, and the
assistance that you have provided our staff in
connection with the hearings, as well.

I would now like to recognize the
Commission's Deputy Counsel, Constance Cushman.

MS. CUSHMAN: Good morning, Mr. Quinlan.

Good morning, Ms. Quentin.

We've talked before, a few days ago, have
we not?

MR. QUINLAN: Yes.

MS. CUSHMAN: I would like to ask you in
this context to go over again, for the benefit of
the Commissioners, to go over the process, the
kinds of things that we discussed in the
Commission offices a few days ago.

THE CHAIRMAN: Can we have the witnesses
identified, please?

MS. CUSHMAN: Yes.

Mr. Quinlan, can you please tell us who you
are and where you work, what your position is?

MR. QUINLAN: I work for Universal Elevator Company, Inc. based in New York City, here, and I am employed there as a salesman.

MS. CUSHMAN: And Ms. Quentin?

MS. QUENTIN: Melissa Quentin. I work at the same company, I'm the Comptroller.

THE CHAIRMAN: This is a private company based here in New York State?

MS. QUENTIN: Yes.

MR. QUINLAN: Yes.

MS. CUSHMAN: Ms. Quentin, I'm going to ask you what the company does, what kind of services the company offers.

MS. QUENTIN: We are a New York-based elevator company, and we do, basically, two kinds of service. We update elevators or upgrade them, take elevators that were previously there and make them new, according to the specifications. And the other service we render is a maintenance contract, where we will, according to whatever the contract says, in the specified amount of time, do certain duties, based on what that contract is.

Other than that, we just do work that's not
covered under either of those contracts, but mostly for our own customers.

MS. CUSHMAN: What's your annual volume of business?

MS. QUENTIN: This year, we did nine million in sales.

MS. CUSHMAN: And about what proportion of that is City business?

MS. QUENTIN: I would say it's probably two million of the nine million.

MS. CUSHMAN: So, a healthy percentage of your business is City business?

MS. QUENTIN: Yes.

MS. CUSHMAN: What range of agencies in the City of New York do you do business with at the present time?

MS. QUENTIN: The Housing Authority is our largest City agency. The Department of General Services. Those are the two main ones, at the moment.

MS. CUSHMAN: Have you ever worked for HRA?

MS. QUENTIN: Oh, yes.

MS. CUSHMAN: Do you still work for them?

MS. QUENTIN: No.
MS. CUSHMAN: What's the reason for that, in a nutshell?

MS. QUENTIN: To be very frank, they were the worst. I mean, I have never -- I'm only talking about from an accounting standpoint and from dealing with the clerical and some of the middle management people -- but, I couldn't get paid.

It would take me six months to get a $200 check.

I, personally, took it over, because my clerks couldn't get anywhere, and talking to them was the most frustrating -- it not only didn't pay for us, from my point of view, to work for them, there wasn't any money that could make us work for them.

They said to us, you know, "bid, if it cost you so much money, bid more next time". But it was not worth it.

MS. CUSHMAN: Could we get back to that a little later.

Do you also work for the State?

MS. QUENTIN: Yes.

MS. CUSHMAN: So you have a substantial
amount of your work for agencies of one kind or
another?

MS. QUENTIN: We bid one or two contracts
with the Federal Government, also. If the Federal
Government doesn't pay me in two months, they
automatically send me an interest check; I don't
even have to ask anybody.

MS. CUSHMAN: What I would like to do now,
is to turn to the process of doing business with
the City and to ask both of you, each in your own
area, to compare what it is like to do City work
with what it's like to do work for the State or
the Federal Government, or perhaps even in the
private sector.

And what I would like to do, is to take the
contract process from the beginning.

So, I gather, Mr. Quinlan, it will start
with you, because you're at the the sales end.

First of all, in an elevator maintenance
contract, how does that work? Can you explain for
us what kind of thing you're undertaking to do
when you sign an elevator maintenance contract?

MR. QUINLAN: Well, first of all, you're
talking in terms of City agencies, you bid for it.
If you're the lowest bidder, then after a certain amount of time, you start on the month that's in the contract.

MS. CUSHMAN: What I'm basically asking at this point is: What's the work that's involved in a maintenance contract?

MR. QUINLAN: Each contract has its own specifications as far as maintenance of the elevators, but they are basically all the same. You start in the motor room and work down to the shaft, oiling, greasing, replacing parts, and what-not, according to the needs of the particular elevator at the particular time.

MS. CUSHMAN: Does that involve a monthly site visit, and, sort of, a maintaining visit or a weekly visit, or some periodic visit; and when there's some kind of broken elevator, you would be on call for a repair call; is that it?

MR. QUINLAN: That's according to the contract. Generally, the City agencies are either twice a month or four times monthly, once a week, and we perform all the ordinary maintenance we have to do per prescribed visit. And if we find something that is wrong with an elevator, we will
advise them what is wrong, and they will advise us back on how to proceed.

MS. CUSHMAN: When you sign a maintenance contract, when you negotiate and enter into a maintenance contract, that's typically for a period of what, a year, two years, several months?

MR. QUINLAN: It can be a year, it can be three years, it could be four years; or it could be less than that, less than a year.

MS. CUSHMAN: So it is for a period of time, and you say that you're going to come to do this routine maintenance regularly for the period of time that's called for in the contract; is that right?

MR. QUINLAN: That's correct.

MS. CUSHMAN: When you do a rehab contract for a particular elevator, that's a different kind of contract, isn't it?

MR. QUINLAN: Yes.

MS. CUSHMAN: What does that involve?

MR. QUINLAN: Well, that involves entering into -- after going through the bid process, entering into the contract, and then ordering material for the job. You have to have all your
materials before you can start rehabbing an
elevator, so that takes time. You have lead time,
maybe three, four months, before you get all your
material together, and then you proceed with the
job as it is outlined within your own scope of
your own company. And, generally, you have a time
to do the job overall, five hundred days, six
hundred days, nine hundred days, whatever,
depending on the size of the job.

MS. CUSHMAN: You have a timetable, and in
the contract you sign, the rehabilitation
contract, you promise to complete the work by the
end of that specified period of time; is that
right?

MR. QUINLAN: That is correct.

MS. CUSHMAN: And you can't begin to
gather the material until you are sure that you've
been awarded the contract and you have a
predictable start date; is that correct?

MR. QUINLAN: That is also correct.

MS. CUSHMAN: Now, going back to the
beginning of the process, how do you find out
about the availability of opportunities to bid on
City business?
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MR. QUINLAN: Well, in regard to New York City Housing Authority, we are on what they call a bidders' list, and we -- they send us the contracts as they arise, and we either bid or do not bid.

In regard to the Department of General Services, they put their advertisement in the City Record, and we, for various reasons, don't subscribe to that paper, so we just have to simply call them to see if they have any bids coming up.

It came to a practice where they will call us to make sure we are going to bid, but generally that's kind of late for us to bid, because it's always a week before everybody has been advised.

MS. CUSHMAN: Is that a week --

MR. QUINLAN: That's generally the two we are bidding on in the City right now.

MS. CUSHMAN: HRA; what did HRA do? What was their practice, as you experienced it?

MR. QUINLAN: HRA was generally for maintenance, and their contracts were, as we've discussed in the past, ambiguous enough so that if, when you did extra work, other than what was in the contract of which you're supposed to get
paid, and it's proscribed in the contract, there's always an argument on it.

MS. CUSHMAN: I'm just asking how you find out about the HRA business, for right now.

MR. QUINLAN: HRA business? They mail the contracts to us, also.

MS. CUSHMAN: Okay. When you get the DGS contracts, do you have to pay for the bid package?

MR. QUINLAN: Yes.

MS. CUSHMAN: And how much do you get charged for the bid package?

MR. QUINLAN: $30.

MS. CUSHMAN: And how big is it; how do you go about physically getting it?

MR. QUINLAN: Once we are notified there is a contract, we go down and it is, as I say, $35 -- $30, or $35, I forget which -- and you go down and they give you a set of specifications, probably as big as this, and two or three rolls of prints, and it comes in two booklets; one about this size, and one slightly smaller.

MS. CUSHMAN: I want to let the record be clear that you're indicating a notebook the size of our exhibit notebooks, which are about three
inches thick.

MR. QUINLAN: That's correct.

MS. CUSHMAN: And that's one document. And then you have additional documents?

MR. QUINLAN: Just the prints.

MS. CUSHMAN: When you say "just the prints," what does that mean?

MR. QUINLAN: That's what you get when you initially bid the job. You get the set of documents about as large as this book in front of me, plus a contract book, and the prints rolled up, to do the job, blueprints.

MS. CUSHMAN: The blueprints?

MR. QUINLAN: Yes.

MR. CUSHMAN: Okay. Do you have to pay and collect this amount of material for each building site, or each group of building sites that's included in any particular contract?

MR. QUINLAN: Yes; each contract, you have to pay for the bids, the bid documents.

MR. CUSHMAN: And if they are putting out five contracts for five different elevators at five different locations, you then pick up five sets of material that are the size that you've
just indicated to us?

MR. QUINLAN: I wouldn't do it, but, yes, you have to pay for each one, but I wouldn't pick them all up together. I couldn't carry that much.

MS. CUSHMAN: Now, could you just briefly describe what happens once you've picked up the bid package and you take it back to your office and you try to decide how to -- what bid to put in, in response to that bid request?

MR. QUINLAN: Well, you take those documents back and they are apportioned out to the people who work on them. There's generally two or three gentlemen who actually put the financial part of the bid together, the money, how much we are actually going to bid for that contract, and after they do that, I am delegated, unfortunately, to put the bid together.

MS. CUSHMAN: What's involved in that?

MR. QUINLAN: The Department of General Services bids, to my mind -- really unnecessarily so -- take me just all day to do.

At one time, I had two of them to do in the same day, so, therefore, it took me over the better part of two days to put them together.
There are pages, pages, pages that have to be -- there are sixteen signatures, alone, for each one of them. My boss has to sign them.

This is all, in my opinion, unnecessary work to put a bid together, regardless of the monetary value.

MS. CUSHMAN: Aside from the signatures, what kind of information did you need to put on all of these papers that were taking you two days to fill out?

MR. QUINLAN: Well, you have to put down your foreman that's going to be on the job, the men who are going to work on the job. When you're bidding, you have no idea who the men are going to be on the job, but you still have to list certain men.

You have to put down the financial worth of the President, of all the principals of the company, President, Vice-President, Treasurer. And you have to, naturally, fill in all the Equal Opportunity, that's only one single sheet, but you have to put down who the suppliers are you are going to use on the job each time, which I don't think is necessary. If you get the job, then you
It just goes on and on.

There are pages, and you flip back, Section C, Section D, Section B, back and forth, now you go to the last page, first page. You're so afraid you're going to miss something, you know, you go crazy.

MS. CUSHMAN: Do other government agencies that you have experience with require the same kind of paperwork?

MR. QUINLAN: Nobody requires that type of paperwork. I've discussed it with them Downtown, you know, saying that, for instance, New York City Housing gives you a set of specs about this big.

MS. CUSHMAN: Indicating about an inch or less.

MR. QUINLAN: Yes. And you don't go down and pick them up. They mail them to you. Now, you have that book --

MS. QUENTIN: At no charge?

MR. QUINLAN: Yes, no charge.

(Continued on next page.)
THE CHAIRMAN: The process that you indicated there was no charge with, that was a City Housing process, and you contrasted that with the Department of General Services; correct?

THE WITNESS: Yes. As far as I know, General Services is the only one who charges for bid packages. There are others. The Federal Government, also; Post Office and Department of General Service Administration charges.

MS. CUSHMAN: Now, once you have managed to fill out all of the required pieces of paper, do you have to make copies of these?

MR. QUINLAN: I don't make copies of all of them. Most of it is repeated from the last bid. I have made copies of the actual bid and signatures -- the money part of the contract, which is maybe four or five pages.

MS. CUSHMAN: Then you take your bid down to the Department of General Services again, to put it in, to submit it?

MR. QUINLAN: Yes. There's always a schedule of time, generally the afternoon, and you submit it and you wait, because they open it up on that day.
MS. CUSHMAN: You were describing to me a situation at one of the agencies where there's a clerk who receives these bids who is in a room with a number of tables, et cetera. Could you refresh me on that?

MR. QUINLAN: That's correct. There's generally a table such as this, and you're out in the audience, and you submit the bids to these people, and they proceed to open them at that time.

MS. CUSHMAN: Lots of paper at that time?

MR. QUINLAN: What's that?

MS. CUSHMAN: Lots of paper at that time?

MR. QUINLAN: Well, at the time -- that I submit?

No. It's just a book about this big.

MS. CUSHMAN: We may be talking about something a little bit different, then. I'll get to it a little later in the process.

Once you have been -- the bid opening is a public situation; is that right?

MR. QUINLAN: That's right.

MS. CUSHMAN: And do you attend at that time?
MR. QUINLAN: Yes, I do.

THE CHAIRMAN: Are we describing the bid opening process with respect to the Department of General Services?

THE WITNESS: That's correct.

THE CHAIRMAN: Thank you.

MS. CUSHMAN: Now, if you are the low bidder on a particular job on the date the bid is opened, does that mean that you now have that job and you can start work tomorrow, or at whatever point the contract is set to begin?

MR. QUINLAN: No. It just means that you are the low bidder and it takes a little while for them to get back to you and tell you whether you have the bid or not, officially.

MS. CUSHMAN: That document telling you that is a Notice of Award; is that right?

MR. QUINLAN: Well, in their case, it's a notice that you are going to get the award.

MS. CUSHMAN: And then what happens?

MR. QUINLAN: Then, subsequently, maybe a month or so later -- generally that's their procedure -- you'll get -- well, you have to submit -- before that, you have to submit your...
payment of performance bonds, your insurance requirements, and then you turn those in and they proceed to get themselves together, and they finally get to award you the bid.

MS. CUSHMAN: Now, you mentioned some experiences that you had had with these payment and performance bonds and the insurance requirements. Can you talk about that a little bit?

MR. QUINLAN: Well, in regard to the payment of performance bonds, we are a company, as Melissa said, of about $9 million a year, and each one of these jobs require a bid bond and/or a payment of performance bond, and these not only cost money, but they are underwritten by bonding companies, and the bonding companies only will let you have bonds up to a certain amount, and once we get over that amount, we no longer can bid, not only with the Department of General Services, but Housing and any other agencies that come along.

We bid other agencies, also, but as far as the insurance is concerned, after much wrangling, I believe that's really ironed out now.

At the time that we are talking, it was
still up in the air. They were requiring of us to
have $3 million liability and $3 million owner's
protective policies. We just -- the amount that
we had was a million dollars liability and like --
I believe it's -- no, probably a million, also,
owner's protective.

So, I had much correspondence back and
forth with the legal counsel down there in the
City, and, gradually, they finally came around to
our way of thinking, and reduced it to a million,
but this was after much, much wrangling and much,
much correspondence, and personal appearances down
with counsel and with the City agency, itself.
The insurance is ironed out pretty much right now.

MS. CUSHMAN: Do other jurisdictions
require $3 million the way the City did?

MR. QUINLAN: No. No other agency requires
$3 million, right down through the Federal
Government, Post Office, General Services
Administration, New York City Housing. Even other
agencies in New York City didn't require that much
money. Generally, it's $500,000 per occurrence to
a million per occurrence.

MS. CUSHMAN: Would you have been able to
buy the higher amounts? Was it available in the marketplace?

MR. QUINLAN: Well, in the one instance where we actually had to, they decided, finally, getting $2 million, and we only had a million. It was much tighter three or four years ago or five years ago, but now it has loosened up a little, but it cost us $25,000 per million per year, and these contracts ran, generally, two years, so it was a considerable amount of money out of our bid.

The thing -- in this area, when we were bidding the $2 and $3 million, and having to add $50,000 to our bid, it gave an unfair advantage to other companies who were major entities, a lot of other companies who were bought out by conglomerates. We are a single-owner company. So, they had a $50,000 advantage on us right away.

MS. CUSHMAN: Now, you mentioned a little bit earlier the contract language, and you were talking particularly about the terms of the contract.

Are the terms of the contracts the same from agency to agency, or do you have to read each contract differently to find out what provisions
there are in that contract?

MR. QUINLAN: Well, basically, each contract is the same, contract after contract after contract, if this is what you're referring to.

MS. CUSHMAN: In the same agency?

MR. QUINLAN: Within the same agency, yes.

MS. CUSHMAN: What about from one agency to another?

MR. QUINLAN: Basically, they are the same, as far as the boiler room, boilerplate whatever you call it, within the scope of the contract, and the specifications, naturally, are different.

MS. CUSHMAN: You had mentioned a particular problem with the HRA clause. You started to get into that, and I suggested to you that we would explore that a little bit later.

MR. QUINLAN: HRA?

MS. CUSHMAN: I believe that's what it was, the misleading clause in the -- the contract language that you felt was unfair.

MR. QUINLAN: Yes, as far as extra work, it does vary from contract to contract with what is extra work, other than normal wear and tear, in a
contract, and it does vary from contract to contract, and approach to approach, per agency.

MS. CUSHMAN: And this is the extra work on a maintenance contract. When you're going by on your routine monthly maintenance checks or periodic maintenance checks, and you find something that you think should be attended to and you recommend some additional work on the elevator; how is that treated?

MR. QUINLAN: Well, that, and also if you are called on a daily basis. Some of your larger projects, the Supreme Court, and whatnot, they have almost daily calls, or, certainly, a couple, or three a week, and they are outside of the contract; a shutdown clause other than the normal wear and tear.

MS. CUSHMAN: Does that mean that you would bill an additional amount for your service call for any additional work that you did at that time?

MR. QUINLAN: That's correct, at the end of each month.

MS. CUSHMAN: And has there occurred a situation where you had a difference of understanding as to how you would be paid for that
kind of extra work?

MR. QUINLAN: Well, there's always a
misunderstanding, but it gets ironed out, except
in isolated incidents with a particular agency
where it's arbitrary.

Referring back to the Human Resources, they
were particularly bad. I was down there four or
five -- with a stack of bills every three or four
months, which is a complete waste of time, as far
as I am concerned, going over the language of each
bill as we billed it, and the contract was written
so ambiguously that their interpretation was
different than ours.

One isolated instance that I cited to you:
We were called to answer a shutdown on a
particular elevator, and when our man, who travels
from one part of the City to another, gets there
and the elevator is running, or an instance could
be that a delivery boy has shut the elevator down
with a newspaper or something, some tenant, we
should get paid.

This is other than the normal wear and tear
of the running of an elevator, and they showed me
in their contract -- this is Human Resources'
now -- this was not part -- this is maintenance, and if you read the words the way they interpret them, they are correct; but if you read them the way I read them, they are incorrect, but, therefore, they didn't pay. They had the money.

MS. CUSHMAN: Did you have any place to go where you could easily and speedily get the contract resolved?

MR. QUINLAN: Well, maybe Melissa can answer that better than I can.

MS. CUSHMAN: Ms. Quentin, let's turn to you, then.

Is there any place where you can go if you have a dispute --

MS. QUENTIN: There are different problems. We would speak to the maintenance people, people who would have to send it on for payment. They were reasonable people, for the most part. They were probably the most caring people that we dealt with, you know, because they wanted their work done properly and they knew, to have a good relationship with us, meant that things would get done aboveboard.

We get calls at 2:00 o'clock in the
morning, and you can't always get a mechanic to get there. We have people on call for 24 hours.

I used to really feel bad. We did battered women in the buildings. I didn't want those women to walk through there, but they had to go anywhere.

If that man that you dealt with said no — first of all, the bill was probably $200 or $300. It didn't pay to fight anymore, so we would just quit. We had enough trouble getting what they approved, let alone what they didn't approve.

MS. CUSHMAN: Can you elaborate on what happens at the payment end? When you put in your bills for the monthly maintenance contracts —

MS. QUENTIN: 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. Everybody didn't work together, and if you don't do one little piece of paper, that one little piece of paper holds it up in that department for weeks and weeks, until somebody writes you a note, or even if they get around to mentioning it. A lot of the
times, I just start tracking it down from
department to department, especially on the bigger
payments.

We are doing a job now for the Housing
Authority that's a few hundred thousand a month.
I can't sit and wait for those payments longer
than the time that's allotted, but Human
Resources -- Let me say this: They were
maintenance contracts. I don't remember the exact
price, but maybe 200 a month, five buildings.
Every month, my computer spits out maintenance
bills. They are billed, and my clerks mail them.
If there are five for Human Resources, they go in
one envelope and they are mailed.

Let's say we start in June. Normal
corporations pay within the same month. With the
City, I feel 60 days is reasonable, so I wouldn't
know until somewhere in that third month that I
wasn't getting paid. Then I would start calling.

I won't even go through -- I was trying to
find a piece of paper to show you.

At one point, it took me almost 40 phone
calls to get to the right person; all the names
and numbers all over the place at HRA, and anybody
you speak to, they don't do that job anymore.

Well, who does?

I don't know.

Then you would finally get somebody, and the next month they weren't there anymore, and that person wasn't the greatest cooperator in the first place.

You know, we're in there for like three years. I remember the names of the people who helped me, because it took me so long to get to them. And what would happen is, now here it is three months later, and they give you the cute answer -- if it was just once, I wouldn't remember it, but it must have happened, in two years, six or seven -- "We didn't get those bills."

Now, sometimes they had two of the five of them, or three of the five of them, and I would go through everything, and then I had to redo -- my clerks had to redo everything.

Human Resources would really get me mad, because they would only accept the originals. I couldn't even send them Xeroxes of the ones they couldn't find. Any other organization who doesn't
pay you for three or four months at a time, gives
you a little consideration four months later, and
says, gee, we have to speed this one through.

Not them. They treat you like you just
came in that day, and in a couple of months you're
starting all over again. And then it would take
me to the sixth and seventh month to know that we
weren't getting what we had arranged three months
before.

It was the worst ordeal that I went through
with any agency, and not even that, it was the
least amounts of money. With my corporation, it's
not even a blink, it's an automatic thing. You
pay every month. Not them.

The Housing Authority is very good, they
have procedures. General Services, who we are
billing for very large bills right now, at least
you know an assigned person in each department
that's going to be responsible for something.

They call you back and they treat you like you're
human.

Human Resources: "Ain't my job." It was a
very poor clerical staff, and it never got better,
not once in the whole time we dealt with them. So
we said, it's not worth it.

COMMISSIONER HYNES: How many years did you deal with them?

MS. QUENTIN: Two years. We couldn't keep up with the paperwork. It wasn't fair.

MS. CUSHMAN: There was one particular aspect of the billing cycle that you mentioned to me, relating to the fact that the billing year or the fiscal year ends in June.

MS. QUENTIN: That used to crack me up. I would automatically send the bills. They would -- Human Resources had to have a particular number on everything. The first time it happened, I couldn't believe it. It seems that their fiscal year ended in June, I believe, or the end of May, and my computer still had the numbers. I didn't find out until September that all those bills that we sent all summer should have had a different number.

On all four or five of the buildings, we did have a different number, and every one of them gave me different numbers at different times, and we had to redo all of them in originals, of course, and that happened the second year, also.
They were really ridiculous. To me, it's like people get hired just to do this little piece of job, and instead of working with the people you're supposed to be cooperative with: "No. We can only have it this way," and they wouldn't look any further; really sad.

MS. CUSHMAN: Is there a difference, from the point of view of yourself as a vendor, between a three-month contract and a longer term contract, like a year or a two-year contract, for elevator maintenance?

What kinds of considerations go into why you would bid a particular way on one and not another way on another, or why you would choose to bid on one and not bid on another?

MR. QUINLAN: That started to come about in the three-month contracts. At the end of the contract that we had with Human Resources, as Melissa said, I think we had something like 105 buildings at one time. As they expired, as the term of the contract was over, as the other gentleman so aptly put it earlier, it just never left enough time from the departure date to the start again, and as a result, they quickly would
hurriedly get a bid together, basically with the
exact same words as the bid you had previous, but
they would only want it for three months at that
time.

Now, the approach for us to take a bid of
that nature, as opposed to the full year or two
years, is entirely different, because at the end
of the third -- at the third month, they would put
out the bid, and we possibly would not get the
contract. So for a three-month span, we would
arbitrarily give them at least triple what we
would ordinarily bid for the same job, because of
the length of the contract.

If something goes wrong within that span
and we are liable for it, we can lose our shirts.
I understand, now, that they are working out
three-month contracts all the time. And to be
perfectly honest, I don't know, because even if we
get two or three or four a month, we arbitrarily
put them aside. And they said they have a reason
for the three-month contracts, but I don't know
what it is.

MS. CUSHMAN: But from your point of view,
is it a higher risk to go into a three-month --
MR. QUINLAN: Of course. It's like insurance. It's only three months. If anything major happens within that span, and it comes under the contract, you had no chance to recoup your money over the balance of the year.

(Continued on next page.)
MS. CUSHMAN: And in terms of the -- going into a new location where someone else has been doing the maintenance work up until then, is the risk higher in that situation -- if you go to a new location, a new building, a new elevator, and you have not had the maintenance contract on that building in the past, is that an unknown and a higher risk situation to you than if you had had the building and you had performed the maintenance in the past?

MR. QUINLAN: Absolutely, that goes without saying; if you don't know the equipment, then you have to bid accordingly, and, God forbid, you miss something.

MS. CUSHMAN: Does that unknown factor get reflected in the price that you bid?

MR. QUINLAN: Absolutely. Absolutely. It has to be higher.

MS. CUSHMAN: Mr. Chairman, I have no further questions of these witnesses at this time.

MR. QUINLAN: I have a few other things to add, that we didn't get into, on the part of General Services, which we discussed earlier.

MS. CUSHMAN: If I left them out, it was
not intentional.

MR. QUINLAN: Two things have happened. To just go along with what we are talking about, the bureaucracy and the chain of command within the chain of command within the chain of command; we recently incurred pieces of paper from the Department of General Services for the -- we are doing a major rehab out in Queens Supreme Court, ten elevators. It a sizable job, two and a half million dollars, which is sizable for us.

Lo and behold, we get a couple of pieces of paper from them saying, "you are now five percent behind in the job". Another job in Queens, at Family Court, "you're now 15 percent behind in the job". We have like 700 days to do this job. We haven't got all our material at the time we start the job, and yet they are telling us we are late; they haven't approved all of our drawings and everything.

They should do something with that sort of system. To just arbitrarily say, "you're five percent behind" --

MS. CUSHMAN: Are they charging you any money, or is it costing you money, as a
consequence of that piece of paper coming to you?

MR. QUINLAN: No. It's just an embarrassment, and unnecessarily.

MS. QUENTIN: That piece of paper is going around to every department there. We weren't even supposed to start yet. It happens constantly.

MR. QUINLAN: Another thing, just yesterday -- we were contracted to shut down three elevators at one time, and we said, okay, we'll go in, and we are going in like the middle of next week, and, lo and behold, yesterday they said, no, we don't want you to go into three elevators and shut them down, we only want you to shut down two.

Now, we said, well, we have scheduled three crews to go in there, they have no other work in other areas of the City, or our commercial jobs, what do we do with these two men, and they said, well -- I'm not naming any names, who said this, or what, but their approach was, "Well, then, fire them".

We can't afford to fire skilled mechanics, because if you do -- granted, forgetting about the financial aspect of it -- you spend many years training them, or getting them to the way you like
them to work within your scope, and now they just
arbitrarily say this.

However, this instance, I believe, has gone
from the gentleman who told it to us to two or
three people above his head. It's in discussion
now.

But this is generally what you run into
with City agencies. There's just no -- this
little cubbyhole has nothing to do with this
little cubbyhole. A lot of people just
arbitrarily make decision that they really
shouldn't make in the overall scope of the
contract.

There was another area that we discussed,
and we didn't get into it, and this is, after you
get the bid -- this is with General Services --
they give you a contract equivalent of the
original bid that you put in, plus about five
others, and you now have a stack of papers this
high.

MS. CUSHMAN: Indicating about eight
inches.

MR. QUINLAN: Easily, because I have to
carry them. I have to tie them with a rope,
either jump in a cab; if I can't get one, I have
to walk them back to the office. The President
has to sign, I notarize them with a seal, and we
carry them back.

Now, when I carry them back to the room I,
deliver them too -- you have tables like this,
filled with --

MS. CUSHMAN: Indicating about two feet
high?

MR. QUINLAN: More than that, almost three.
-- tables almost the equivalent of this
amphitheater here. I hate to put anybody down
down there, but this is their system, this is what
I'm jumping on, not the people that are doing it,
and they -- I'll ask, "Where is our contract"?
"Let me see. We think it's over here". This
shouldn't be.

Now, conversely, when we bid with the
Housing Authority, Housing Authority gives you a
contract, they mail it to you, it's like that size,
and that is, basically, some boilerplate, and some
half of the specifications.

THE CHAIRMAN: The witness is indicating
about an inch in each case, when he makes
reference to "this size" or "that size."

MR. QUINLAN: A little less. Three quarters of an inch.

But within that three-quarters of an inch, they give you three pieces of paper, and this -- all you do -- and that is the bid. You put your money on that, and they want it in triplicate, so you fill it out three times, and that package is that thick.

MS. CUSHMAN: So, you're indicating a very, very small sheaf of paper is your final bid proposal that you mail back to the Housing Authority, is that right?

MR. QUINLAN: Right. Or I hand-deliver it. My point is, that the Department of General Services could do away with all of this paperwork and take -- with Housing Authority, bing, bing, bing, bing, fill it out and bring it down. Now you're talking about $4 million, $5 million. So, you know, the size of the contract has nothing to do with the piece of paper you're given.

The Department of General Services requires this big thick book that I have to do -- that takes me all day long to do, and give you back a
stack of copies that big to take down, indicating, again, about eight inches, and jackass them back down there.

Housing Authority, again, they give you one contract to bring down, the official one that they keep, and the contractor's copy that they give back to you after they are executed.

MS. CUSHMAN: One other thing that you mentioned to me beforehand was the retainage, the amount that gets kept by the agency until a period of time after full performance of the contract.

Can you talk a little about that, Ms. Quentin?

MS. QUENTIN: Every one of the agencies keeps a different -- they call it retainage. If the contract is $2 million, every time you send them a bill, some of them hold ten percent of that bill, some of them hold five percent. It becomes very expensive for us.

I'm working on a $4 million contract with Housing Authority right now, and they hold five percent. However, once we complete 51 percent, they allow me to drop that down to two and a half percent, and they let me take some of my money
back, which will be 100, 100-some-odd thousand
dollars, that they are going to owe me.

Department of General Services never lets
me have any of my percentages back until the end
of the job, and if it's a ten percent, at the end
of the ones signed off and completed, they only
let me have nine, and I have to have wait a whole
year for the one.

The Housing Authority, once everything is
okay, they are the ones that let me go from five
to two and a half, and they give me back
everything.

Everybody has got different rules. The
person that I remember, one of those three people
from Human Resources, we had done a small contract
of about $40,000, and I got back $3400 at the end
of it, right. I was so thrilled, I found her
again a year later, because it's not like somebody
is going to automatically mail me the one percent.
I have to really pray to God it gets to the right
person's hand, and wait for the money.

MS. CUSHMAN: Several times during our
conversation here today, and also earlier, you
have expressed that you didn't want to speak
particularly harshly about any individual, you
have expressed that you want to continue doing
business with at least some parts of the City
Government where you are able to maintain a
relationship and do business in a reasonable way,
even in light of all the hardships.

I take it that that is very much the way
you feel, that you are not trying to do anything
other than cooperate with our investigation and
provide this information to us, you are really not
terribly thrilled about being in a public setting
about it; is that right?

MS. QUENTIN: Correct.

MS. CUSHMAN: I take it that you are doing
this in the hope and the expectation that this
will add to the improvement of the system, and not
complicate your life in any way as a particular
vendor in the City of New York; is that right?

MS. QUENTIN: That's correct.

MS. CUSHMAN: And we've tried to express,
ourselves, in our own interviews, the hope that
that will be the case, and we've told you that
that is the basis on which we've subpoenaed you to
come and testify; is that right?
MS. QUENTIN: Correct.

MR. QUINLAN: I could add one last statement on the contracts with the Department of General Services. As I say, the contract is well over an inch high, and it takes all day long to do. Conversely, the New York City Housing Authority gives you the book about three-quarters of an inch, of which you only give them back three pages, but in your folder, or in our premises, they give you a book, oh, about half an inch, and this applies to all of their contracts. This is all the pages about the gobbledygook in there, lawyer talk. That applies to all of the contracts.

Why couldn't General Services take the same approach, take all the pages and give us one book and this applies to all the contracts all the time, and it would serve a greater purpose. If you did nothing else today and did that, I would appreciate it.

THE CHAIRMAN: I think there will probably be some questions from the Commissioners.

I would like to go back to some of your testimony. I recognize that time is running.
Let me see if I understand what you've said.

I take it that your experience is with, essentially, three agencies, HRA, the Housing Agency and the Department of General Services; correct?

MR. QUINLAN: In general, yes.

THE CHAIRMAN: Because you made reference to City agencies in general, and I just want the record to be clear that the specific testimony you've given really involves just three agencies.

MR. QUINLAN: Right. Without mentioning any others, right.

THE CHAIRMAN: You made reference to your experience with, I guess, the Department of General Services and three-month contracts. Do you remember that testimony?

MR. QUINLAN: Yes.

THE CHAIRMAN: As I understood what you said, that when you enter into a three-month contract, your price is three times what it would be for that period of time, if that period of time was part of a year contract?

MR. QUINLAN: Easily.
THE CHAIRMAN: Easily. Let me say it perhaps more simply. That that three months, the part of a year contract, would be one-third the price of what you charge when it's by itself as a contract period?

MR. QUINLAN: Repeat that.

THE CHAIRMAN: I thought I was doing it more simply, but, obviously, I didn't.

When you enter into a three-month contract, you have a price that's three times what it would be for that three-month period if that three-month period was part of, say, a year or longer contract?

MR. QUINLAN: Yes, sure.

THE CHAIRMAN: I would like to ask each of you, in a brief response, to comment on this observation: That from the standpoint of a City employee who has taxpayer money on the line in terms of these contracts, it seems to me that there is a responsibility on the part of the City to be sure that the contractual relationship with a vendor is very much in order, because if it's not very much in order, the City may bear responsibility and liability that results in
having to expend a lot of taxpayer money down the line.

Number two, with respect to a City employee who is asked to issue a check to a vendor for work done, services provided, there is a responsibility on the part of the City employee to be satisfied that the work called for by the contract has been done, and the work is consistent with what was expected of that vendor, so that, it seems to me, entails delays.

Looking at it from the standpoint of City employees, how do you respond to those kinds of observations, that we have a responsibility to all people before we spend money, to be certain that the work has been done, and that before we enter into a contract with a vendor, to be certain that that contract is correct and proper from the standpoint of the City.

I just would ask you, if you can, just to give me a crystalized response to those two observations.

MR. QUINLAN: My own viewpoint is, we don't ask any City employee to give us any more money than we are entitled to. If we perform, we
would want our money. It is in the areas where
the clerk will dispute our bill and hold it up and
hold it up and hold it up, and eventually beat us
down, oftentimes, and we don't get a full payment.

As Melissa said, payment in 60 days; but we
understand the position that the City is in, they
just can't arbitrarily say, I have a bill and I'm
going to pay it. We've, oftentimes, gone down
with a stack of bills and gone over each one of
them and tried to come to a meeting of the minds.

But all we ask is to be paid for the work
that we perform under the contract, and that is
all.

THE CHAIRMAN: You eventually get paid,
don't you?

MR. QUINLAN: No. Quite often -- we have
bills going back three or four years that are
supposed to be paid to us, and we still haven't
gotten it, but we just forget about it, put it in
the drawer and the contract is gone, forget about
it.

You eventually get paid, but oftentimes we
will accept money that, if we wanted to fight and
go into a court of law, we would win. We don't
want to do that. Eventually you get paid, but oftentimes you don't get paid the just amount, quite often.

(Continued on next page.)
Public Hearing

THE CHAIRMAN: Any reflections on my observations?

MS. QUENTIN: I got very lost in your observations.

Let me say this: One of the things I object to is the fact that every single one of the City agencies is allowed to pay us different rates of money for work done, every single one of them.

Now, my normal rate, at this point in time, is $75 an hour. The Housing Authority pays me $39.78 an hour. Human Resources, oddly enough, even though there were few of those bills, they were allowing that rate, but they wouldn't allow other little extra costs that other agencies -- everybody has a different scheduling going, and with the Housing Authority, they get their rates from the Office of the Comptroller. Where are the other guys getting theirs from? That's my only observation.

THE CHAIRMAN: Thank you.

Commissioner Vance?

COMMISSIONER VANCE: Yes.

First let me thank you for coming and testifying and being so frank in discussing these
You described what sounds like a nightmare of red tape and bureaucratic mire.

I would like to talk about just one aspect, and that's the paperwork involved with the bid packages.

In your judgment, I gather, it's not necessary or desirable to have such huge bid packages, and you believe that smaller bid packages can do the job and still protect the City; is that correct?

MR. QUINLAN: Well, it's being done successfully in other agencies; why are they so arbitrary that everybody in the organization has to have his own particular contracts?

COMMISSIONER VANCE: You're pointing at the Housing Authority when you say it's getting done?

MR. QUINLAN: Yes.

COMMISSIONER VANCE: Do you make bids on other governmental agencies in New York City, such as the Federal government?

MR. QUINLAN: We deal with, yes, the General Service Administration, which is different from the Department of Human Services. That's the
Federal Government, and we do business with the
U.S. Post Office.

COMMISSIONER VANCE: How do they do it? Is
it simpler?

MR. QUINLAN: Oh, absolutely. The same as
Housing, they give you, with the fingers, about
three-quarters of an inch, and that's all you get.
That's the specifications of the contract that is
involved in that one package, that one set of
papers.

COMMISSIONER VANCE: So, what you're
saying -- and I am asking basically the same
question that I have asked of other witnesses --
it wouldn't be any big deal to perform that
contracting process to make it simpler and still
protect the City or the other agencies with which
you deal?

MR. QUINLAN: Mr. Vance, the answer is
obvious. If everyone else is doing it, why can't
they?

COMMISSIONER VANCE: Thank you.

COMMISSIONER HYNES: One question with
respect to the insurance disadvantages that you
say you're under. Are you saying the other
companies don't have to provide the same amount of insurance?

MR. QUINLAN: Oh, no. They can, but since they are, quote-unquote, a conglomerate, they have unlimited resources, again, quote-unquote, so they can procure the 3 million with no problem.

It's tough for us. We used to have 10 million --

COMMISSIONER HYNES: That's an economic advantage by reason of their size?

MR. QUINLAN: Oh, absolutely.

THE CHAIRMAN: Commissioner Emery?

COMMISSIONER EMERY: I just have an observation.

It sounds like your experience in waiting for payment from some of the agencies is like waiting for an elevator in some of these buildings.

MS. QUENTIN: Obviously, not the buildings that we do.

COMMISSIONER EMERY: Right. I would often take the stairs.

THE CHAIRMAN: You're obviously referring to our elevator.
Public Hearing

MR. QUINLAN: We didn't get into specifics with you guys.

THE CHAIRMAN: Thank you very much, on behalf of the Commission, for your participation. We'll take a brief recess at this point.

MS. QUENTIN: Thank you.

MR. QUINLAN: Thank you.

(Whereupon, a recess was taken.)

THE CHAIRMAN: The hearing is now in order. The Commission calls as its next witness,

Gerald Levy.

GERALD LEVY, called as a witness, being first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: We recognize once again, Constance Cushman.

EXAMINATION BY

MS. CUSHMAN:

Q Mr. Levy, you're the Commission's Chief Investigator, are you not?

A That's correct.

Q Have you participated in the Commission's review of the contracting processes in New York City?

A I have.
Q What particular aspect of those contracting processes have you focused on?
A I, and the people I work with, focused on competitively bid contracts as opposed to sole source and RPF.
Q Did you try to deal with construction contracts?
A No, we did not.
Q Within the arena of competitively bid contracts, did you try to take a closer look at a particular section of those contracts?
A Yes. We selected the service contracts as opposed to the goods contracts. The goods contracts are handled mostly through one particular office, DGS, and the service contracts are handled independently by each agency.
Q Your team was looking at service contracts in a variety of agencies; is that right?
A That's correct.
Q Did you focus your attentions more closely on all service contracts?
A Yes. We looked at contracts with fewer than three bids.
Q Was there a reason that you selected that
universe of contracts to look at?

A We selected fewer-than-three bids, because universally, through contracting experts, and even through some City guidelines, you learn that if you have fewer than three bids, you're getting out of the realm of the barest minimum to have a good bidding process.

Q Now, were you able to get Citywide data concerning the kinds of contracts, or the dollar volume of service contracts that are competitively bid and awarded on the basis of lower than three bids?

A We were not able to get Citywide data.

Q The Comptroller wasn't able to provide you with that kind of data?

A The Comptroller, as of 1989, could tell you single bid contracts, one bid alone, and that would be the only data, I believe, for 19 -- the very last year. They are just about up to that now.

Q What about DGS, the Division of General Services; or the Department of General Services?

A They could have some single bid information. Very often you had to go back to the individual contract holders, of course. You didn't have any computer run that could tell you all of them.

Q Now, was there any agency within the City
that was able to provide the Commission with that kind of information?

A Yes. HRA was able to provide a very complete bit of information on less-than-three-bid contracts, and going back to the two fiscal years that we asked, fiscal year ending '89 and fiscal year ending '88.

Q As a result of HRA being able to provide this excellent information, have we then taken a closer look at a number of contracts that do involve HRA?

A Yes, we have.

Q Has your analysis of these contracts and these situations branched out, however, beyond just HRA?

A The modus we used was to do, in part, a statistical survey, and then actually go speak to vendors dealing in -- or who had some connection with less-than-three-bid contracts.

When we speak to these vendors, we learn that in some cases, they either do or do not deal with HRA, but they do deal with other agencies, and in some cases they don't. But it got beyond the one agency when you actually spoke to the vendor.

Q So I gather that it's not your sense that HRA is unique in the kinds of problems that it faces, among agencies that we are talking about at today's
That's true, and fortunately, we were able to deal with HRA, because they kept such good records.

Speaking now of the universe of contracts that HRA has let in the service area on the basis of competitive bid process, but after fewer than three bids were received by the agency, do you have some sense of the total dollar volume that was involved in fiscal '88 and fiscal '89?

Fiscal '88, approximately $7-1/2 million, and by fiscal '89, it was $24-1/2 million.

Now, what kinds of contracts are these services contracts, and how do they fit within the mandate of what HRA does as a government agency?

HRA runs programs such as Child Welfare, Day Care, Head Start, Emergency Shelters, Homeless Shelters, Medicaid, Income Maintenance, Medical Assistance programs. Within that realm, they contract for a myriad of services that would go for maintenance of buildings, plus maintenance of their own operation, plus maintenance of shelters.

You get things like exterminating services, janitorial services, trucking services, elevator repair and maintenance, painting contractors, roofing.
contractors, repairmen, plumbers, movers. Car services they contract for, asbestos removal, food services; basically the whole gamut of what you can think of in terms of services.

Q What we are not talking about here is a situation where HRA would contract with a not-for-profit provider to actually run a day care center?

A That's right. We are not involved with that.

Q What kinds of approaches were you able to take in looking at these under-three-bid contracts?

A One approach was a survey from the printouts, a statistical sort of survey, in which we made comparisons, and we examined the printouts which usually tell you how many bidders were solicited, how many bidders responded, who won, how much the lowest bid was, how much the City estimated the contract was worth before they let it, and then we actually went out and interviewed numerous bidders.

Q Were you also able to review a set of questionnaires which had been compiled by HRA and which had been returned to them from people who chose not to bid on particular contracts?

A HRA has a system, when they send out a
notification of a bid coming due, to attach a little form which says: "If you did not choose to bid --" and it has 12 reasons on it "-- please check the reason why you did not care to bid".

Q Can you look at Exhibit 7 in the exhibit book in front of you?
Is Exhibit 7 an analysis that you prepared of the HRA questionnaires that you just mentioned?

A Yes, it is. The top part is statistical. The 12 questions are the 12 questions as they appear on the HRA form that is sent out.

Q Did you basically go through the entire bundle of forms and tally up the different responses, which categories they fell into?

A Yes, we did.

Q Can you tell us a little bit about the analysis that you did and what it reflects?

A Well, there were 720 contracts in which they got some reply from somebody answering with a questionnaire.

Q That's not all the contracts in this area that they may have let during this period; is that right?

A No. It's only the ones on which they got a response on the questionnaire. It seemed to be complete,
because the contracts run numerically, because it would be 8001 and then 8003, and then you would see one 8004. So, it ran through the whole gamut of the contracts, switching them here and there, apparently because they didn't get a response.

Q Can you go on and tell us about the rest of it?

A There were 2,031 vendors who responded to the questionnaire, in total, from all 720 entries, and these vendors gave 2,398 reasons; some vendors actually checking off twelve boxes or three boxes.

Q And looking at those reasons, which were the ones that stood out as being the most significant?

A The single biggest reason in the questionnaire was: The work or service requested was not performed by the company, and that was approximately a quarter of all people who responded why they weren't bidding.

The second biggest number was: The bid request was received too late, and there was insufficient time to plan or estimate the bid. Then there was a whole series of reasons -- I would point out that you saw things like where it says "Unable to meet insurance requirements," or "Unable to meet bonding requirements,"
"unable" was crossed out, and it would say "unwilling" to meet the requirements.

Q Were there other situations in which a little more detail was provided, where you could learn a little bit more about what happened, from the face of the questionnaire?

A People would write in little anecdotes to the questionnaire, little explanations or reasons.

Q Did you develop any insight into the situation of "work or service requested not performed by this company," based on your review of the documents?

A Yes, we did.

Q Can you tell us about that?

A Well, these are just sort of examples of what you would see in this type of thing. You would see somebody sent it back and said, "our company is out of business sixteen years". "This company is out of business ten years." We had elevator service contracts, and the form would indicate what the type of service was at the top, responded to by Smith's Artesian Well Company; "we don't do elevator contracts". You would see one to repair window sashes. "We are Island-Wide Photo. We don't do window sashes."

There was one for canvas awnings, and the
responses came from one ironworks company, three asphalt paving companies, one hydrographic survey company, one water main and sewer company, and six construction companies, all indicating they don't do canvas awnings.

Now, when I say that, the names were self-descriptive. I am not talking about Smith and Jones Company, so you wouldn't know it. The names describe what the companies were in business doing.

There was another instance, a construction company that indicated their name was, I think, 13 Q Construction. In January of 1988, they responded to a contract -- I don't recall what it was, it was for painting or something: "We only do flooring. We are a flooring contractor." From 1/88 through 5/88, they got eleven contracts, all offering work in a different area, none of which were flooring, all of which they responded to, as we got them: "We only do flooring work." It appears after 5/88, this is not a recurring problem with them.

Q Now, what about the bid requests received too late; did anybody comment on that in more specific detail?

A A couple were in the vein of: "The bid conference was 11/6/87; I only received the bid request
11/17/87." That was not that prevalent.

What was more prevalent was: "We don't have enough time to estimate the job. I mean, I only got this a week ago."

Now, I must say that that's not always the fault of the agency. I mean, obviously, there are mail difficulties. Obviously things were mailed and the people moved and the agency wasn't aware of this, and it didn't get to them directly; it had been forwarded and things like that, but mostly you saw, "I didn't have enough time to go out and estimate this job."

Q Now, you mentioned, or your statistics showed, that in these particular contracts, there were 2,000 vendors responding to the questionnaire. Do you have any idea of how many were actually solicited, and what the response rate was in relation to that number?

A We have been getting information, constantly. In fact, some information came last night. We now have information on 347 of the contracts.

Now, out of 31,000, people who sent in some reason why they didn't bid, isn't absolute for the entire 720, but we estimate that there were approximately 2400 people who bid in total, and what we actually did was double the number, because it's basically half, and it's
public hearing

1. actually 32,000 people or 32,000 solicitations to bid, sent out. And so most people don't even bother responding. They don't even give you the reason why they are not involved.

Q. Now, one of the reasons on the questionnaire, which is an option to select, is: "Previous unfavorable experience with City contract/work," and that shows a relatively low number in terms of percentage of respondents who chose not to bid. Do you have, as a result of the interviews you did, any insight as to why that figure is what it is on the questionnaire?

A. Well, we say two things: Some of the people we talked to were people who sent in questionnaires. They said, "I am still interested in bidding with the City. I don't want to check off that box, so I just checked 'Too busy at this time to do the work'."

If you look back at the history, you'll see that they were too busy for two and a half years. When you went out and spoke to vendors not actually interested in City work, "we are not interested in working for the City", either they personally had had bad experiences or it's known in the industry the troubles with dealing with the City, and they are not interested in going into that
Q Can you go into the matter of the interviews, now, in a little bit more detail?

A First, can you tell us how you went about identifying vendors to seek out for an interview?

A We picked contracts from the printout. It indicated a contract, and we picked, for instance, some large dollar amount contracts where there were less than three bids. We picked some contracts where the low bidder -- the numbers and -- if there were two bidders and in the figures there was a great divergency between the winning bidder and the next bidder, we tried to get a sample of all the things you could see from the printout that were different.

Q And then who did you go interview?

A Vendors who didn't bid, vendors who had bid and no longer bid, vendors who -- I mean, I didn't know this in advance, but vendors who didn't bid at this agency, but who bid at other agencies.

Q How many interviews did you do altogether?

A It must have been upwards of 70.

Q Out of these 70 or so interviews, did you recognize any patterns in the kinds of responses being provided to you?
The first thing you recognize is what I call the large vendor-small vendor dichotomy. They each view what goes on in different terms. When I say large vendor, I would even include medium-size companies.

THE CHAIRMAN: Can you be a little more specific as to the distinction you are making in terms of what is large, what is small, what is medium size?

THE WITNESS: That's a little hard to do. The small vendors were basically mom and pop, small companies, not a lot of employees, and a little bit upwards of that.

The middle-size vendor was probably somebody who was much on the scale of Universal. They have staff. They may even have bookkeepers, a nice-size office.

Large vendors, of course, are of the Ogden type.

(Continued on next page.)
Q And when you're talking about this dichotomy, are you basically reflecting their perceptions of where they fit in this continuum; in other words, people who view themselves as small are commenting about the big fish in the pond, and the other way around?

A Absolutely. Even more than my judgment of who is small and big. When you listened to them, you heard them either say the "big guys" or "the small guys," referring to those who were not in their class.

Q Can you tell us some of the things that they communicated to you?

A The large vendors perceive that the City doesn't want quality, they just want cheap; they are willing to pay whatever it is, as long as it's the least possible price. And their gripe was, that the City requires prevailing wages to be paid. Many times they would say -- prevailing wage, I don't know exactly how it's calculated, it's not union wage rate, but it's some kind of conglomerate figure for wages, it's calculated by the Comptroller's Office.

The larger vendor said, "sure, these guys can bid the cheapest price, because nobody is going around to check to see if they pay the prevailing wage rate, because nobody can bid these prices and be paying
what is required by the Comptroller."

Q Were there any other comments?

A They also felt that, with the smaller company, the City wasn't getting quality and didn't really make a check for quality, as long as they were paying little.

Q I take it that the small vendors did not share that point of view?

A Not at all. They claimed everything is a fix for the big guys, and what they point to is City contracts that cover five boroughs, or having such a large well of service that it is impossible that any small vendor could possibly deal with all the services required in one particular contract.

And, of course, the key complaint that, across the board, small bidders have, is, you don't get paid in time, and what they are reflecting is that late payment kills them, because these guys don't have a cash flow.

When you lay out payroll for a month and expect to get paid in the second month, you're at the end of your tether by the time that second month rolls around, and if you didn't get paid, you're in the third month already.
We have one particular instance where the guy said he had to borrow $50,000 to meet his expenses because he wasn't getting paid. It wasn't that they don't ever get paid, it's just that the City is sort of cavalier with how quickly they pay.

The small guy complained bitterly about paperwork which he said adds to overhead.

Many don't have on-staff counsel. When they get a bid book that's three inches thick, they have to go running to counsel, because you never know where in there is some quirk, and they don't have the expertise themselves to determine it.

They were especially peeved at agencies that, for each contract, instead of giving them one -- as you heard alluded to by Mr. Quinlan, that they give you one book, and all you get are specifications for the rest of the year. They were especially peeved with somebody who gives them a whole new bid book with every bid, because every time it comes, they have to run to an attorney, and there's up-front costs with no guarantee of getting contracts.

The little guys have to pay $25 or $30 a book. Sometimes there would be 20 contracts for 20 buildings, for virtually the same service; they would
have to purchase 20 bid books. There are many small people and that let's them out.

The bonding requirement, they felt, was an attempt to knock them out as a small vendor.

Q I take it that you focused on, or you ended up interviewing people that fell into a variety of different service areas?

A That's correct.

Q Can you tell -- first off, were there some complaints that seemed to be more particularly predominant with one service area than another?

A In the general case, of course, the late payment; wherever you went, that was across the board. You didn't hear too many big companies -- big companies would mention it in passing, but small companies, that would be their biggest bugaboo.

Q Let's talk about particular service areas.

Turn to car service for a moment. Tell us a little bit about car service.

A That service is provided to the Child Welfare Bureau, and they need limousine service when there's battered children, to rush them out from home, when they have to take the children into Family Court, back and forth. They had extensive need for car service
throughout the five boroughs.

It's a very difficult contract. They solicited between 500 and 600 car service firms for the contract, and they got one bidder each time they did it.

Q And is this pattern reflected on Exhibit 6 in your book? Can you take a look at Exhibit 6, the second page?

A Those are the actual different contracts they let. You can see they were let by boroughs or conglomerations of boroughs.

Q And there was an hourly rate, a unit price on which the bid was based?

A Yes, and the estimates would be much like in the elevator contract. "We estimate. Please bid for like 90,000 hours for the next year, 112,000 hours of car service", and so the bids were multiplied by your hourly rate times how many hours the agency was estimating.

Q Somewhat like the security guard contract that Ogden was telling us about?

A Right.

Q What happened in the history of this service that was being contracted for?

A Well, the contract, first of all, I point out -- I'm not sure that this is exactly right -- it
called for like 30 drivers and 30 cars to be available from 9:00 a.m. to 9:00 p.m., dedicated to the contract, and maybe half of that number to be dedicated between 9:00 p.m. and 9:00 a.m.

We made some inquiries into the Taxi and Limousine Commission, and I would say approximately 95 percent -- now, the number is all the Taxi and Limousine Commission has registered as car services. 90 percent don't have 30 vehicles. I mean, it was only very few companies who even were in a class to have 30 vehicles dedicated all the time, every day, where it was even feasible.

What we found was, in one particular case, the winning -- the person who bid the lowest did not get the contract, and we went out to interview them. We wanted to know how come -- I think it was a difference of three dollars per hour that he bid between the person who eventually ended up with the contract, and his bid price -- and he said he bid on the contract, and then they told him he needed $5 million in liability insurance, and he said he was just flabbergasted, because he couldn't conceive of why he would need so much, but he made an attempt to go out and get the insurance.

He went to the Taxi and Limousine Commission
to find out who insures the bulk of their companies. He couldn't get $5 million.

He went to the State Insurance Fund to see who would be willing to cover him for $5 million worth of liability. He couldn't find anybody to cover him, and he lost the contract because he couldn't provide the insurance requirements.

He was especially upset, because he works for the Health & Hospitals Corporation, another City agency, and they require, for the same type of car service, I don't know if it's the same type of clientele, but only $1 million in insurance.

Eventually, HRA, realizing that this may be an impediment to them getting more than one bidder, I guess, yelled to whoever imposes the insurance requirements, and they were eventually reduced to $1 million, and it didn't seem to help. They got one bidder.

In fact, that particular gentleman we spoke to, we said, "Do you know the insurance has been reduced to $1 million?" He said, "No. When did that happen?" I said, "They reduced it six months ago." He said, "Ever since that experience, when the stuff comes, I just throw it in the garbage. I don't even bid on it anymore."
MR. SCHWARZ: Did you ascertain how many
car companies there were that did have more than
30?

THE WITNESS: No, I didn't get a count.

MR. SCHWARZ: Do you know that there were
more than two?

THE WITNESS: Oh, yes. They indicated to
me that -- they said about 95 percent of the 613
didn't have more than 30 vehicles.

Q Now, can you turn for a moment to health
care contracts, and tell us, first of all, what those
contracts are for, and then what is a particularly unique
problem in that area.

A The health care contracts are for
homeworkers who HRA sends out to the various people who
are in need, or people who can't afford their own health
care services, or they are incapacitated and can't take
care of their home by themselves.

Q Is this physical exams?

A They are being sent out on the job.

Physical exams.

Q What did the vendors tell you in that case?

A Many of them found the paperwork was
daunting, they had to fill out these big fat things that
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asked lots of questions. They compared the City to other
places they do work, the State or the court system.

"Oh, the City is the worst, the worst you
ever saw." They complained about not enough time to bid,
to have a chance to estimate it. They complained about
impractical requirements.

Most of them indicated they are not terribly
big, they may have a few doctors or technicians in the
company, and then the City would require that, well, you
go along, you do a medical exam, and then one day there
would be 25 back-to-back medical exams, which meant that
they couldn't possibly continue their business and still
take care of that.

These were the things that made them say,
the hell with it, I'm not bidding with the City.

Q And what about painting?

A Painting contracts, the ones that we came
across, were ones who are relatively small. Late payment
was the biggest problem.

Within that group was the firm that had to
borrow $50,000 in order to keep the business going while
awaiting City payment. They complained about the
aggravation of dealing with the City, things like you go
to the expense of buying the bid book, preparing your
bid, even getting the bond, and you're the winning bidder
and you've won the job and the job gets canceled, and
you're left holding the bag for the expenses. Some of
them said, "I never knew why, they just said the job is
canceled."

They complained about start work orders.

Once you win the City contract, that's only winning the
award. You wait for a notification to start work. They
complained that sometimes it would be five, six months
after the fact that they would get a start work order.

(Continued on next page.)
Q Now roofing contracts, is there anything in particular about the roofing contracts?

A I must say, the roofing contractors gave me the same remarks. A lot of them said it wasn't too bad dealing with the City. They complained about technical knowledge on the part of the people who had contracts.

One vendor related a story about a contract to do some kind of roofing work that required gauge aluminum.

Now, I just learned this, that if you have 20-gauge aluminum, it's thicker than 24-gauge aluminum. So, the first thing they said was, that the City ought to get someone who knows that 24-gauge aluminum is thinner than 20-gauge aluminum.

He said, "When I went to look at it, this aluminum work was not in an exposed area and was not going to get a lot of wear and tear." The contract called for 20-gauge aluminum. He said, "I said to them, 'Where you want 20-gauge aluminum, 24-gauge will last you ninety years in this location'. He said 24-gauge aluminum was ten times cheaper than 20-gauge aluminum.

He said when he explained it to them, they said, "Well, that's in the specification".

His opinion is that the specifications are...
40 years old and they go back to a period when maybe 20-gauge aluminum was the only aluminum anybody knew.

One contractor was aghast, and said one bid can be a whole big fat book, wherein other agencies, State, for instance, it's two or three pages.

Payment was a big problem.

One contractor said -- and this is a contractor who won several roofing jobs with a variety of agencies -- He said, "My bids include two to ten percent higher than I would bid normally, to take into account, aggravation and late payment."

Q Can you talk a little bit about the burglar alarm and the fire alarm contracts?

A Universally, throughout the roofers, they did say City work goes for a premium because of the bureaucracy and red tape.

The burglar alarm and fire alarm, the contracts are installation and maintenance of burglar and fire alarms, and usually it requires central station monitoring. The renewals are usually for just repairs and the central station monitoring.

One firm has been doing most of the City's work for the last fifteen years.

Q And is that reflected, in part, at least, on
Exhibit 6, on the first page?

A Yes. Those are the contracts. He is the only -- at least in the last four years, he has been the only bidder. He said he is about fed up with the red tape and the horrendous payment schedule, and getting his money six and seven months late.

The only reason he is in there is, he says, I have them all. So, you're talking about, for instance, in April of '88, contracts worth $2.1 million, he was the only bidder, and he got all the contracts.

Thirty people were solicited. He was the only one who bid. The records indicate there were three responses as to why they didn't bid.

One company who had a contract four years ago still hasn't been paid in full for the work they did, so they don't bid anymore.

A large company said their Legal Department wouldn't approve the City contracts because it was an attempt to transfer liability to the vendor that they felt was rightfully the City's, and five other companies don't bid because of the horrendous payment record that was well-known in the industry, but they, themselves, had not experienced it.

Q Now, we have heard a lot of testimony this
morning, or some testimony, about elevator contracts.

Did you look at elevator maintenance contracts in more detail?

A Yes, we did.

Q Can you tell us how it was that you looked at them, in more detail and what you learned as a result of that inquiry?

A There were two reasons. First of all, we started with HRA. From the period mid-’87 to somewhere around now, they were issuing three-month elevator contracts. Every three months they were renewing one, and these were $10,000 limit contracts that had not a very indepth approval procedure to go through. And when we looked at the bids, virtually all the bids -- there were just two bidders.

Now, as you heard from Mr. Quinlan, the elevator contract is bid on the basis of how much you bid for monthly maintenance. When you look at the bidder who won every single contract but one, he would have a different rate for monthly maintenance on each building. Of course, that's a consideration of how many elevators there are, and what condition they are in when you go see them. The other bidder bid $3,333 for maintenance every single month of the three months, which, of course, used
up the entire $10,000 that those contracts were, maximum.

Now, the man who was bidding and going out
and doing the individual building check, had every single
contract except one. There was one building that went to
this bidder who is bidding $3,333 and he was the only
bidder of that contract.

So, we went out and talked to the winning
bidder, and we said, what happened; how come you didn't
bid on 197 Messerole Street?

He looked at me and said, the only reason we
wouldn't have bid, maybe we lost the folder for that
particular building, or when we went to pick up our
package, it wasn't in there.

As a result, the only guy who bid on it got
the contract at $3,333 a month.

Q Did you learn anything more about the vendor
who was bidding at approximately $3,000 per month?

A We came to see him again. We looked at
single bid contracts with the Department of Correction,
and we found that this bidder is the only bidder with the
Department of Correction.

About two and a half years ago, they had
attempted to debar that bidder because they weren't
getting what they considered adequate service. In fact,
they attempted -- I shouldn't say "attempted." They started the process and then stopped, and then decided not to go ahead with the debarment proceeding. They had not been able to provide us with the reason, but it appears that, in part, was their attempt to get more bidders when they found they didn't like this guy's service, they went through every type of contortion:

First, they put the bids out conglomerate, Citywide, everyone in one. Then they broke them apart building by building, and no matter what they did, they ended up with the same bidder. They even brought in a consultant to tell them what to do, and he commented on how badly the elevators were being served at that time. To this day, it's the only service company they have, still the same bidder.

Q Did that bidder have any experience in any other City agency?

A In the Department of Transportation, they had a contract for remodeling an elevator. The agency estimated the contract as being worth $50,000. They put it out to bid. Our same contractor is the only bidder, and he is bidding $148,000 for the contract.

The agency gets very uptight. It's three times what they estimated the cost should be on that
particular contract, and they put it out to bid. They
cancel the bid, and put it out to bid again, and this is
like 90 days later. We get the same one bidder. He bids
$83,500 and the agency, now in dire need of getting their
work done, just awards him the contract.

THE CHAIRMAN: Can I ask you: Do you know
why only one bidder, in the Department of
Corrections situation?

THE WITNESS: I can't think for any
particular agency. I mean, when you speak to the
elevator repairmen, when they service, they won't
service many agencies. They don't like the
payment record. They don't like the way the
contracts are let. They seem to be in demand,
elevator service people. In private industry,
everywhere you go there are elevator buildings.
Even good government agencies, from their points
of view, if they pay quickly, they won't bother
with anybody who will give you any trouble.

Q We have talked about three-month renewal
contracts at HRA.

Did you pursue that, to try to find out what
was going on with that information?

A After hearing from so many elevator
companies where you pay premium if you have a three-month contract, we wanted to know why, for at least a period of two years, they were giving 3340 contracts. We went to speak to the technical people, the guys who actually write up the specifications and deal with the vendor, at least once the contract is let, you know, they are the ones who have that elevator lingo, and they are talking back and forth. They draw up the specifications.

Q What did you learn in those discussions?

A Prior to 1987, HRA used to give one-year elevator contracts. They would let them for one year. The people in the Technical Division found that it took them six months to a year to get the contract through the process before they could let it out to bid. So, as soon as they were finished letting a contract, they had to start the process again of drawing up the specifications, sending it through the bureaucracy to be approved.

So they decided -- in addition, they were giving the contracts one building at a time, and it meant 30 and 40 contracts.

So they decided, gee, let's give a two-year contract, group the buildings in lumps of four or five, and we can get away from this constant contract preparation. And they attempted to do that.
Once they got that contract into the flow,
all the roadblocks of large contracts started to come
down on them; a whole different approval procedure,
because now the contracts were a million and a quarter
instead of $80,000 or $90,000. It brought into play a
whole different set of rules.

So now they couldn't get the contracts
approved.

So now their last contract back in '87 had expired, and now these people would yell that they needed service.

They were homeless shelters, or whatever else, and they started issuing the three-month contracts, and they knew they would cost them more, but they were in a bind now, and they had to have the service.

THE CHAIRMAN: Are there fewer requirements for a three-month contract?

THE WITNESS: In answer to that, I had spoken to the gentleman who took the three-month contracts. He won't bid on the two-year contracts, because he said the three-month contracts, from his point of view -- and this was unique in the industry -- most everybody else won't take the three-month contract.
He took the three-month contract, he said, because, number one, he is only at risk for three months of late payments. If he doesn't renew, they still owe him only for three months. If he gets caught without payment in eight months, his cash flow is eight months behind, and he can't afford that.

In addition, in the less-than-10,000, the bid bond, the performance bond, the payment bond, payments are not required. It's a rush-through job.

So, he was willing to undertake it, and of course he said he built in the fact that three-month is greater risk. That's in his price, but he said I won't go for those two-year contracts. I won't get caught where they owe me money for 11 months, knowing I am hooked and I can't get out of it.

Q These three-month contracts that we are referring to as 3340 contracts, in actuality are under- $10,000 purchase orders, are they not?

A Right. They are open market orders, not to exceed $10,000.

Q And so if the work that is needed on a
particular contracts exceeds $10,000 before the three
months are up --

A They let another one.

Q And it's your understanding, is it not, that
agencies have control without a complex approval process
over their purchase order purchases under $10,000?

A Yes, that's correct.

Q Now, is it your sense, in any event, that
HRA, in using these contracts, is trying to get
competition, and trying to advertise the process widely,
and the availability of these contracts, and trying to
follow the competitive process?

A Oh, absolutely. Their system is unique.
The contracting staff is separate from the technical
staff. The technical staff just says, this is what we
need, and then a contracting staff puts in to work the
actual bidding, and they have bidder lists, computerized
bidder lists, where they are sending out to every known
firm that handles this that they have been able to find
are entered on to the bidder lists.

In some cases, the computer will, depending
on the size of the contract, the computer will ask for 15
bidders, and it's a random 15 bidders that comes back.
Where it's a larger contract, they'll ask for the entire
names that they have, and they still end up with only one
or two bidders.

Q Did the HRA technical people, or anyone
else, provide you with an estimate of the price
discrepancy between the private sector and the public
sector, in this situation?

A Before I answer that, I would like to
mention two other things. The technical people who deal
with the vendors were very chagrinned. They said another
reason why we don't get vendors is, we don't deal with
people very nicely, and they gave me two examples:

They said not too long ago there was a
vendor who put in a bid on a particular type of work and
he won the contract and he was a good vendor. They had
good experience with him. He didn't get to start the
work order for over a year. He comes running in and
says, I can't do this. I got my guys assigned. They are
all out on jobs. You know, what can we do about this?

The technical people, said we'll try to do
something. When they went to -- they said legally, they
were told, that the contract was binding, and the vendor
would have to perform. Now they said, of course, that
was transmitted to the vendor, and now you have a very
unhappy vendor, and you get the type of quality that you
can expect from somebody who is very unhappy and who has
been put into a bind.

The second story they told me was where
somebody won a contract which was a year-long contract.
After about three months, the whole industry experienced
a thousand percent insurance increase. The vendor came
in and said, we are losing money. I mean, can we do
something, because this was totally unanticipated.

The technical people suggested well, why
don't we just extend this for 90 days, and then we'll
rebid the contract.

Legal said it was a binding contract, and
the vendor would have to honor it. The way he put it to
me was, he said, you can imagine when the vendor knows
everytime he sends a man out he is losing money, what
kind of service we are going to get on the performance of
a particular contract?

These gentlemen at the Technical Branch
estimated to me that private industry maintenance
contracts probably cost between $300 and $500 a month,
and City maintenance contracts between $900 and $2,000 a
month. And they attribute it all to these problems that
they had mentioned there.

(Continued on next page.)
Q Now, one of things that you alluded to, is that when there is not adequate competition, the City pays higher prices, and my question to you is whether there is any other instance in which that appears to have occurred, that you know of, as a result of your investigations.

A HPD, Housing Preservation and Development, had a contract that had to do with payroll for employees, paying, and the company they wanted sort of had a clerical function to take care of the payroll.

Q They have a contract in which handymen, is that right, are retained pursuant to a contract with an outside firm, and the outside firm essentially handles the payroll processing?

A That's correct. So on the day of the bid -- and this is an agency that requires you show up on bid day with your bid; they don't, I believe, accept them in advance. The room -- people come early, they wait around, there is a particular hour in which the bid will be accepted. The particular vendor who eventually is to win the bid is there, and there's one or two other people in the room.

The vendor recognizes one of the people in the room as being the representative of a very large firm.
that handles this type of contract. This story is related to us by the HPD people who were at the bid. This vendor, the one who wins it, has two envelopes in his pocket, his high bid envelope and his low bid envelope. If he sees nobody there that's prepared to bid, he puts in his high bid envelope.

In this particular case, he saw this guy from the bigger firm, who he feared might be bidding, and he puts in his low bid envelope. It turns out that that particular vendor who he feared just put in an envelope that says no bid.

They actually do this there. According to HPD, the man started to hyperventilate and he had to get medical attention when he realized that he could have put in his higher bid.

I did a little estimate, based on some figures I had, indicating the size of the contract, and he could have -- I figured it to be about $150,000 more he could have -- his bid would have called for a $150,000 bigger payment, if he was able to put in his higher bid envelope.

MS. CUSHMAN: Now, actually I have no further questions of this witness at this time.

THE CHAIRMAN: Thank you.
I just want the record to be clear on this subject.

You made reference to your survey of vendors, big vendors, small vendors, medium size vendors and the different complaints that they have about other vendors.

I take it that your testimony, in the main, in that respect, is to report about the results of your survey and not necessarily is a verification that the complaint were true?

THE WITNESS: That's correct. The people who responded to the survey were people who, in some manner, were still staying to the system. People who said, I received the bid too late, didn't indicate they wanted to drop out of the bidding, but the main point of that was, you are talking about out of approximately 32,000, only 4,000 responded in any way; either they bid, or they said, this is why I'm not bidding.

THE CHAIRMAN: Thank you.

Commissioner Hynes?

COMMISSIONER HYNES: In the last example that you gave us with the fellow with the envelope with no bid, was that staged, or why would
somebody take the time to go down?

THE WITNESS: People are interested in seeing how the system works. I don't know where they got this idea, but some of them felt that not putting in anything, after you perhaps got the bid package, might be an indication of no interest, so putting in an envelope that says no bid is their indication of: Let me know the next time, even though I'm not bidding this time.

COMMISSIONER HYNES: I see.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: Were you able reach any conclusion whether these vendors were incurring similar problems with other governmental agencies, other than New York City agencies?

THE WITNESS: Universally, I heard nobody say that the City was better than anybody else. Everybody said that the City was worse than everybody else they dealt with.

COMMISSIONER MAGAVERN: Were the complaints they were voicing to you, indicated by them to be complaints specifically about New York as distinguished from other places?

THE WITNESS: It was New York City people.
Virtually every vendor who we talked to, except maybe one that I'm aware of, was New York City based.

COMMISSIONER MAGAVERN: Did they indicated to you that these were problems peculiar to dealing with New York City?

THE WITNESS: Only as they compared it to their experience with the State and Federal Government.

COMMISSIONER MAGAVERN: What was that comparison?

THE WITNESS: People would say, with the State, they paid you in 60 days; when you get a bid from the State, it is three pages. In the City larger ones, you have to fill out Vendex things and indicate minority hiring practices, and who your owners are and who they do business with and what office they are in. And they said the State only requires that, only if you win the contract.

And then the next week, if you bid on another contract, they required it another time; you had to do it all again.

COMMISSIONER MAGAVERN: Did any of them...
give you any indication as to whether they thought
the increased paperwork level and delays, and the
like, in New York City may have served to protect
the City against overcharges or inadequate
performance?

THE WITNESS: If that be the case, draw my
attention to that was the reason.

COMMISSIONER MAGAVERN: It was considered
to be entirely unnecessary, then, in terms of
protecting the public interest?

THE WITNESS: They did it on a comparative
base. The question was, how can the State send
you the same kind of roofing contract that's three
pages, and the City send you one three inches
thick?

COMMISSIONER EMERY: You described the
circumstance where the three-month contract came
into use as a necessity because of the complexity
of the two-year, and the fact that the one-year
was expiring; is that correct?

THE WITNESS: Correct.

COMMISSIONER EMERY: And then everybody
seemed to find that the three-month contract
suited their purposes very nicely?
THE WITNESS: One vendor. Two vendors bid; one bid the maximum number, 3,333 a month. The other one appeared to be bidding different buildings, different monthly maintenance charge.

COMMISSIONER EMERY: The other one never resorted to the three-month contract system?

THE WITNESS: You mean another agency?

COMMISSIONER EMERY: I'm talking about the elevator situation.

THE WITNESS: You mean another agency giving three-month elevator contracts?

MS. CUSHMAN: They were both three-month.

COMMISSIONER EMERY: One was individualizing it, and one was just bidding at 333?

THE WITNESS: Right.

MS. CUSHMAN: 3,333.

COMMISSIONER EMERY: I understand. The question is: In your looking at these, did you find the same thing that the gentleman from Universal testified to earlier, and that is, that the prices in the three-month contracts were often, he said, three times as high as the yearly contract?
Public Hearing

THE WITNESS: When we talked to the elevator people who didn't bid or who don't bid, we asked them, you know, what about three-month contracts, because we started off from our base of knowing only about three-month contracts, and people told us, I'm not bidding on a three-month. Why?

Well, the risk factor is tremendous. If the generator breaks in those three months, you get a $7,000 bill.

They all said we have to build that in. If you're going to bid on a three-month contract -- from the point of view -- they didn't like it from the point of view it increased their risk, and how much risk, they didn't know, and they just didn't want the aggravation.

COMMISSIONER EMERY: It wasn't a prevalent means of getting around the more onerous procedures in longer contracts?

THE WITNESS: I don't think it was an attempt by HRA. I think here came a period where they attempted to change the procedure to make it a little better from their point of view, and nothing happened, so they just were sort of stuck
into giving these three-month contracts.

COMMISSIONER EMERY: Thank you very much.

THE CHAIRMAN: Thank you very much, Mr. Levy.

(Witness excused.)

THE CHAIRMAN: The Commission calls as a group of witnesses, Charlotte Frank, Melvyn Hester, Sy Simon, Jack Diamond, and Nora O'Connell.

I would like to ask each of the witnesses if they would just stand for a moment, please, and raise your right hands.

CHARLOTTE FRANK, MELVYN HESTER, SY SIMON, JACK DIAMOND and NORA O'CONNELL, called as witnesses, being first duly sworn by the Chairman, were examined and testified as follows:

THE CHAIRMAN: It will be helpful to the Commissioners if each of the witnesses, as I look at the witnesses from left to right, if they would identify themselves by name and also by current position in City Government.

MR. DIAMOND: Jack Diamond, Deputy Director of Fiscal Services for the Fire Department.

MS. O'CONNELL: Nora O'Connell, Contract
Supervisor, New York City Fire Department.

MR. SIMON: Sy Simon, Director of Fiscal Affairs for the New York City Department of Transportation.

MR. HESTER: Mel Hester, Executive Deputy Administrator, HRA.

MS. FRANK: Charlotte Frank, Assistant Commissioner, Procurement, Department of General Services, Division of Municipal Supplies.

THE CHAIRMAN: Thank you very much.

I would like to say to the witnesses how much we appreciate your presence today and your participation in the process of our examination of the subject of procurement contracting. And I think it's important for me to say, at this point, that the purpose of these hearings is ultimately for us to advance recommendations to those in government, that are designed to improve where there may be areas for improvement, and even though we have certainly been recipient today of a number of testimonies concerning weaknesses, as some of the witnesses have testified, have pointed out, from their perspective, exist in the system, these hearings are really designed to see how we
can improve the system, and so we invite your participation to help us in the recommendations that we will be formulating and providing to people in government.

MS. CUSHMAN: Mr. Chairman, I would also like to note for the record, that it has been our experience throughout this investigation that the City witnesses have been particularly cooperative with us, and very forthcoming with information and with sharing their insights with us as they went along.

THE CHAIRMAN: Thank you. I would now like to recognize, for initial questioning, Alexandra Lowe of the Commission's staff.

(Continued on next page.)
Public Hearing

MS. LOWE: I am here. I'll be speaking briefly without a mike. I would like to walk through some of the exhibits here.

Again, I wanted to thank you all for being here.

The Panel format is exclusively designed, if you feel comfortable with it, to people not specifically addressing a question, to interject if they have any comments about what they would like to say.

I'll be speaking to each of you in turn, but I do hope you can tell help a little bit with the discussion here.

We have heard extensively this morning about the City contracting process from the standpoint of the vendor, how they see it, what someone called here the nightmare of red tape, a system that seems, from their perspective, to be a wash of paperwork.

I think what we would like to hear now is how it is from your side of the desk. We would like to know a little bit about what you see regarding the paperwork and the system.

We would like to discuss briefly with you,
as an example, some of the steps involved in threading your way through the City maze, so to speak, of the City contracting process for one group of contracts.

What we have here in Exhibit 4 -- the people who have paper exhibits will have a corresponding one in their books -- is it map for what are called contracts that are awarded by virtue of a request for proposal.

THE CHAIRMAN: Can you refer to the exhibit book for the benefit of the witnesses?

MS. LOWE: Yes. I said it was Exhibit 4. I think it would be helpful -- could you, first of all, tell us a little bit about what --

MR. DIAMOND: My area of expertise is in the area where we do competitively bid contracts. We have a separate Contracts Manager who works on the RFP process.

MS. LOWE: You have a general sense of some of the steps, I take it. I don't want to get into the detail of how you select a particular proposer, but a Request for Proposal is one way, and what you do is, you're looking at something a little more than price. You go out with a sealed
bid, advertise it, tell the people that you have
an hourly rate, a contract rate, and you pick
whoever is it lowest one; right?

MR. DIAMOND: Right.

MS. LOWE: The Request for Proposal gives
you a little more flexibility, in that you're
looking not only at the price that the proposer
puts in, but his or her suitability about the job;
is that correct?

MR. DIAMOND: Yes.

MS. LOWE: It's a different means of
selecting a vendor; correct?

MR. DIAMOND: Yes.

MS. LOWE: Would it be fair to say that
this avenue of selecting a vendor is currently
perhaps the most time consuming one in the City
now?

MR. DIAMOND: That's correct.

MS. LOWE: I want to go over a little bit
of this and have you point out to us -- or I'll
point them out to you, and you can tell me whether
I am right in pointing them out -- some of the
steps along the way.

As you see, our artist took a little bit of
poetic license here. We have a few keys here. We have the vendor who starts out young and happy -- the agency person calm, looking forward to everything going smoothly, and at the end of the chart we have him here, and then we have the vendor who comes in, feeling that things may go smoothly, and then the vendor has gotten a little bit older. It's a bit of poetic license to make a point.

I want you to confirm for me some of the highlights of the approval process for the RFP. Again, I understand that you don't get into the nitty-gritty of selecting them, but is it fair to say that early on in the process, there are three or four agencies -- and we'll leave out construction for now -- that are involved in looking at the RFP very early on?

You have the Mayor's Office of Contracts here that is reviewing the RFP before you release it to the public; correct?

MR. DIAMOND: Yes.

MS. LOWE: You have kind of a questionnaire you fill out and submit to the Mayor's Office of Contracts before you submit the RFP?

NATIONAL REPORTING INC. (212) 732-3120
MR. DIAMOND: Yes.

MS. LOWE: And there's another set of papers that you submit to the Mayor's Office of Operations that they review; correct?

MR. DIAMOND: I don't fill out that form.

MS. LOWE: Is there anyone on the Panel who is familiar with that?

MR. SIMON: It's not necessary.

MS. LOWE: How about the one you fill out for OMB?

MR. DIAMOND: Yes.

MS. LOWE: Mr. Simon, you said the one for the OMB is not necessary. Is that a change?

MR. SIMON: We notify them what has happened.

MS. LOWE: I am going by something in your notebooks there under Exhibit 19, excerpts from some guidelines from the Mayor's Office of Contracting on the RFP procedure, and there's an Appendix C that lays out some of the approval steps. That's what I am basing the Mayor's Office of Operations step on.

Do you all have Appendix C there?

Just for the record here, so that we are
here and clear, and if we need to supplement the
record we'll do that: This is a list of approval
steps for the Request for Proposal, and we are
kind of going to follow the map. And it lists on
Page 26 the submission of the form data for the
Office of Operations.

Mr. Simon says that's not always
required --

MR. SIMON: It is now under the new
regulations.

MS. LOWE: You will have these three
components in there?

MR. SIMON: Correct.

MS. LOWE: As I understand it, your agency
goesthrough these steps. If it's approved, you
continue on; correct?

MR. DIAMOND: Yes.

THE CHAIRMAN: Can I ask, Counsel, for
purposes of the record, somebody reading the
record and having the exhibit, needs to tie the
exhibit in with the record.

MS. LOWE: Okay. We just finished
discussing the various oversight bodies that have
input on Step 3; correct?
Then you continue on, and I take it when you get to Step 7, at that point you have released your RFP. You have had a committee select a vendor whom you think is an appropriate vendor for that service, and as this map shows, and I would like to know again if that's your experience, you go back to these oversight bodies.

You go back at Step 7 to the Mayor's Office of Contracts, and they want to know how you selected your vendor; correct?

MR. DIAMOND: I am not sure at what stage we go back. This may be a little too early in the process.

MS. LOWE: What we have tried to do here is to map the steps set forth in that same exhibit, but you're aware that, at some point, you do go back to the Mayor's Office of Contracts; is that correct?

MR. DIAMOND: Yes.

MS. LOWE: And you're aware that you also go back to the Office of Management and Budgets and to the Office of Operations; correct?

MR. DIAMOND: At a later stage, yes.

MS. LOWE: Once you get that approval,
isn't there a next layer of oversight that we call here DOI standing for Department of Investigation, BLS for the Bureau of Labor Statistics?

MR. DIAMOND: Yes.

MS. LOWE: Can you or someone else tell us what the DOI involvement at that stage is?

VOICE: I think you mean the contracts for where the bids are over $100,000.

MS. LOWE: Can you tell us a little bit about what is involved in that?

VOICE: The Vendex system is a composite of the City's contract arrangements over $100,000. To the extent that a firm has had a poor performance in a contract, the Vendex document may reflect a caution list that indicates that that firm, that one ought to tread very, very lightly with, in considering them a responsible bidder.

MS. LOWE: Is it fair to say that before you go to Step 8, the DOI oversight aspect, for contracts let by RFP of over $10,000, you have the vendor fill out a form called the Vendex questionnaire, the Business Entity Questionnaire, Principal Questionnaire and so on; correct?

VOICE: In our agency, yes.
MS. LOWE: That's true Citywide, I take it?

VOICE: Yes.

MS. LOWE: Besides the poor performance information required on that form, I take it you ask for a variety -- the City asks for a variety of other information from the vendor, things ranging from who they share their office space with; is that correct?

Things like, do they have any former or current New York City employees or officials on their payroll at that time; is that correct?

Now, BLS stands for Bureau of Labor Services, and that involves, as I understand it, a review of the potential vendor's Equal Opportunity practices; is that rights?

MR. SIMON: Over $50,000.

MS. LOWE: For contracts over $50,000. Okay. If you have gotten past those hurdles, you continue on and you get to the Board of Estimate and the paperwork that is required to get on the calendar of the Board of Estimate; correct?

MR. DIAMOND: That's correct.

MS. LOWE: A copy of the contract, 12 additional copies for members. Is there something
called an intergovernmental memorandum that you also file with the Office of Intergovernmental Relations before you go to the Board of Estimate?

MR. DIAMOND: Yes.

MS. LOWE: Then if you're lucky and you get through the Board of Estimate, then there are a few other steps that you have to go through that are set up here, and particularly Step No. 14, you go to the Comptroller's Office to get your contract registered; is that correct?

MR. DIAMOND: That's correct.

MS. LOWE: Can you give us an idea, Mr. Diamond, of what, in your experience -- how long it takes your agency to get through this process for these contracts awarded --

MR. DIAMOND: Your talking about from the initial step through registration of the contract?

MS. LOWE: Yes.

MR. DIAMOND: It could be anywhere from four to five to six months.

MS. LOWE: Is it any longer than that?

MR. DIAMOND: We have had a few that have taken slightly longer, yes.

MS. LOWE: Now, I take it that if we were
to look at --

THE CHAIRMAN: Excuse me. When you said it takes four or five months from start to finish, is the starting point sending out the request to get back proposals, and is the finishing point after the proposals have come back and the choice has been made as to who is going to do the work?

MR. DIAMOND: The starting work is when they are in our headquarters office. When we receive the request for proposal, we have to take it and do some developmental work. From that point, it can take four to five months.

MS. LOWE: That gives us a little bit of the sense of the time scale involved in those kinds of contracts.

I think, Mr. Simon, that you have told us in the past that, looking at a somewhat simpler contracting methods, the competitively bid award for services, that that takes you, if things go right, about four months; correct?

MR. SIMON: Three to four months, correct.

MS. LOWE: Now, I would like to ask --

COMMISSIONER MAGOVERN: I would like to know what you mean by the starting point.
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MS. LOWE: It's when the City determines that it has a need, and starts putting the specifications together to initiates the process. Is that fair?

MR. SIMON: Yes.

MS. LOWE: Now, what I would like to do, is talk about what the effect of both the time period that you face and the factors that the vendors have described, what the effect of that is on the whole process.

Mr. Hester, we have spoken to you at some length in the past about your views of the impacts of all of this on the vendors, and I think I would like -- the Commissioners would like to hear that. I wonder if you could give us your sense of what the effect of these various factors is, and whether you believe the City is drawing on as large a pool of vendors as it, in the best of all possible worlds, should be drawing on.

THE CHAIRMAN: I don't understand your question. Do you want the witness to respond to what?

MS. LOWE: I would like to know Mr. Hester's view as to whether he believes the City
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is able to reach as large a pool of vendors as it
would like to reach.

(Continued on next page.)
MR. HESTER: Well, in some specific
contract zones, for example, transportation
services, we have sent out certified letters to as
many as 600 companies in an attempt to draw from
that pool, bids to attract solicitation, I mean,
to attract bids, and in some instances we have had
two and three responses.

In other areas, we've sent out 30, we might
get six, and so on. It's obvious that the
dynamics of the process creates outcomes in
vendors' minds that sometimes preclude them from
wanting to bid.

MS. LOWE: Isn't it also your view that
somehow New York has created something of an
artificial marketplace for itself, that New York
City is really, to some extent, not operating in
an ideal market by virtue of these various factors
we've heard from some other individuals today, and
which you have referred to in the past?

MR. HESTER: I wouldn't say the City
purposefully does such thing. Every industry
tends to sector itself in such a way that they
tend to serve some very small sector firms. They
interact with those firms.
Take public advertising, for example, public relations firms interlock together. They do business together. They know each other. Madison Avenue is obviously not a geographical address, it is a cluster of firms grouped together. You have sectoring that take place.

I think in government procurement, you have sectoring that takes place. I think that's what you're referring to.

COMMISSIONER VANCE: We have heard testimony to the effect that in the requests that have been sent out to the vendors, that in many cases, they don't have anything to do with what the request for bids is concerned with.

Is that prevalent in what happens, and if it is, why?

MR. HESTER: Well, I think the document that must have been introduced was one in which HRA had only sent out questionnaires to specific -- to solicitations in which we had fewer than three bids, so you're dealing now with a highly skewed sector of the HRA bid performance, only solicitations where there were three or fewer bids coming in.
So already you're just dealing with -- are not dealing with what is normal in HRA. I can't speak for the rest of the City, but I'm pretty sure, in this instance, you can't state -- you can only say this is the failure zone, so this is what it looks like.

COMMISSIONER MAGAVERN: Why would you send out bids to people who aren't in the business you're sending out bids for?

MR. HESTER: We try four systems of getting bidders. We pull from the DMS bid list, we pull from any firm on the City Comptroller's lists, we pull from the Office of Economic Opportunities where minority vendors are stimulated. We advertise four times a year in the Minority Commerce Weekly in an attempt to say to the sectors -- we don't say we want ten digits, instead, we say, are you interested in bidding with the City.

Part of the problem is, we were spending $750,000 a year, advertising bid after bid after bid. So, when cost control time came for those kind of advertising contracts, we decided to advertise once every quarter, invite as many firms...
as possible to bid within sectors: elevator service, asbestos removal, elevator service, and so on. We get a number of firms sending in documents indicating they wanted to be on the bid list.

So, when we sent out solicitations to firms in transportation, we have no way of knowing how precise the firm is.

Let's say the firm is in the cabinetmaking business; we don't know if they only work in pine or only formica. Frequently the -- the firm is in the cabinetmaking business, it doesn't know certain technology, and this is a function of trying to reach out as aggressively as the City can.

We operate on the theory that the market should have a situation of access. We give every firm a chance to bid. And that firm gets bids that say, solicitations that say we are asking for something that you don't do, which is, in many ways, a virtue, because we are trying not to make the market narrow, we are trying to preserve access to every contract. You want to give every type of firm an opportunity to bid.
Keep in mind that you're only dealing with our analysis of why we fail in some instances. It doesn't apply to any kind of contract situation where we got five bid or six bids or seven bids. It only applies to situations where we have three or fewer bids.

MS. CUSHMAN: Mr. Hester, in our conversations earlier over the last couple of weeks, you did pinpoint, however, a number of what you talk about as dynamic factors in this marketplace, which do serve to keep some people out, and which, in your eyes, were not necessarily required in order to do the best job. And I'm thinking right now about insurance or bid bond or things like that.

Perhaps you could share with the Commission some of your thoughts on those subjects.

MR. HESTER: Let's see if we can set up two models. One is a regular commercial transaction. A businessman has a firm that does $800,000 worth of business, and he plans to spend $80,000 on computers.

He can wait until Saturday morning, look in the NEW YORK TIMES, find firms advertising big
bargains. He takes money out of his pocket. He walks down to 37th street, whatever, he buys three small computers, and he gets them at a bargain. Ordinarily the complex of components sell for $5,000, printers, the main frame, the memory, et cetera. He gets it for $3,000. He takes it home.

Monday morning he takes it to his job and he works out an invoice arrangement by which he gets his money back. This is a two-day procurement process.

Government, it's not that simple. You have a vast array of public interests that are simply not the private firm's interests.

You have -- take for example insurance. We in the transportation business, we asked at one time for $5 million worth of total insurance. The firm that provides transportation to you when you leave here and take a cab, is giving you, whether you like it or not, $20,000 worth of insurance, or perhaps $300,000. That's it, nothing more. He's only required, under New York City law, to provide $20,000. When you step in, you share the risks with him. If you get banged about, the company that owns the cab has made this cab a private
corporation. The maximum you can recover is $20,000 plus whatever you can salvage from the wrecked cab with 200,000 miles on it.

The government is different. The litigation section of the Corporation Counsel has to deal with requirements for -- not requirements, but suits that ask for $10 million settlement, $15 million settlement, because the City is a bottomless pit of money, the way the thought goes.

The dynamics, in this instance, is that the City protects itself against the litigant who seeks $4 million in damage. The City can't go with a $300,000 requirement in this instance. So, I'm just using it illustratively.

As you explore that kind of dynamics, the City has to protect itself. The effect of marketplace is to restrict the market to those firms who are willing to do a number of other things to put in a bid.

Another thing you have to do when you put in a bid, you have to give a certified check showing your series. We say whatever your bid, you have to give a check for two percent of it certified.
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$80,000 is an enormous am of money to put in, and if you don't do that, give us a bid bond for ten percent of your bid, in this instance $400 worth of bid, which you can't recover when you paid the bond company.

Can the government forego it? It's an administrative code that you have to ask for it. I've given two examples of why the process of sectoring is a dynamics idea in the public's interest.

COMMISSIONER VANCE: I have one question. I understand protecting the public interest through making sure that everybody is included in the process that ought to be included, and there are various elements within the City government that have to be brought in, and it makes it more complex.

How come it can be done in the Federal Government in a much more simple way than it's done in the City?

MR. HESTER: There are a number of experiments going on in procurement across the country. The State of New York does it differently than the City of New York, the feds do
it differently.

Take data processing in the Federal Government. They have data processing equipment that is, on the average, eleven years old, well past the age of data processing equipment.

I saw an article in Government Information Weekly that indicates that the Federal Government take as much as eight years between the beginning of their procurement process, the concept that the equipment ought to be changed to the day they get the computer.

You have to take a look at the sector; you have to see how they do it. The new fellow who came in to run GSA in respect of computer procurement decided to use a model they use in New York State, where you say to each bidder, what is the lowest price you have on the type of equipment, and then present to the agency of State Government a whole array of price across a whole array of equipment, whether or not it's wise or not wise, whether or not it captures all the elements of competitive bid is another question.

COMMISSIONER MAGAVERN: Mr. Hester, in your experience, have you identified any ways in which
the City might improve or change -- I won't use
the word "improve" -- change its processes in order
to widen the pool of bidders? Have you seen any
such opportunities?

Well, there might be opportunity with the
new Charter where a lot of language in the
administrative code is transferred to a policy
board. A policy board that has its head screwed
on would be adaptive to market conditions, an so
on.

MR. MAGAVERN: What would you advise that
policy board to do in order to adapt?

Take a look at whether or not the risks
that, for example, insurance risks are avoided, or
the risk that are calculated for is, in fact,
real, whether or not you want to share risks with
the firm that runs -- whether you want to share
risks with the firms that bid with you, rather
than force them to cover for all risks, and so on.

Do you have a sense that weighing the costs
and the benefits, that, in some instances, the
insurance requirements are too high?

It's an empirical question. I'm not asking
for a statistical answer, but I'm asking for your
opinion, based on your experience in the field, as
to whether that's something that ought to be
looked at, reexamined carefully, because you have
some kind of a hunch that maybe costs and benefits
may be a bit off.

MR. HESTER: I can't calculate here. I
don't have enough experience with the litigation
section.

It would seem to me that the City has to
determine whether or not, say in car insurance,
moving the risk level down to $300,000, for
example, might bring out more firms. There are
other reasons why firms don't bid, other than the
insurance question.

MR. MAGAVERN: Could you identify some of
those other reasons that might be amenable to
change, for example, if you were advising a new
procurement board, what kind of things would you
ask them to look at carefully, in order to
identify those areas where some change might widen
the pool of bidders?

MR. HESTER: English language contracts;
the contracts that we have require legal thought
to unravel them. Small beginning firms, et
cetera, simply don't have that kind of access to funds to buy legal talent to do that. Contracts that are simpler.

COMMISSIONER MAGAVERN: Do you see any ways to speed up the payment process?

MR. HESTER: The City is coming down from paying firms -- we used to pay 30 percent of all our bills in 30 days. HRA now pays 90 percent of all its purchases, that is the record for the last fiscal years, 90 percent of all its purchases within 30 days of receiving the invoice.

There are improvement there. I believe it can be improved further. I think part of the problem is that there is sort of a retarded memory that bidders have. They remember three years ago, four years ago, five years ago. They don't know about last year when we really cranked up the system and the City, as a whole, was paying. That kind of news has to be disseminated.

COMMISSIONER MAGAVERN: Do you have a system in place in your agency to get that news out to bidders, to get that kind of information out to potential bidders?

MR. HESTER: No, we don't.
COMMISSIONER MAGAVERN: Are there other opportunities that you see, that you think ought to receive special attention?

MR. HESTER: Well, there's a question of liquidated damages, damage clause, we probably can take a look at that to see whether or not it works to frighten firms away or not.

Sometimes when we ask for indemnification to protect us against all kind of risks, we squeeze out firms.

For example, we have a -- we have made a large settlement with Federal EPA that says if we follow one of two thousand different routes, we can get find $10,000 a day for every asbestos abatement.

A firm looks at it, and decides whatever profit they make from the City is simply not worth bidding. You take a look at that. I can't give you a calculated number, but I think you take a look at something like that.

You take a look at some of the social policy inherent in what we bid. Some of the contract have progressive notations about how society ought to work, doing business with the
City with respect to minorities. You take a look
at those to see whether or not there's a way of
getting around making it empirical, making it hard
and fast, and so on.

(Continued on next page.)
MR. SCHWARZ: Have you ever compared the bid books and contract documents as between City packages and State and Federal packages?

MR. HESTER: I have seen a few State packages, and they simply don't have the progressive views the City has. They tend to be quicker, because firms have fewer hurdles to leap when they make a bid, but whether or not they are socially useful, is for society as a whole to determine.

THE CHAIRMAN: Commissioner Hynes?

COMMISSIONER HYNES: Just following up on this testimony that we have heard this morning, that at least among some of the vendors there's a willingness to bid in the State system or in the Federal system, but an unwillingness in the City system, and you're telling us that you want to expand the bidding pool and bring more of these people in, so my question is, you know, can't we learn from the State and the Federal system as to why vendors are willing to bid in that system, and can't we make some adjustments -- because they are governmental entities serving the public -- can't we learn from some of the good experiences that
the vendors have had with those groups, and the
problems that they have had with the City?
Have you looked at that and tried to
incorporate that in the City's program?

MR. HESTER: Well, I think the Commission
really needs to look at the Administrative Code of
the City to see what is legally required of all
the people sitting here, and what is legally
required of the Executive Office of the City.
It's not so optional. A good deal of what
we are doing is required by the law.

COMMISSIONER HYNES: I want to step back. I
want to say -- because our role is that, if there
should be a change and if the process could be
speeded up, if the bidding pool could be expanded,
if the City could get its services more cheaply
and more competitively, then the fact that this is
what is required, and that's how it's done, is not
the end of the inquiry, it's the beginning of the
inquiry.

So, I want to get to the beginning of the
inquiry and find out what will make us better,
more competitive, bring in more vendors, make them
happy, get them paid in a timely way so you're not
pushing them out of business, or saying I wash my hands of the City.

I look at this as an opportunity to start to look at the process and find the way to make it work better. I think we would all agree that there are problems. I want to know how we can solve the problems, and if it means changing procedures, changing the Administrative Code, I think that's the kind of thing we want to be exploring with you, because you people are the experts and you're on the line and you deal with the frustrations, day in and day out.

We would like to make the system work for you, for the vendors, and for the City, and that's the purpose of our being here and taking everyone's time.

MR. HESTER: You chose a rather ironic example, because what is missing from this chart is HRA's experience with the State and City.

You see, HRA gets on average 70 percent of all its money from the State and the Feds. If we want to buy a network computer, PC, just like in my initial example, we have to write an advance planning document which takes a little time, and
we have got to send it to the State Government,
and they take a good six months to determine that
they want to send it on to the Feds.

The law requires this. Federal law
requires this in this instance, or rather the laws
give HHS the right to make these rules. They send
it to HHS -- this is HRA's real experience.

In HHS, it goes to six parts, like HCVA,
like the others, each of which individually
determine whether this is a good idea or not.

They are not in New York City. They don't
have to look at the Mayor's outlook --

COMMISSIONER HYNES: So you're a frustrated
vendor, too.

MR. HESTER: It goes to the USDA, because
they share in our overhead. Six months later, it
comes back, and we are outside the fiscal year and
we are now ready to issue the RFP; one year later
we get to Stage 1.

That's HRA's experience, and when you talk
about procurement for HRA, it's not just that.
It's the larger model. If we want to do something
in shelters, we have to send the RFP offer to the
State shelter people, because there are lawsuits
and regulations and the like. If you want to do something in Head Start, you have to send it over to the Feds. This is a nice prototypical picture and you have chosen a nice example.

I am sure many things the State does, we can copy. But there are many things that they do --

COMMISSIONER HYNES: I don't say copy. I am saying for you people who are on the firing line who see how the system works, obviously it must occur to you that there are ways to streamline. Apart from what your requirements are, I am stepping aside from that, because I realize you have these very stringent rules and regulations that you have to follow.

I am trying to find out, is there any way that you believe that would serve the public interest, but that would streamline the process, make your job easier, get the benefit for the City and basically make the system work better.

I realize the frustration that you operate under with all the checks and balances and paperwork. That's a given here, and we are well aware of it.
What I am trying to find out is: Is there a way of streamlining it without sacrificing public interest?

MR. HESTER: We must sacrifice some public interest in order to streamline.

COMMISSIONER HYNES: For any streamlining?

MR. HESTER: A good deal of what you saw on this board is the result of trying to be sure that the integrity of all the City's transactions are publishable and assurable; a good deal of what you see. All these various steps of review, to a large extent, is to assure everybody that there is no --

COMMISSIONER HYNES: I understand that.

MR. HESTER: -- thing hidden. One of the things you can do is remove a large amount of the oversight and review. What you sacrifice is the assurance that the thing is absolutely, completely, fraught with integrity.

COMMISSIONER HYNES: I wonder if anyone else on the Panel has any ideas of streamlining, or taking examples from any State or Federal agency to improve the system.

MS. FRANK: I want to discuss a few things.
COMMISSIONER MAGAVERN: Will you identify your agency?

MS. FRANK: Charlotte Frank, DMS.

THE CHAIRMAN: DMS?

MS. FRANK: Division of Municipal Supplies.

We are the City's central purchasing agent for goods and supplies. We purchase requisitions over $500,000 dollars. The agencies have -- $5,000.

Now, we have done a number of things which mirror practices in the State Government. I am not at all familiar with the Federal process. For example, we are emphasizing requirement contracts.

These are term contracts with unit prices over a period -- which last over a period of time, which run from 12 to 18 months.

That means we don't go out for competitive bids. We go out once every 18-month period. The State has similar contracts. Therefore, the processing time against those contracts is approximately, maximum, two weeks from the date of receipt of the order to the date the purchase order is issued. About 40 percent of our purchases are dollar volume purchases against

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requirement contracts.

Another thing we are doing is, we are beginning to streamline the external review processes. On the Vendex questionnaire, for example, the approval is good for a year, and as I understand, there's now consideration for extending it beyond that.

The -- if a vendor bids again after filing an initial questionnaire, he only files what is called a Statement of Change.

Now, I think our figures run something like 700 Vendex questionnaires last year, and of the 700, 300 were Statement of Change, a simple one-page form. There are ways we are beginning to streamline the external review processes.

Bureau of Labor Services, again, when they approve a vendor, they approve for a period of time, and there's only an update then of the vendor's status during the approval process.

THE CHAIRMAN: Is there a process by which the developments you described in your agency are shared with the purchasing people in other agencies?

MS. FRANK: One of the things we have done
to streamline our bid document -- all the agencies have copies of those bid documents -- on that particular bid document, you have to remember that we do all of the contracting for the agencies. They do have access to those documents.

THE CHAIRMAN: You may complete your answer. I was going to ask you if there's any regular system of communication from one agency to the other about experiences, and ways to cope with problems.

MS. FRANK: There are procurement liaisons in each of the agencies, who are essentially our agency counterparts. They deal with us. We have regular meetings with the procurement liaisons where we share policy, we share changes in procedures. We work regularly and closely with the agencies. I think like on the Vendex that's a Citywide policy. The statement of changes is a Citywide policy. That's through the Citywide policy review.

MS. LOWE: Can I interject on that point? There's something the Commissioners would be interested in. You mentioned your streamlining of the bid documents for your procurement in the
I wanted to ask Ms. O'Connell a question about that. I recall when you and I have talked about this in the past, one of the things you pointed out from the vendors you were dealing with, their difficult in grappling with your bid book; correct? They call you up and say, this is where we have to sign, for example.

MS. O'CONNELL: Yes.

MS. LOWE: Can you tell us a little more about the questions you get from vendors at the fire department? I am not talking about --

MS. O'CONNELL: Just to clarify the particular type of contract you're referring to, it's a Form 58 contract. Mostly that's what we are referring to.

A formal contract for services over $10,000 and a construction contract over $15,000 are contract books. They are literally a hundred or so pages, and for services, approximately 75 to 80 pages.

A number of vendors have stated that they feel it's too much material to read. If they see
the ad in the paper, perhaps on the eighth day it's published in the City Record, and they come in to pick up the document, if it's their first time bidding, they don't have time to read the whole document. They may say to me, where do I have to sign, and I'll say to them, fill in your bid page on Page 80, whatever, and I'll say to them, you're aware that this is a contract document and you should be knowledgeable of everything in there.

They have also stated some things about -- that's the complexity of the contract book itself. They may not have time to go get -- you know, you get the data for it, you may not be able to get a bid bond -- their company's own procedures on how to obtain checks. Sometimes requiring a deposit on the contracts might be something that might deter the vendor from bidding on the contract.

MS. LOWE: Just along these lines, if you could turn to Exhibit 9 in your book there, perhaps both you and Ms. Frank can look at that together with me.

What I have asked you to turn to is the very bid book that I think, Ms. Frank, you were
referring to earlier, your agency's effort to streamline the bid process a little bit.

And Ms. O'Connell, if you could just take a look at that, turning in there to Page A-3, one of the things that DMS has tried to do is to pool all of the vendors' signatures into one section of the document, to kind of give the vendors a little bit of a roadmap to what is there.

Now, I don't want to put you on the spot, but my sense, from when we spoke about this before, is that this is something you have not seen; is that right?

MS. O'CONNELL: I haven't seen it.

MS. LOWE: When we were talking about the dissemination of it, you are disseminating it to procurement officers who are buying goods in the City, and not necessarily legal people buying services in the City; is that right?

(Continued on next page.)
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MS. FRANK: On the procurement liaison, very often they do both.

MS. LOWE: Maybe not in the fire department

MS. FRANK: Possible.

MS. LOWE: Has there been any other dissemination of your document other than through these procurement liaison; has there been dissemination to every person in the City, or anything of that nature?

MS. FRANK: I can't answer that; I don't know.

MS. LOWE: Would you think that would be something that would be useful to do?

MS. FRANK: I think there are a number of things in this -- do you mean that would be useful to other agencies, and that are applicable to other agencies, yes.

MS. LOWE: Maybe we'll give you a copy to take home with you. But I take it this is the kind of thing, Ms. O'Connell, that you were talking about that perhaps would be useful to your vendors if they can have a checklist, sign on Page 5, 7, 9 and so forth; is that right.

MS. O'CONNELL: I believe what you're
referring to is, I had mentioned that I'm aware that other agencies have different boilerplates, that's the term that they refer to when they talk about the contract book.

For service, there's one, and for construction there's another. Often, the number of pages differ, the Schedule A in one agency might be on a different page than another.

When a vendor comes in, they will say, where is Schedule A, and I'll say -- this might say that certain requirements differ from one agency to another. That is something that is different from one agency to another, basic things that are required that are uniform in each agency.

What I had said to you, that I thought it would be good if these service and construction, if possible, should be standardized.

MS. LOWE: To the extent possible. I would think there would be certain things particular to one agency, rather than another.

I think you also mentioned to us that you would have liked, had you had the time, to do some refining of your own agency's bid book, and you recognize that it is somewhat more cumbersome than
you would like it to be, and given your other
problems, you haven't had the time to sit back and
do that; is that fair?

MS. O'CONNELL: Yes. Also, it would be a
matter of reviewing it. I'm not solely
responsible for revising boilerplate. I'm not an
attorney.

MS. LOWE: Can you give us some indication
of how long the effort to revise you're bid book
took, Ms. Frank?

MS. FRANK: It took place over the course
of about three months, because we not only revised
the front part, which was the signature section,
but we also revised the standard form of contract,
and that was -- that had to be worked out with the
Law Department. We had to go over it section by
section.

In addition, we worked out a series of
standard clauses, big clauses that would be part
of the terms and conditions, and those are clauses
which are in our automated system.

We standardized term an condition language
as well.

COMMISSIONER MAGAVERN: I wanted to ask,
Ms. O'Connell, do you have a standard set of
general conditions for construction in effect for
a given period of time, and is referred to in all
of your bid documents?

MS. O'CONNELL: The general conditions are
part of the boilerplate.

COMMISSIONER MAGAVERN: You have them
reprinted for every bid book, rather than just
incorporated by reference?

MS. O'CONNELL: Yes, it's in each -- let me
explain.

We have a boilerplate that the only thing
that changes, like for instance with construction,
are the specifications. It's a 90-page document
that we send out with each bid proposal package.
It has the specifications, the terms and
conditions. It's a complete document.

COMMISSIONER MAGAVERN: That's a uniform
part of the bid package which remains in effect
indefinitely until it's changed?

MS. O'CONNELL: If there's an update from
maybe Corporation Counsel, they issue --
anti-Apartheid provision is an addendum. If they
update it, they will insert that as an update.
COMMISSIONER MAGAVERN: Is that used by for all construction contracts for all agencies?

MS. O'CONNELL: I can't speak for other City agencies.

COMMISSIONER MAGAVERN: What is your agency?

MS. O'CONNELL: New York City Fire Department.

COMMISSIONER MAGAVERN: You have your own departmental set of general conditions which remains in effect from contract to contract, and which you're contractors can get familiar with; but as far as you know, any contractor doing construction work for another department of the City would have to deal with another set of general conditions; is that right?

MS. O'CONNELL: I guess so. I really can't answer that. This boilerplate that we use has been -- was in existence when I came there. I don't know if that was issued, how we obtained it; I don't know if that was something that was issued Citywide prior to my working for the Fire Department. But I know that that's the New York City Fire Department --
COMMISSIONER MAGAVERN: Is there any reason that you know of that the City couldn't have a standard set of terms and conditions for construction?

MS. O'CONNELL: Not that I know of.

MS. LOWE: I would like to explore with Simon and Frank the training of contracting staff. I gather that both of you are firm believers in the need for training for your contracting staff; is that fair to say?

MS. FRANK: Yes.

MS. LOWE: Mr. Simon, maybe you could tell us a little bit how you have gone about training your staff. and what sources of training you have found useful.

MR. SIMON: We have various types of training within the agency. We are members of the National Institute of Government Purchasing, which gives regular training classes, and we insist that our purchasing agents go through training. We have Contract Manager training in both aspects.

We've also had, from Human Resources, in-house training for Contract Managers.

MS. LOWE: How about what you get from the NATIONAL REPORTING INC. (212) 732-3120
National Institute of Government Purchasing, when you have you're people attend classes?

MR. SIMON: It teaches law with respect to National Government, City law. It doesn't exactly follow City law, but it teaches them the understanding of what they can and cannot do.

MS. LOWE: It's not just laws, it's training in procedures, but good practice. If you believe you're a buyer and you don't think you're getting enough bidders, don't they teach you how to expand the market of bidders you're reaching; is that correct?

MR. SIMON: That's correct.

MS. LOWE: What are some of the other kind of nuts and bolts things that your people get out of those classes?

MR. SIMON: They teach outreach, where to advertise, how to develop a bidders list, using a revolving bidders list; that's small dollar purchases, not contracts. It will get more involved with contracts, it will teach about boilerplate, specifications, how to develop specifications, how to manage a contract when it's in place.
We've had training for all those items.

MS. LOWE: Mr. Hester, do your employees participate in the NIGP training courses, or do you have something else?

MR. HESTER: Currently, we have 40 employees that are registered for the next round of training.

In addition, we have an annual training session each year for all our contract managers. It goes for about two days. We go through the entire process from Project Manager's point of view, Contract Manager's point of view.

We try to enable Contract Managers to sense the completeness of their responsibility for every aspect of the contract in process, from conception to how they develop the documents, through the evaluation process, including trying to be responsible for all of the goings-on that go on with potential vendors and the eventual contract, audit engagement and the like.

MS. LOWE: You said you have 40 people starting to go through training. Have they done this before?

MR. HESTER: We have had involvement.
MS. LOWE: At the Fire Department, have any of your people been through the training program; would it be useful to be part of that?

MS. O'CONNELL: We have several of our employees who are members of that group, and they have taken some training courses.

COMMISSIONER MAGAVERN: Are they volunteering members on their own, or the department sponsors their membership?

MR. DIAMOND: They volunteer for the service. We recommend it.

COMMISSIONER MAGAVERN: Do you have any way of maintaining an ongoing relationship with the NIGP in systematically encouraging people to attend.

MR. DIAMOND: We have three managers who are members, and they receive updates on what courses are available, and they get updates on purchasing procedures.

COMMISSIONER MAGAVERN: How many of your employees in your department have actually participated in the training sessions?

MR. DIAMOND: I believe we have three members.
COMMISSIONER MAGAVERN: Three of your people who signed you have up have taken the courses?

MR. DIAMOND: I'm personally not a member. I'm not sure.

COMMISSIONER MAGAVERN: How many people would be eligible for membership?

MR. DIAMOND: I believe it's up to the individual agency.

COMMISSIONER MAGAVERN: You have three out of how many of your employees?

MR. DIAMOND: We probably have five or so active employees in contracting, who we have a working on this type of thing, or who have gone.

MS. LOWE: Just to point out here, Mr. Hester, I have looked at the membership list for the local chapter of NIGP, and at least when I was supplied with it, which was March of this year, I don't recall seeing any HRA members.

I stand to be corrected if I'm wrong, but is this something that has developed since March?

MR. HESTER: I was talking about training, not membership.

MS. LOWE: Do you also encourage your
employees to join the professional association in
the buying field?

MR. HESTER: Yes. We go well beyond that.
We actually look for conferences through other the
United States, and there are few conferences that
we don't have representatives in who are there
both to meet the new technologies that are all
over the place.

HRA is like a city, it's needs being desks,
chairs, computers. We have 800 locations that we
must serve, and we rent more square footage than
the City of Calgary has in space, and we have to
maintain it.

The technology that we have to look at is
extraordinarily large. In many ways, some of our
most successful organizations are organizations
that became successful because of the technology
that we purchased through training people.

MS. LOWE: I have a lot more questions, but
unfortunately, it's a quarter to 2:00 and we have
to be out of here at 2:00. It's 20 of 2:00, we
have to be out at a quarter to 2:00.

COMMISSIONER VANCE: I think none of the
Commissioners have any further questions.
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Do you have any further questions, Connie or --

MS. CUSHMAN: There was one little vignette that Mr. Hester shared with us, back in our conversation about the way he had to go about buying these computers, that has led us into this path, and I had a great deal of sympathy with the computer purchasing process.

I was wondering if you could share with us both why it was, ten years ago, that you thought it was so essential to do it, and then some of your observations as a result of having gone through that process.

MR. HESTER: Ten years ago, there weren't any PC's. About eight years ago, it was clear to us that a new technology had been developed, and even though, at that time it was at a level of a toy. It was clear that it had potentials. m,

The industry moved; this would be clearly a part of the equipment of the future government administrator as much as the telephone is today, part of the working environment.

We tried to buy computers, this is 1981, '82, and the process was not particularly helpful.
It kept on bouncing between agencies. We wrote the specs, and the specs -- the specs became Citywide specs, not HR A specs any longer, and they therefore had to be rewritten for Citywide purposes.

Probably about twenty month later, we purchased computers. When we bought them, at the time, the City wasn't really up on how to purchase PC's, so we bought the machines, but no maintenance contracts. We bought the machines, no software, no memory.

It was another six months before we got this accomplished.

Over time, the City has learned from this early effort. Right now, I think the City's procurement process is a genuinely good one, to the extent to which it acquires, their MSDO's or OS-2 or the MacIntosh operating system. You can draw on requirements contracts, and those requirements provide external memory, CPU level, the maintenance, the software; HRA now has 160 different types of operating systems, software, for its equipment. Applications development.

So, the City has learned, and I think to
the extent to which this kind of hearing is held,
I think the City learns, and if spotlight is
placed on more easily organizing and driving a
procurement system, we'll take a look at them.

Obviously there's things the State is doing
that we ought to take a look at. The feds have
made a change, also, because they are now
acquiring PC's the way the State of New York
acquiring PC's for the -- in the military
services; there are changes.

There are also many more magazines and
journals that tell us what's going on in
procurement. The information is available, and I
think we are learning more.

I would like the hearing to reflect the
fact that we've learned enormously how to do
things in the last four, five years, and much of
the distress that you might have heard from
vendors simply is, in many regards, passe or
anomalous, the kind ever thing that occurs on the
one percent fringe.

It's amazing the extent to which we have
overcome the built-in obstacles, through
imagination and a sense of our being responsible
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and having to deliver quickly.

(Continued on next page.)
MS. FRANK: One last thing regarding the State contracts. Many of the vendors who hold the State contracts also hold our contracts. I think you'll find that there's a common pool in all agencies.

COMMISSIONER MAGAVERN: Is there anything the Panel would like to say before we draw this to a close, anything you haven't had a chance to say?

MR. HESTER: There are additional barriers to speeding up the process. We need to do very sharp analytic work of each of the microsets within the process, to see what can be dispensed with, what can be time-shortened, and so on.

Things that you wouldn't even think about; a manufacturer having to provide the material safety data sheet. It turns out, in Federal Law, that we must follow an employee for 40 years to tell him every type of toxic substance that may have aaffected him over the past 40 years, and we must do that. That sounds wonderful to the environmental-oriented legislature, who says the people need to know this thing.

It's a nightmare for the government to try and follow an employee for 40 years after he...
leaves the government. That's in the boilerplate now, and so a novice employee contractor, looking at this, says to himself, I don't know what this is. I am not going to bid on this. I don't even know what this is.

These kinds of things must be looked at to see what it yields in terms of shortening contracting time.

COMMISSIONER MAGAVERN: Thank you very much, Mr. Hester.

Chairman Feerick had to leave to take a very important call. He regrets not being here at the end to personally thank you, as do all of us, for joining us this morning, and helping us to better understand the problems, because we see it as our responsibility to try and take a look at the situation as it stands through the testimony of others, and then we can come up with recommendations which we think would be in the public interest, to help simplify and make more efficient this system.

Again, we thank you very much for being with us this morning.

We'll meet again tomorrow morning at 9:30.

(Time noted: 1:50 p.m.)

NATIONAL REPORTING INC. (212) 732-3120
STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

PUBLIC HEARING

on

NEW YORK CITY CONTRACTING PRACTICES

----------------------------------------x
Fordham University Law School
140 East 62nd Street
New York, New York

October 25, 1989
9:30 o'clock a.m.

BEFORE:

JOHN D. FEERICK,
Chairman

RICHARD D. EMERY

JAMES MAGAVERN

CYRUS R. VANCE

VERNARD S. MEYER

Commissioners

000

THOMAS SCHWARZ, ESQ.,
Special Counsel to the Commission

APPEARANCES:

CONSTANCE CUSHMAN, ESQ.
Deputy Chief Counsel

ALEXANDER LOWE, ESQ.
Staff Counsel

STEWART NISSENBAUM

HAROLD RABINOWITZ

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1. Public Hearing

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THE CHAIRMAN: I would like to call this hearing to order. This is the second of a two-day hearing dealing with issues involving the contracting process in New York City. The Commission calls as its first witness today, Carla Lallatin.

CARLA LALLATIN, called as a witness, being first duly sworn by the Chairman, was examined and testified as follows:

THE WITNESS: Good morning.

EXAMINATION BY MS. LOWE:

Q Good morning, Ms. Lallatin. Can you tell the Commissioners where you work presently?

A I'm President of a consulting company named Lallatin Associates.

Q Can you describe your professional background to us, please?

A It's largely in the purchasing arena. I have been in purchasing for over 20 years, the last 15 of which have been spent in the public sector.

I went to work for the City of New York in
1979 and was there until 1985. Prior to that, I was the State Purchasing Director for the State of Wyoming.

Q Are you currently active in any professional procurement organizations?

A Yes, I am. I am currently the First Vice-President of the Purchasing Management Association of New York. I am Executive Director for the Metropolitan New York Association of the National Institute of Governmental Purchasing, IGP. I am working with the National Purchasing Institute on professional development programs.

Q Are you professionally certified by any of these organizations?

A Yes. I am a certified purchasing manager by the National Association of Purchasing Management. I am a certified public purchasing official by the certification council.

Q If I can ask you one thing, and I am kind of guilty of this myself, if you can speak a little more slowly, it would be easier for the court reporter and for the Commissioners to understand you. I have unclean hands myself, I understand that.

When did you leave the City?

A February of '85.
Q Can you describe the kinds of work you're currently involved in with the consulting firm you mentioned earlier?
A Currently, is that what you're asking?
Q Yes.
A The work that we do, is working with both buyers and sellers in the institutional and public sector markets.
What I mean by that, is that as far as buyers go, we do professional buyer training in government, public seminars where we may have a number of different governments represented. We concentrate primarily on the State and local level.
We also have contracts with various governments to do procurement needs assessments. We write the policy and procedure manuals, we do legislative reviews. We assist in defining requirements. All of this in the area of procurement.
In the contracts that we have with private sector companies, we, in some way, assist those companies in doing business with State and local governments. We frequently call that meeting one on one. We assist in preparing bid documents. We do market research to identify their best potential markets. We do new product
introduction. We do not actually help them complete a bid, but we will interpret what a document means.

Q You were here yesterday; correct?
A Yes.

Q And you heard, I take it, a number of the vendors who spoke, describing the experiences they had in dealing with New York City; is that right?
A Yes.

Q You also heard some of the City people who testified after them; correct?
A That's correct.

Q Do you have a view as to whether today, presently, New York City is having trouble attracting vendors?
A My view, which is based on remarks which are made to me by clients of mine, is that yes, they are. The reason I say that, is because over the past several years nothing has changed in terms of my clients' complaints. They are having problems getting paid. They are having problems finding out about bidding opportunities. They can't get the people to meet with them. They have a contract, but they can't get started, et cetera.

Q Do you also have any other bases for your
observations? For example, in your capacity as the
director of the local NIGP chapter, are you in contact
with people currently doing buying on behalf of the City?

A       Yes. There are a number of people employed
by the City who are members, who are in a buying
capacity.

Q       What do you hear from them with respect to
attracting vendors?

A       That they have a lot of vendor complaints
about the length of time it takes to process a contract,
the amount of paperwork they have to fill out in order to
be considered for an award, even if a bid opened; the
cumbersome aspects of the system.

Q       Have you, yourself, since you have left City
Government, had experience as a vendor with New York
City?

A       Yes.

Q       Can you tell us a little bit about that?

A       Yes. In early 1988 I had a contract, a very
small contract, $2500, with the Division of Municipal
Supplies to provide three half-days of training,
basically in DMS procedures, City requirements as it
pertains to purchasing.

Q       And can you tell us something about that
Was it a favorable experience, or did you have some difficulties with that contract?

A When I received the contract and I had met with Commissioner Frank several times on the contract, we had discussed what was to be done and how it was to be accomplished, and I believe that she would agree that we had reached an understanding, and we were in agreement on those points. That did not change.

When I received the contract, there was the standard boilerplate that I believe DGS uses for its consultant contracts -- it may be a City boilerplate -- in which was required a million dollars of liability insurance.

Q This is for your three half-day training classes?

A That's right, for $2500.

I called DMS, not Ms. Frank, and I told her that I was not willing to provide a million dollars worth of insurance for a $2500 contract, and that they would need to take that out.

They said they would have to discuss it and get back to me. I guess they discussed it and got back to me, and told me it could not get done.
Since I had worked for DGS previously, I referred them to one of the people in the law offices of DGS. I said, why not talk to him, because I think he would be amenable to deleting this requirement under this circumstance, which was true.

Q What do you mean, "which was true"?
A He was amenable to that. It was deleted.
Q I take it the average vendor is not really familiar with the ins and outs of DMS's Law Department?
A That's correct.
Q Did you have any other experiences with the City that you can tell us about?
A I was called by the Office of Management Information Services, again of DGS, late in 1988, because they were looking to do two contracts under $10,000 with consultants, to do some review of the CLIPS system -- I am not sure what the acronym is -- do some work on the commodity coding portion of that, and they had called me and talked to me and determined my interest, and I was interested.
I met with them as I recall in early November --
Q Of what year, do you know?
A Last year, 1988, late September, and
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received from them a draft of the contract.

I believe on November 1st I made my

comments, and we worked together on the agreement and

received the final draft of the contract on November 14th

for signature.

This was all accompanied by telephone calls

stressing the urgency of getting this done; that was from

OMS.

Q Office of Management Information Systems?

A Yes, OMIS.

I had to notarize it and get it back. It

had to be approved by the Corporation Counsel and it had

to be registered. I knew in the future that I would get

a copy back.

I had not yet received a copy by early

December, and so I called there to find out what happened

to the contract, and I was told that they had changed

their mind, they were no longer going to do this work.

I said, well, that's fine, but I should have

been alerted to that fact, because I had signed the

contract and agreed to do this work, and I did not want

to find out, two years later, that I was in breach of

contract.

They told me they tore it up and threw it
away, and I said that was also fine, but please send me a letter that you had changed your mind, which they did.

Q That was an under-$10,000 contract?

A Yes.

Q Is there any significance to that figure of under-$10,000?

A I think, frequently, agencies would have to speak to this, and they use under-$10,000 contracts when they can identify smaller segments of work to be done in order not to have to go through a lot of the processes that are required, that take a lot of time, if the contract is over $10,000.

Q In other words, if it was a $12,000 contract, there would have been many more review and approval steps --

A Definitely, yes.

Q Now, going back to your current involvement with the clients that you mentioned earlier, from time to time do clients come to you, requesting your assistance or your opinion on whether they should seek to do business with New York City?

A Yes, they do.

Q What kind of advice do you give them?

A It varies somewhat. If they are vendors
that are relatively new to the public sector market, I advise them that they would do better to get their feet when the in another governmental setting, other than New York City.

If they are relatively familiar with the public sector market, I caution them about the time delays, the different amounts of forms and data they'll have to produce for New York City, the cost involved, if you will, of doing business with the City, and also the payment delays experienced by a lot of vendors, so that they are fully aware of what they are getting into before they make the decision to try to do business with the City.

Q I would like to break that down into several pieces. You said for the new vendors, you advise them to get their feet wet some other city. What is different about these other cities that you suggest --

A Many, many other governments are much more straightforward to deal with, if you will. Their bid documents are more simple. Their processes for awarding contracts are more straightforward, and take much less time. There are not so many layers of review and approval. The amount of data that has to be submitted in order to be approved as a supplier is normally less. The
reason I say "normally," is that it really depends on what the contract is for, especially in the areas of materials or goods, that the requirements are less. If you're into things like service contracts or construction contracts, those types of contracts that have a higher degree of risk, most governments require that there be some type of experience-financial responsibility and information submitted to those effects.

Q When you're speaking to someone who has a little more experience in the public sector, you said you warn them about the costs of doing business in New York City. Can you tell us what you say to them in that respect?

A I talk to them about the bidding documents and the Vendex questionnaire, to make sure that they know how many forms are supposed to be filled out when they submit bids.

I talk to them about the BLS requirements if they happen, you know, to get a contract that requires BLS approval, and depending on the client, if they are getting their materials from a parent company, for example, not only the distributor, but where the parent company will be required to submit documents to BLS,
that's what I am talking about, and that those all have to be done prior to the award.

Also the registration process, which I don't think is really awful. I think usually, not always, but that usually occurs within 30 days.

Q You mentioned something called the Vendex form. We have an exemplar of one of those in Exhibit 12, for people who are trying to follow along in the audience.

Can you say a little bit about what you believe to be the impact of collecting the kinds of information that the Vendex questionnaire seeks to collect, impact on the vendor?

A I think it has a tendency to impact competition, and I am not saying by that that I don't think the information is not necessary, but I am not sure that it's necessary in every single case, and I am not sure that it's necessary as a result of, or in conjunction with, submitting a bid.

Right now, most, if not all, agencies require the bidder to fill out the Vendex form and submit it with his or her bid. That's a lot of questions, if you have not done that previously. I realize that you have to update it only occasionally, once you get it
done, but it adds to your costs if you're not a successful bidder, because it takes a lot of time to fill out the form.

Q The one in question here is 26-odd pages or so.

A Exactly.

Q You mentioned the impacts of various paperwork requirements on competition. I wonder if you could back up a minute and tell us, generally speaking, based on your experience, why competition is an important thing?

A I think in public procurement, if a program is effective, it really mirrors the free enterprise system. I think competition is important not only because of the price aspect and the cost, the expense, if you will, but also when there's adequate competition it really keeps the system honest, and the 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.
Q For example, what you're saying, in other words, is that a lack of competition may provide breeding grounds for bid rigging, for example, not that it always does in every instance, but --

A That's correct.

Q Would it also be at least breeding grounds for collusive behavior between the buyer and one of the vendors?

A It could be. I mean, it would certainly provide more opportunity than if you had a lot of competition.

Q The other competitors could more or less police the system; is that what you're saying?

A Yes.

Q Can you give us some idea, and I realize that you may not be able to do this across the board, but can you give us some idea of, in the field of procurement, how much is enough competition?

A Typically, I think, there are two answers to that question. Either there should be at least three bids or there should be at least five bids. So, depending on who you talk to, that's the answer you receive.

I think it's slightly more complex than
that, because it depends on what it is you're buying. In some areas, especially in very technical types of areas, you may only have, in the entire nation, or maybe in the entire world, three vendors, three suppliers. So it depends on how much competition is available.

Q Let's talk about some of the more ordinary kinds of goods and services we've heard about up to date, such as elevator services, security guard services, the run-of-the-mill commodities the City purchases, such as food, office supplies, things of that nature; what would you consider to be a reasonable degree of competition in those areas?

A I don't think I can answer that, because it depends upon what your bidder base is. I know, from my own experience with the City, that we had a lot of trouble attracting food vendors, for example, and also there's different breakdowns in that area; canned goods, fresh produce, et cetera.

In the area of office supplies, for example, I would think, easily, we could get 5, 10, 15 bids.

Q How about in some of the service areas we heard about yesterday; security guards, elevator maintenance, painting; things like that?

A From my understanding in talking to City
people, it's difficult to find elevator service people. There are not an awful lot of them out there. They even have out-of-state suppliers bidding on the work. And in terms of security guard services, that, I would say is a relatively competitive field, and there are several national companies that provide security guard services and do business with the public sector.

Q  I am not asking you so much to estimate how many people you would expect to bid on those kinds of things. I would like a sense of what you would consider a healthy degree of competition in those areas.

A  I would say that you should have a good bidders list, first of all, and those people who are capable of providing the goods and services should be identified, and willing to do business with you. And a minimum goal, if you will, should be 50 percent of the bidders that you solicit respond to the bid.

Q  Now, among the exhibits is an excerpt in Exhibit 32 from an audit that the New York State Comptroller did last year of the Division of Municipal Supplies Procurement practices, and there are two statistic in there that I would be interested in your opinion about.

If you could turn to Page 4 of Exhibit 32?
A  Okay.

Q  Page 4 includes the information that, on the sample of contracts that the State Comptroller looked at, 87 percent of the vendors responding were directly solicited by the buyers, off of some kind of vendor list. I am interested in juxtaposing that statistic with the statistic on the top of Page 5 where they find that 19 percent of the solicited vendors actually submitted bids. An additional 10 percent of those solicited responded "no bid," and they compare that to a 21 percent bid rate and a 5 percent no bid rate in an audit they had done previously, a number of years before.

What do you believe to be the significance of those numbers, particularly in light of your earlier testimony that a healthy bid response rate would be about 50 percent?

A  First, I am not at all surprised, and I don't think it's peculiar to New York City, that the majority of bids come directly from the bidders list. And I think that that points out the importance of a good bidders list.

Q  Does it say anything about the effectiveness of advertising in the City Record?
Public Hearing

A

I think it possibly could. I think the only practical way to solicit vendors is through good bidders lists, because they are not -- the vendors are not that religious about reviewing the City Record.

Q

In other words, what 87 percent of the vendors statistics means, is that a majority of the vendors is coming from lists that the City has put together, and the majority are not responding to some type of public advertisement; correct?

A

That's correct.

Q

How about the second statistic, the response rate --

A

I think what this says -- and this is the first time I have seen this audit -- is that it would appear that -- maybe several things; a dwindling supply of vendors. There are fewer vendors willing to do business with the City, and there may or may not be an effective vendor outreach program. And if there is, I would say they are really having a tough time, probably for the reasons that I talked about earlier.

Q

The two relate to each other, in other words. There may not be all that much that one agency can do on its own if the larger climate that the agency is functioning in has a way of deterring vendors?

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A Yes.

Q Are you familiar with the Mayor's Office of Contracts? Are you aware that there's an agency in the City known as the Mayor's Office of Contracts?

A Yes, I am.

Q And are you familiar with a study that came out in late 1987 by the Institute of Public Administration on the contracting process in New York City?

A Yes, I am.

Q And are you aware that that study recommended the appointment of a Panel of procurement experts to advise the Mayor's Office of Contracts?

A Yes.

Q Have you, yourself, had any discussions with the City about that expert panel?

A Yes, I have. I read about the IPA study in the newspaper, and subsequently read about it, and was very interested in the advisory board. That was one of the recommendations.

So, I made several inquiries as to whether or not the Office of Contracts had been established, and yes, they had, and also who I would stalk to about my interest in terms of the advisory board, I was told I
should talk to Mr. Copperman.

Q This is sometime early in 1988; is that right?

A Yes, it was. So, I wrote Mr. Copperman a letter expressing my interests, and subsequently called him.

I received a letter back from him, and also had a telephone conversation with him to the effect that he was not at the point yet -- that he was not ready to appoint this panel or board, because he was in the process of putting together his own office, which certainly made sense to me.

So, I thought three to six months or so from now, I might hear from him, and that was incorrect.

Approximately a year later, he called me -- that was in March --

Q Of this year, 1989?

A Yes. He told me he had gotten his office together, he was working on guidelines, and that he was going to appoint his advisory panel, and was I still interested. And I said I was.

I went to his office and spoke to him about it, and I was under the impression -- but I was incorrect -- that he was just, you know, a little ways
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away from appointing this panel. I had the impression
that, certainly in the very near future, two to four
weeks, whatever, he would have this panel in place.

Q You said that you were incorrect in that
impression, but I would like you to back up and tell us
what gave you that impression.

A He had the draft guidelines, which he gave
me a copy of, and told me he wanted to have those
guidelines, in order for the panel to be able to review
them.

We discussed what role the panel would have,
what they would be doing, and he talked about the work in
getting his new office up and running, but that because
he had the draft, and because he was talking about the
role that the panel would play, et cetera, I was under
the impression that he was ready to appoint the panel,
and that was not correct, because my understanding is
that he has not yet done so.

Q Did you ever hear back from him after your
meeting?

A No. He said he was going to put the panel
together, and that he would call me. I have not yet
heard from him.

Q I think you said earlier that you were aware
that the panel has not been appointed?

A    That's my understanding.

Q    Do you believe the City would have benefited
from having such a panel in place in the past year or so?

A    I think that panel could have been used to
do some of the drafting of the guidelines for which the
Office of Contracts is responsible.

Q    Is there anything else you think they could
have done?

A    I think in terms of some of the guidelines,
they could have offered suggestions. I think they could.
have moved the process along faster, because there would
have been more people to do it.

Q    In that regard, when you were the Deputy
Commissioner at Municipal Supplies, you put together a
purchasing manual for that division?

A    Yes.

Q    Can you tell us how long it took you to put
that manual together?

A    Yes, between four and six months, and there
were a lot of nights and very, very long weekends
involved with that, because I had several people that
were also -- I had been Purchasing Manager for buyers --
I had a lot of people working with me on this, and in
addition to our working duties, there was no time to do this during working hours.

Q You did this on nights and weekends, along with your normal responsibilities?

A That's correct.

Q I would like to turn for a moment to the question of training. Is there a field, or a body of knowledge, which could be characterized as procurement expertise?

A Yes.

Q What does that knowledge consist of? Not every detail, but how would you characterize it?

A I would characterize it in the same way that the professional associations of purchasers characterize it. It's a combination of education, experience, professional involvement, if you will.

What I mean by that is, there's usually a background in business, economics, law; it varies; experience in terms of actually buying things, continuing education.

There are only a few -- and this has been in the last 10, maybe 15 years, a few universities that offer degrees in procurement, and they are not geared to the public sector.
But, there are a lot of continuing education courses, special seminars, et cetera, offered through the National Association of Management, the National Institute of Purchasing, and so I think it's important to have those generic-type training courses, the basics, the foundation, as well as some education in the area regarding how the UCC works, for example, and also there should be a judgment about your progress in terms of your career.

Q You mentioned a couple of professional organizations. Do they offer formal credentials to people who have undergone a certain amount of these continuing education classes?

A Yes.

Q What is the significance of obtaining those credentials? Is it simply a piece of paper, or is it more than that?

A These pieces of paper signify that you have met with these associations, and there are a number of private sector companies and a few public sector jurisdictions that require -- that either recommend or require certification, for being employed in purchasing.

Q Is New York City one of those jurisdictions who requires it?
A No, it's not.

Q Do you know some of the jurisdictions who do?

A The City of Baltimore, the State of Maryland, Arizona. I think -- although it's a different certification, I think New Jersey requires certification.

Q Can you tell us a little bit about what goes into the generic aspect of the training you described earlier?

You said the background and experience on the job, and then you talked about some training?

A Yes. Starting with the basics, you're taught basically in the procurement process, if you will, and that process that I am talking about is that recognition of need through the disposition of property and every step in between: The requisition phase, contracting work, contract administration, et cetera.

You're taught specifics in terms of how to put together a competitive sealed bid, how to enhance competition, how to put together a bidders list, how to develop specifications, how to administer a contract to assure quality, if you will.

Then you go into more specific types of areas, such as procurement management, warehouse...
management, life-cycle costs and analysis; those
techniques that can enhance the procurement program.

Q Is that type of training available for City
personnel who are buying goods and equipment, or is it
useful for someone on behalf of the City who is buying
services, for example?

A Definitely. I would say services is much,
much harder to buy than goods. You're normally talking
about a competitive request for proposal process, and
much less clear definition about what your requirements
are, as well as a lot more requirements. So I believe
services are much more difficult to buy.

Q And all the more reason why some of the
people buying them should have this formal training?

A Absolutely.

MS. LOWE: I have no further questions.

THE CHAIRMAN: Thank you very much.

COMMISSIONER VANCE: We have heard a lot
over the last two days about the complexities of
the system, the red tape, excessive time to get
things done, slow payments, and all of those kinds
of obstacles.

You have had a lot of experience, both in
the government and outside. Maybe you could help
me better understand why it takes so long to do
something to simplify the system.

THE WITNESS: I think it takes so long for
a couple of reasons: There are a lot of different
players with a lot of different interests
involved. There isn't one authority that can say,
we are going to fix this, so let's do it now. And
because there have been scandals, there's sort of
a bit of overreaction, if you will, to be sure
that this never happens again.

COMMISSIONER VANCE: Am I correct in
assuming that it is not a terribly difficult job
to take steps to simplify the structure, other
than the natural political impediments of having
to deal with a bureaucracy in turning things
around?

THE WITNESS: I think it can be compared to
coming in and taking over the management of any
other big function. You identify the key points
of what needs to be done, and then you start
changing your organization in the process, in
order to fit that so it can get done.

COMMISSIONER VANCE: Aren't there fairly
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clear steps that most experts would agree that need to be taken?

THE WITNESS: Absolutely.

COMMISSIONER VANCE: So then it's a question of political will, in order to get it done?

THE WITNESS: Yes.

COMMISSIONER VANCE: Thank you.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: Can you tell us what those steps would be, in response to Mr. Vance's question?

THE WITNESS: Technically, what the steps are in any setting, whether the private or public sector, is to, first of all, determine what exists, and so someone would have to go out there and find out everything that was being done that concerned purchasing, warehousing, inventory, that whole cycle, if you will. Until you know what it is, it's hard to put it in place and set your goals as to what needs to be.

Once you can determine what exists, then you need to set the goals about what is broken, what needs to be fixed, and what you're going to
fix first. And basically those components of fixing something look at legislation or legal authority; is the Charter sufficient, does it give clear guidelines for the procurement process, does it fix responsibility and authority.

In conjunction with that, you need to look at organizational structure, what organizational structure can you establish in the City of New York that will enable the City to carry out the legislative intent, if you will; what rules and regulations or policies and procedures, whatever you call them, do you need to implement those, and how can you — what training requirements are there, what automation requirements are there; those sort of support type things, if you will, for your resources, be it human or equipment.

COMMISSIONER MAGAVERN: If we take — this may be unfair, and if it is, just tell me —

THE WITNESS: Okay.

COMMISSIONER MAGAVERN: If we take each of the areas in the sequence you identified that should be examined, if we start with legal and legislation, from your own experience in the system, do you have a view as to what legal
changes should be made?

THE WITNESS: Let me see if I can state this simply. Yes, I do. First of all, I think that there needs to be Citywide policy so that the City is speaking to the business community, if you will, with one voice, which does not now occur. So, there needs to be some Citywide policy.

In other words, in addition, I believe there needs to be a position of individual whatever you want to call it, that's removed from the political process, with whom you can fix responsibility for what goes on in procurement.

Now, I do not mean by that, that that person has to process every single piece of paper that gets processed in order to make an acquisition.

I just think there needs to be for an exception to the rule, if you will, an approval place, and then maybe some of the Citywide contracting, the requirements contracts that Commissioner Frank talked about yesterday, those Citywide requirements could be covered more legitimately by combining requirements.

I think there needs to be a fixed place of
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responsibility, and I think that place, that person, that title, needs to be removed from the political aspects, if you will, the direct political influence.

COMMISSIONER MAGAVERN: How would you do that? Would you have someone appointed for a term of years --

THE WITNESS: A lot of places have actually implemented a policy board which sets Citywide, Statewide, what have you, policy, and then either the policy board or the Governor, the Mayor, the Executive, appoints the chief purchasing officer with the approval of the policy board.

Normally, that policy board is for a period of years, and not necessarily a political term, and with removal only for cause.

In addition to that, there's criteria set in terms of the qualifications required of this person who is going to be appointed the purchasing agent.

COMMISSIONER MAGAVERN: You have already covered part of the organizational structure. Is there more in that area that you would look to, to change?
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THE WITNESS: I think the other parts of the organizational structure depend largely on the amount of consolidation and centralization you can do in terms of what makes sense and what gives the City the most value, by, say, centralizing the purchase of all widgets, or whatever it is you're purchasing, and to have the agencies do things themselves; delegation.

It's centralization/delegation that defines what the rest of the organizational requirements should be.

COMMISSIONER MAGAVERN: Do you have a sense as to whether that balance between centralization and decentralization, as it presently exists, is weighted on one side as opposed to the other?

THE WITNESS: I think it's weighted on the side of decentralization. I don't think there's Citywide policy where the City speaks to the business community with one voice.

COMMISSIONER MAGAVERN: Turning to rules and procedures, do you have any ideas of changes that should be considered there?

THE WITNESS: Yes, but that has to go back to the Charter changes or the statutory changes,
whatever they are, because what rules and regulations should do is implement the legal requirements.

So, it really provides the detail, if you will, of the statutory requirements. This is the requirement, and this is exactly how, step by step, you get it done.

COMMISSIONER MAGAVERN: You mentioned training requirements. Can you give us your views on those?

THE WITNESS: In addition to those type training things that I was talking about, first of all, you need to identify who needs to be trained and what their experience and education is; what the individual needs.

Maybe, you know, you're lucky, and you just had a few individuals who, a couple of times every couple of years, have to take courses to keep up, because they are well trained. And others may have some deficiencies for which you want to provide training.

In addition to the generic type of courses, there needs to be training on the internal specifics to the City of New York-type things; the
law, the rules, the procedures. And this needs to
be done not only for the purchasing office, but
also for what I would call the using agencies, for
the users of that central office, and also for the
delegated agencies.

Usually it's one thing, but an agency will
use centralized purchasing for the requirements
that central purchasing does, and also do a
certain amount of purchasing, independent of that
authority, for things such as services. It's a
generic type of thing.

They also need internal training on
procedures, and they have to follow the Citywide
policy and the procedures that they have to follow
in order to do business, if you will, with the
central office.

COMMISSIONER MAGAVERN: To what extent does
the City now have in place, training of the kind
you have just described?

THE WITNESS: Right now, the local chapter
of NIGP that I described earlier, offers several
courses. Some City people are attending those
courses, that generic type training.

In terms of the specific type training
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which would now be DMS staff, as well as the agency staff, I don't know. I can't answer that.

COMMISSIONER MAGAVERN: Finally, you mentioned automation. Do you have an opinion as to the extent to which the City is now adequately in automation?

THE WITNESS: I don't think the City has a sufficient amount of automation to support its activities, but I would say to you, that if there are going to be changes made in the other areas that we just talked about, that those changes need to be made prior to doing any automation changes, upgrades, or whatever you want to call it, because it can change the system.

COMMISSIONER MAGAVERN: Are you familiar with the work done by the Charter Revision Commission?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: Do you think that represents a good start?

THE WITNESS: I think that it's a change. I think there has been a lot of thought that has gone into it. I think there are potential problems with some of the changes.
COMMISSIONER MAGAVERN: Could you tell us a little bit about that?

THE WITNESS: I agree, as you know, with the appointment of a policy board, and I do not disagree that the Mayor should appoint three and the Comptroller appoint two. I don't see that as a problem.

The policy board members do serve, in the case of the revised Charter, at the pleasure of the appointing official. I believe that there could be a lot less politics involved -- the reason I keep referring to politics is not because of anything necessarily that happened, but sometimes there can be more room for corruption because of -- in consideration of past favors, so normally there's an effort made to sort of protect the procurement contracting process from the political aspects.

I think there would be less of those political aspects if the policy board were appointed for staggered terms, some of which would expire during each Mayor's term, so that an incoming Mayor can add his own people, but not necessarily get rid of three, replace three.
I understand the Charter Revision Commission made great effort to fix responsibility for purchasing so they could hold someone responsible, which was their thinking in making the Mayor responsible for signing off on procurements that other than competitive sealed bids use.

The Charter invests all this power with the Mayor, which really makes the Mayor the City's contracting officer, and I think that could present problems in terms of the integrity of the process.

If an agency sends the award of a contract to other than the low bidder, and the Mayor can overturn that recommendation, I think what really making the Mayor the chief procurement officer, if you will, does, is contracting right at the nub of politics, and I am not sure that the Mayor would really like that, either, you know, a Mayor with a lot of integrity. It sort of puts that person in a bad position also, I think.

COMMISSIONER MAGAVERN: That's a very clear set of answers.

Thank you very much.
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THE WITNESS: You're welcome.

THE CHAIRMAN: Commissioner Emery?

COMMISSIONER EMERY: Jim, Commissioner Magavern, has asked primarily the questions I was interested in, but to bring it a little step further, with respect to the Charter Revision Commission proposals, on the scale of delegation versus centralization, which I consider to be one of the most important aspects of reform, how do you think the Charter revision proposals come down in that regard?

THE CHAIRMAN: Commissioner Emery, could you just explain the question? I am not sure I understood you.

COMMISSIONER EMERY: Yes. The witness made a point about the appropriateness of the balance between centralization of the procurement function and decentralization of the procurement function, and testified, I believe, that the present system is too decentralized.

What I am asking her is, if the Charter Revision Commission proposals are the appropriate ones for rebalancing that tension.

THE WITNESS: I really thought what the

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Charter revision does, in terms of centralization or decentralization, is that it centralizes policymaking with the policy board, centralizes responsibility in the Mayor's Office, and probably will have the effect of more decentralization in terms of actual operations.

So, I don't really think it's balanced centralization-decentralization, because primarily the Mayor's Office, which I think is primarily involved in running the City, and the policy board would be involved primarily in setting policy, neither of which would be involved as a primary concern operation.

I think you need to look at power and authority being centralized, but you need to look at some things that need to stay centralized and other things that need to be delegated, and maybe a large amount of things need to be delegated.

COMMISSIONER EMERY: I take it that it would help with respect to uniformity?

THE WITNESS: It should.

COMMISSIONER EMERY: What you're saying is, that it won't necessarily help with respect to centralizing purchasing functioning for those
items or services which can be purchased Citywide. So that's the failure at that point.

THE WITNESS: Right. I would say that it appears that the Charter would have the effect of at least giving everyone in the City the same rules to follow.

COMMISSIONER EMERY: But that's not enough. Operationally, it should be centralized for some functions and some services?

THE WITNESS: I believe so, yes.

COMMISSIONER EMERY: Let me ask you a quick question about the Mayor.

My predisposition for your testimony, which I think is very convincing and very useful, is that the Mayor is the appropriate place for this functioning, because of the budgets and because the Mayor and the agencies -- his or her agencies want the budget to be kept in control, and, of course, contracting is a big part of keeping the budget in control, and that they would be an extremely appropriate spot for that function.

Why doesn't the budget pressures counterbalance the fear of corruption, or the fear of politicization that you have identified?
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THE WITNESS: It might.

COMMISSIONER EMERY: But you still think that the Mayor is the inappropriate --

THE WITNESS: Yes, I do.

COMMISSIONER EMERY: Where should --

THE WITNESS: I think logically, the way the City is structured now, it should be in DGS or DMS. I think their role needs to be changed, if you will.

COMMISSIONER EMERY: Isn't that an agency under the Mayor, anyway?

THE WITNESS: It is, but some of the things the Mayor -- well I can't remember which it is -- I think it's the -- I think it's -- I am not sure. I think it's the signoff on using other than the competitive bid, that the Mayor cannot validate --

COMMISSIONER EMERY: For contracts over a hundred thousand, isn't it?

THE WITNESS: You're not really talking about, you know, why not put it there -- you know, why not put it in DGS in the first place, instead of putting it in the Mayor's Office, because -- and then, you know, the Commissioner or whomever ends up being the chief purchasing official, you
know, has a dual reporting function to both the Mayor and to the policy board, because the policy board, in my view at least, should not reach the policy, but should have oversight in terms of that policy being followed, be it in DGS or any of the other City agencies.

But there should be, I think, an operational person responsible for a lot of that, because otherwise, the policy office is going to be so inundated with trying to do compliance reviews that they are going to end up being involved in daily operations instead of at a different level, setting policy, which is what I think a policy board should be.

COMMISSIONER EMERY: Thank you.

THE CHAIRMAN: Thank you.

In response to Commissioner Vance's question as to why the process takes so long currently, you gave two reasons. And as I recall your testimony, and assuming my summation is not incorrect, one of the reasons had to do with, quote, different players were involved in the process with different interests. And what I would like to ask you now is, if you would explain
what you meant by that.

THE WITNESS: Yes. If DGS is doing the contracting, or if an agency is doing the contracting, and it doesn't matter if it's DGS, I think their primary interest is getting competition and awarding the contract to the lowest responsible bidder.

DOI, with the Vendex system, has concerns that all of this information is obtained about potential suppliers to the City, so that the City is not doing business with corrupt vendors, being involved in corrupt practices.

The Bureau of Labor Services, for example, has an interest in assuring that Affirmative Action is in place, Equal Opportunity, and the like.

In some of the review processes, the Budget Department, OMB, has concerns about keeping the budget in control, which is legitimate and certainly not to be done away with.

But in a number of cases when the budget process -- when the budget is approved, and there has been specific approval for funds for specific line items, and a number of those have to be...
reapproved, if you will, by Budget, unless there
has been a cut or an adjustment in the budget that
is an area, that should be looked at.

There's the registration of the contracts
with the Comptroller, which I agree with, because
the funds need to be in place.

There are other instances, like if it's for
data processing equipment, there are some reviews,
et cetera, by the Office of Controls. There are a
lot of facets that precede the contract award.

Now some of those interests -- the
interests are legitimate. I have no problem with
any of the interests, but I do think a number of
those processes that happen between bid opening or
recognition of requirement, if you will, until
contract award, could occur as a post-audit, and,
in a lot of cases, on a random sampling basis, not
necessarily on every contract.

THE CHAIRMAN: So you weren't referring to
political interests, which were very much a part
of the process --

THE WITNESS: No, I was not.

THE CHAIRMAN: It may not be clear to some
readers of the transcript of this proceeding,
regarding what you meant with respect to some of
the corruption opportunities you identified, where
there wasn't much competition; bid-rigging and
collusive behavior between buyers and vendors.

I would like you to amplify on, if you
would, what you meant by those statements.

THE WITNESS: If you have a limited pool of
vendors in a particular area of contracts, say you
have two vendors bidding for widget services,
those two vendors, I believe, have a greater
opportunity to come to agreement between
themselves as to, I'll get the contract this time,
you can have it next time, than if you have 12
bidders bidding on the same contract.

By the same token, it's easier to know,
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.

Also, because there are such a few number
of players, I think the opportunity is greater --
I am not saying that it has happened or is
happening or that it will happen, I am saying that
the opportunity is greater for maybe three people
to agree on how this business is going to work,
those three people being the two competitors and
the buyer.

THE CHAIRMAN: I take it that these
subjects were known to you during the course of
your employment with the City; correct?

THE WITNESS: Correct.

THE CHAIRMAN: Did you observe, in your
experience, these kinds of dangers occurring?

THE WITNESS: When I worked in the City of
New York, there were specific areas that we
targeted to work on the level of competition, if
you will, because there was either no
competition -- the same supplier had a particular
contract since the City began, or because the
competition was so limited.

We were successful in expanding the
competition in a number of areas. The Bureau of
Labor Services, I believe, the Executive Director
for the Bureau of Labor Services was issued in
1983, although I am not sure. The process that
was implemented by that bureau to be sure that
they met their mission or objectives, was to deter
a lot of competition, because buyers would get
discouraged, or wanted to do business someplace
else, with the amount of data they had to provide, the confusion -- especially when the bureau was set up, I understand they were more helpful and clear about the requirements and also the amount of time for them to do their compliance reviews before the contractor ever started to work.

And even those who complained about that we have to give you so much data, it was sort of complaining because they had to do it, and there was a willingness to do it if they could only get to work, because in bidding on the contract, they set aside a certain amount of their resources and time to do the contract, if in fact they got the award. But when that's an ever-moving target out there, it's kind of hard to have resources in reserve.

THE CHAIRMAN: For the purposes of the record, can I get the period of your service for the City?

You were a Deputy Commissioner from what point to what point?

THE WITNESS: I worked for DMS in 1979, and was Deputy Commissioner since 1981. I left in February of '85.
THE CHAIRMAN: How about the Department of General Services? Were you involved with the Department of -- well that was the department you just made reference to?

THE WITNESS: Yes.

THE CHAIRMAN: How about the Division of Municipal Supplies?

THE WITNESS: When I worked for the City, I worked for the Division of Municipal Supplies.

THE CHAIRMAN: Your total experience with the City was in that area?

THE WITNESS: Yes.

THE CHAIRMAN: I take it you have been representing would-be vendors who want to deal with the City, or who do not want to deal with the City, as the case may be, until sometime in 1988?

THE WITNESS: That's correct. I have only discussed doing business with the City with these particular vendors. The majority of business my clients do is outside the City of New York; the vast majority.

THE CHAIRMAN: You have certainly been helpful to the Commission in these areas. Thank you for your testimony. I know you'll be joining
us a little bit later.

THE WITNESS: Yes, I will.

THE CHAIRMAN: Thank you.

THE WITNESS: You're welcome.

(Continued on next page.)
THE CHAIRMAN: The Commission calls its next witness, Joel Copperman.

JOEL COPPERMAN, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: I would ask the witness to identify himself and the gentleman to his right.

THE WITNESS: My name is Joel Copperman. To my right is Laurence Levy. I am the Director of the Office of Contracts. Mr. Levy works for the City's Law Department.

THE CHAIRMAN: Thank you.

MS. CUSHMAN: Mr. Levy, I take it you're here representing Mr. Copperman for purposes of the hearing?

MR. LEVY: Yes, ma'am.

EXAMINATION BY

MS. CUSHMAN:

Q Mr. Copperman, as head of the Mayor's Office of Contracts, are you familiar with the spectrum of New York City's contracting procedures?

A Yes.

Q I would like to go through, very briefly, the basic procedures, as I understand them, and make sure...
that we are talking about the same kinds of things.

The first set of procedures that I would like to talk about is what we've heard reference to today as the under $10,000 contracts. Is it correct that agencies can award under $10,000 contracts by way of purchase order?

A There is different processes for different kinds of contracts that are under $10,000. If we are talking about goods, contracts between 5 and $10,000 go through the purchase of goods between 5 and 10, go through the Division of Municipal Supplies.

If we are talking about consultant contracts and services, those are done by the agencies without a requirement of going to the Board of Estimate. Those can be done off of a purchase order.

There's also other ways that you can do that, and those have to be registered with the Comptroller as contracts. Those are not done by a purchase order. Those are registered with the Comptroller as contracts. You can either use a form that the Department of Personnel has developed or you can do an actual contract.

Q In either case, however, is the step -- basically, the relatively simple step of the agency
defining what it wants to do, preparing whatever its specifications are, getting bids, if it's own rules require it to, in the case of the things that DGS has to buy, of course, going through DGS, but then deciding to whom it wants to award the contract, and going forward with either the purchase order or the registration of the contract?

A Following the requirements of the law for bidding and, yes, that's what has to be done.

Q Now, the next --

THE CHAIRMAN: Excuse me. Could you get closer to the microphone. It would be helpful.

Thank you.

EXAMINATION CONTINUING

BY MS. CUSHMAN:

Q Is it fair to say that each agency has its own rules which implement the laws, as they apply to bidding, that you've just mentioned?

A Agencies have procedures for -- are we still talking about under $10,000?

Q Yes.

A Agencies have procedures for doing this.

Q And those are not procedures which are adopted out of your office, they are procedures that the
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agencies have developed themselves; is that right?

A Those are procedures which my office has not yet addressed. It is an area that my office will be addressing or any successor office I would suggest should be addressing in the future.

Q The under $10,000 contracts?

A Yes.

Q Now --

A If I can add a point, I believe it's an agency under the new Charter, if that's adopted, that the Procurement Policy Board will be required to address.

Q Up until now, it hasn't been addressed in any central location; is that right?

A In the less than two years we have been in existence, no.

Q And prior to your existence it wasn't, either, was it?

A I can't answer that. Not that I'm aware of.

Q Now, over $10,000, as I understand it, there are two basic categories of what you would call in a competitive bid contract -- I don't want to say, simply, competitive, but competitive bid, services are handled one way and material and supplies are handled another way; is that right?
We are talking about service contracts that do not go to the Board of Estimate for approval?

Yes.

That's correct.

I'm talking about bid service contracts.

That's correct.

And what are the steps that are involved in bid service contracts?

Again, there are requirements of the law requiring advertising and the like, and those are under the current system, the procedures that are followed that are determined by each agency.

And in the case of these bid over $10,000 service contracts, the Corporation Counsel's Office plays a role, a review role along the way; is that right?

Those contracts are approved as to form by the Corporation Counsel's Office and those contracts also must be registered with the Comptroller.

And with contracts over $50,000, the Bureau of Labor Services gets involved; is that right?

A decision was made by the Mayor that we should be looking at the labor force of the people we do business with for the purpose of advancing opportunities for minority people, and the Bureau of Labor Services is...
the vehicle to do that.

Q I take it your answer is yes, the Bureau of Labor Services gets involved at that point?

A Yes.

Q The Department of Investigation also is involved at that point, is it not?

A The Department of Investigation, the so-called Vendex check and Vendex process, is for contracts over $100,000.

Q Now, the Corporation Counsel's review is prior to the award of the contract, is it not?

A They approve the contract as to form, so, yes.

Q Before it's awarded?

A Yes.

Q And the Bureau of Labor Services check and the Department of Investigations check are after the vender has been selected; is that not right?

A In the case of the Vendex check, some of the agencies have decided, in order to expedite the process to start the paperwork before, but, yes, the Department of Investigation check is only for winners, if you will, the person who is -- has been selected to receive the contract.
Q You just again referred to agencies on their own deciding to expedite paperwork. Does that mean that the decision to collect Vendex information from vender, from all bidders, rather than only from the person who receives the initial award of the contract, is made by an agency on an agency-by-agency basis, that's not a city-wide policy?

A At this time, yes.

Q Now, after the contract has been reviewed by BLS and DOI and now the determination, I take it, has been made that this vender is the lowest responsible bidder, there's yet another check on the contract and the contract process before the contract is actually awarded and the vender can start work, isn't that right?

A Are you referring to registration?

Q Yes.

A Yes, the law requires that contracts be registered with the Comptroller and the Comptroller has a process for registering contracts, so, yes, we comply with the law.

Q That process involves sending paperwork to the Comptroller with the checklist so people in the Comptroller's Office can go over it once again; is that right?
Those were services contracts that we were talking about. Supposing an agency wants to acquire material or supplies in excess not just of $5000, but in excess of $10,000; that, too, goes through DGS, the Department of General Services, Division of Municipal Supplies; isn't that right?

A Yes.

And in the over $10,000 cases, does DGS, to your knowledge, or DMS have more stringent requirements for the bid process, the minimum of bidders that must be selected, and various other aspects of the selection process?

Than for contracts under $10,000 or $5000?

Under $10,000.

If we are talking about contracts between 5 and $10,000, where the goods are purchased by DGS are contracts over $10,000, I don't know if DGS requirements are more or less stringent for those kinds of contracts.

Have you got supervisory jurisdiction over the DGS, DMS procedures or conduct in this regard?

That's a longer answer, if I may. It goes to the nature of and the role of my office in the City structure. So, if I may, I'll talk about that, if you
want me to.

Q I would prefer -- I think we'll get into that amply during the course of questions.

Do you or do you not at the moment have supervisory authority over the --

A Our office has general responsibility for contracting in the City of New York, and if there was a procedure at DGS that was inconsistent with appropriate contracting, it would be something that my office could address.

Q If it came to your attention, I take it.

A Of course.

Q You don't go into DGS and DMS and look and assess --

A At this point, my office has not done a comprehensive review, analysis, prepared any kind of guidelines or addressed in a comprehensive way as we have with RFP's bid contract in the City. If it came to my attention, yes.

Q At this point, for supplies, it's DGS acting as the contracting agent for the City, the process, in terms of BLS, Bureau of Labor Standards review and Department of Investigation review of the Vendex check and the Comptroller's registration of the contract; that
process is essentially the same whether it's services or supplies that are let by competitive sealed bid?

A Yes, those are all done with regard to dollar amounts, different dollar amounts kick in different requirements, and, yes, it doesn't matter if it's an RFP, sole source, a bid for goods, a bid for services. The rules are the same with the exception of the Bureau of Labor Services has different standards for construction contracts than they do for the purchases of goods and materials, and it is a higher number, and I'm not sure exactly what the number is. It's 1 or $2 million, I believe.

Q In fact, when we are talking about the kind of oversight review or checking up review, when you have very substantial contracts, in the case of $10 million services contracts -- equipment contracts, rather, or $50 million in another category, the Office of Management and Budget has to get involved again.

A The Office of Management and Budget gets involved because the Financial Control Board, a safeguard instituted during the City's fiscal crisis in the mid '70's, required their approval of contracts over $10 million. Few and far between.

(Continued on next page.)
So we have the Financial Control Board also getting involved in some major contracts; is that right?

Yes, in the dozen or so contracts over $10 million a year.

I understand the Mayor's Office of Contracts has had its most intensive work, or has devotes its most intensive efforts in all of these kinds of contracts, to the Request for Proposal, which we'll refer to as RFP contracts, and sole source contracts.

Can you tell us quickly what those contracts are?

In the case of Requests for Proposals, these are contracts where the selection is made, not based solely on cost, but there are other factors involved in the selection of the vendor.

You're interested in the experience; you're interested in the approach that that vendor makes to the problem, commonly used for architects, engineers, computer programming; generally known as consultants contracts.

Sole source contracts is a somewhat of a misnomer. It's more properly, I think, referred to as non-competitive contracts; a body of contracts where either there's a sole source, that is, it's a patented
good, you have to buy it from this supplier.

That may mean maintenance of certain equipment, or where the supplier has not authorized anyone else or you void the warranty, or something like that.

Or, in the case where it only makes sense to go to a contractor for the second phase of work. For example: You have hired an architect or an engineer to do a job that will be done in many phases. It very often doesn't make sense to go to a different architect or a different engineer to go to the second phase of the job, because the start-up costs, or the learning curve, for the second phase would be so significant that it wouldn't make any sense not to go to the original person.

So, that's a noncompetitive, commonly miscalled in the City, sole source contract.

Q These contracts, because there's a selection process which is somewhat more objective, have an even more complicated set of reviews, checks and steps that they go through; is that right?

A Yes. The law requires that those types of contracts be approved by the Board of Estimate.

Q And it's for that reason that there are more subjective elements involved, and the Board of Estimate
is serving to act as some sort of a check?

A I can only speculate. I did not write the Charter, but I speculate that that's the reason. But I wasn't there in 1975.

Q Isn't one of your office's main jobs right now to make sure that, by the time the contracts get to the Board of Estimate, that they have satisfied all of the potential requirements that the Board of Estimate might have, and that they'll go through the Board of Estimate and be approved without difficulty?

A That's the hope, but our job is to review the selection process and make sure that the selection process is proper, not only for the purpose of getting it through the Board of Estimate, but rather to make sure that it's done properly. It's not part of just this approval process. It's not just to make sure that it get through, but to make sure it's proper. And we assume it will get through if it's proper.

Q For purposes of making sure it's proper, your office reviews these types of contracts twice, with respect to RFP's; once when the proposal is being put out and the next time when a selection has been made as to a vendor; is that right?

A Yes.
In a sole source situation, of course, because you're not putting out a proposal, your office reviews the matter once; correct?

We review the selection only, that's correct.


-- Labor Services, and the Department of Investigation and the Office of Management and Budgets, and occasionally the Office of Operations, and various other oversight bodies, still have a role in the process; is that right?

They all have separate and distinct roles in the process, that's true.

Now, in addition to all of these -- and perhaps this is really one other vehicle or situation in which the contract methods that we've already talked about are applied -- I am thinking about construction contracts.

Does your office have any role in construction contracts?

Yes.

What is that role?

Within the Mayor's Office there's an office
called the Office of Construction, whose job it is to
work with the agencies and to make sure that their
construction projects move ahead as expeditiously as
possible.

This office reports to the Deputy Mayor for
Physical Planning and capital projects. We, in terms of
selection, our office approves the selection process of
those contracts, and we work with the Office of
Construction to make sure that they also have to approve
the selection process. They are experts in the area of
construction, and we work together on these kinds of
matters.

Q Now in this context, are you simply
reviewing the contracts or those portions of the
contracts which are awarded by RFP or sole source, or are
you also reviewing those contracts which are awarded
through bid procedures?
A The former; only RFP and sole source
contracts, not bid contracts.

Q Now, one of my questions is: How much
money, if you know, does the City spend by way of under-
$10,000 contracts or purchase orders which are entered
into by the agencies?
A I don't know.
Q Do you know who knows?

A I don't think anybody knows. One of the criticisms of the City that has been -- that came up during a series of studies of the City's contracting process that was going on between 1985 and 1987 by the Sovern Commission, by the State Comptroller, by the Institute of Public Administration, and by others, is that the City doesn't have a good handle on the number of dollars and contracts, and the City is working hard to address that problem.

The Comptroller's Office and the Office of Management and Budget are working on a computer system. We are gathering that information better and better all the time.

I see one of your witnesses is from the Comptroller's Office, and he can better address what that system, known as ICCIS can do. My office is developing a system which I assume we'll talk about, called Vendex, that is also putting together that information.

It's varied. It's a big, cumbersome process. It's a big cumbersome City with lots of different agencies, and it takes some time to put this together.

Q Mr. Copperman, I do plan to cover a lot of
these areas, but I am aware of the fact that we spent an
entire day together in a deposition not long ago, an on-
the-record interview, and I would like to be able to
cover these things step by step, and in much less than in
an entire day. So, if you could just bear with me and
answer my questions as we go along, I think all of the
topics that you are talking about will be addressed in
turn. I would just ask you to bear with me.

The second question that I have is as to
competitive services contracts. Do we yet have a handle
on how much the City spends, by way of dollars, in
competitively awarded sealed bid services contracts that
the agencies enter into?

A I do not know that number. Whether the
Comptroller's Office knows that amount, I can't answer
you.

Q And it's not the responsibility of your
office to gather that kind of data; is that right?

A The decision and the legislation which
required the creation of the ICCIS system, required that
the Comptroller and the Office of Management and Budgets
develop this system. In fact, the legislation was passed
before my office was created.

Q So your answer is no, it's not the
Q Now, with respect to the Department of General Services and the amount of money that they spend on requirements contracts, or contracts that are over $10,000 on material and supplies, who keeps track of how much money that involves?

A The Department of General Services.

Q With respect to the dollar amounts of contracts awarded pursuant to RFP's and sole source contracts, who keeps track of that?

A That would be part of this ICCIS system which will keep track of that information. We have approximations on those numbers. I know the amounts of contracts that -- when agencies come through my office for approval before it goes to the Board of Estimate, they indicate the dollar amount of those contracts, and I have those figures.

Q You have the data base in which you have been collecting information about all of those contracts; isn't that right?

A Yes, but that's not the contract as registered, and there may be some changes, either because the Board of Estimate has required some changes, which
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could mean some enhancements or some reductions in the
amounts of the contracts. Those numbers are not precise.
The only precise numbers would be the registered amount
of the contracts.

Q Do you know what the most recent fiscal
year's spending is, in terms of the dollar amount of
registered contracts in the City of New York?

A I believe it's in the vicinity -- I do not
know a precise number. I don't know if the Comptroller's
Office has a precise number. I believe it's in the
vicinity of six billion dollars.

Q I think you're just about right on target.
From the information given to us most recently, it was
6.4 billion dollars, but we were also informed that that
does not include spending pursuant to DGS'S requirements
contracts, which may be a substantial additional expense
not included in that figure.

Is the bottom line of all of this, precisely
what you were alluding to before, that people's
criticisms are well-founded that there is no one place
where contracting data is available in the City of New
York right now?

A Well --

THE CHAIRMAN: Can you answer that
question? If so I would ask --

A The criticisms were well-founded. The City has taken steps to address those criticisms. That's the best answer I can give.

THE CHAIRMAN: Can I ask the reporter to repeat the question, please?

(Read back.)

THE CHAIRMAN: What was the witness' response?

(Answer read back.)

THE CHAIRMAN: Will you expand on the witness' answer?

MS. CUSHMAN: Yes.

Q So, at the moment, there is no such body of information generally available, but there have been steps to move in that direction; am I correct?

A The information I am talking about is numbers, essentially; dollar amounts, numbers of contracts.

Q Now, can you please describe for us the steps the City has taken, that you were starting to get into a moment ago, and if you can do it in somewhat simple terms, it would be much appreciated by everybody.

I take it there's the ICCIS --
A Did you think I was going to do it in complicated terms?

I'll do my best.

Q If you would just address, first, the components; which agencies are trying to gather which kinds of data as you understand it, that would be a help.

A There are essentially three components. In the mid '70's the City went through a well-known fiscal crisis. As a result of that, a system was created called Integrated Financial Management System, IFMS. It's an accounting and budgeting system. It makes sure we have money there to pay our bills. It's not a management information system.

We did not -- in the mid '80's, when it became clear that we did not have the kind of information that you were just alluding to; number of contracts, which contracts were awarded pursuant to which section of the City Charter, all kinds of bid information, because none of that is important from an accounting and budgeting standpoint, some legislation was passed by the City Council in, I believe 1986, Local Law 52 -- I think it's among your exhibits. I am not sure if it's '85 or '86 -- which required the creation of a data base which pulls together some of this contract information;
information on the contract, how it was awarded, with whom it was awarded, and that's what this system, Integrated Comprehensive Contract Information System -- ICCIS, that was the next step in this.

Q  Who does ICCIS?

A  ICCIS is being put together by the Comptroller and the Office of Management and Budget. The final step in this whole piece is this system called Vendex.

Vendex is a system that my office is putting together, and the distinction between ICCIS and Vendex is that the Vendex system focuses most closely on the contractor; who are we doing business with? That's not exclusive, but let's me tell you some of the pieces of Vendex.

Vendex has been referred to a number of times, this background questionnaire which must be completed by the vendor; both the business and principal of the company. There's performance evaluation also in Vendex. There's something called the consolidated caution list; information on, most simply, has this vendor been debarred; that's part of this system, or do we have any other information which agencies should know about besides debarment. I won't go on with that,
because I see that --

Q I would like to go into Vendex a little bit later, but since it's information relating to the contractor --

A Can I finish describing the system?

The Vendex system will also coordinate all of the other contract information systems in the City so there will be a central management system. Vendex will bring together information that we have put in to the system; background information, contractor performance, et cetera, and also draw upon the information ICCIS brings to the system, and also this system called CLIPS, Commodity Line Item Purchasing System, I believe it is -- it will draw on the CLIPS system and also draw on a system being developed by the Mayor's Office of Construction, which has information about construction related contracts.

Vendex brings all of these things together so that we'll have a comprehensive management information system in the City.

Q The one piece, in terms of comprehensive management information as to contracts, that I did not hear you talk about in this universal system, was those contracts let by agencies which are not on the ICCIS
Are there such contracts under-$10,000 purchase orders, in agencies, for example --

A No. You're correct. ICCIS will only capture those contracts registered with the Comptroller. So that under-$5,000 contracts, in the case of consultants -- well, I take it back. All consultant contracts will be captured, because those have to be registered with the Comptroller.

We are talking about purchases of goods of less than $5,000, I believe, are the only thing that will not be captured on the system.

Q What about elevator maintenance contracts?
A In excess of $10,000?
Q No, under $10,000.
A That will not be captured by the system.
Q So, services such as roofing repair, elevator maintenance contracts, things like that, which are service contracts under $10,000 let by the agencies, and supplies, equipment and supplies under $5,000, which are let by the agencies, will not be captured in the universal system; is that right?
A That's correct.
Q Is there presently anybody thinking about a
uniform agency-to-agency management information system
which will enable agencies to follow the same procedures
and gather the same data, and be able to generate similar
reports to interpret the data with respect to those
contracts?

A The same procedures?

In terms of procedures, again assuming the
Charter is adopted, there will be uniform Citywide
procedures for those contracts.

Q I am talking about data collections.

A There is no plan at this time, to the best
of my knowledge, to collect data on those particular
types of contracts.

Q And in developing the Vendex system and the
CLIPS system and the ICCIS system and the IFMS system,
have various agencies in the City taken primary
responsibility for those systems, independently of each
other, or has there been one mastermind trying to set up
the whole thing in one fell swoop?

A These were created at different points in
time and with different purposes. IFMS was created 15
years ago. ICCIS was developed pursuant to legislation
passed by the Council. CLIPS was created by the
Department of General Services, primarily to serve their
Vendex is the system which brings these things together, and that was done -- all of these systems involved are from talking to others people. Nobody did these things by talking in a vacuum. There are agencies, including my office, that were involved in developing that system.

My office, as the developer of the system which tries to bring all of those together, has extensive contacts with the agencies and those other oversight agencies. There's a meeting in my office virtually every Wednesday morning to discuss different aspects of Vendex and of the Vendex system.

Q So, in terms of primary responsibility, because they have come up at different points in time, and to serve different needs, they have arisen under the primary jurisdiction of different agencies, and now you're trying to pull it all together; is that correct?

A That's correct.

Q But still, this universal system is not going to be designed to, for example, capture or be able to audit, or pick up easily to detect instances where agencies have let multiple service contracts for just under $10,000; instances where agencies have let a
service contract and then three months later, another
service contract to the same person, and perhaps even a
small consultant contract to the point where the person
is now sufficiently invested in a particular job that
he's the only logical vendor to finish it up, along the
lines of --

A That would definitely be picked up in my
office in the review of the selection process. And one
of the questions we ask, and one thing that's part of the
Vendex system, is prior contracts with the City. We'll
have that information.

Q Even if they are small?
A Even if they are small.
Q But the other kinds of contracts, the sorts
of buying three sets of refrigerators for just under
$5,000, or buying elevator maintenance contracts in
three-month intervals for $10,000, that kind of thing
wouldn't be picked up; is that right?
A All of these things are part of the IFMS
system in a cumbersome way, and I don't know if the
Comptroller's Office has a method for picking up those
types of things and making a determination whether, in
fact, there has been abuse of the system, or whether, in
fact, these are three separate and distinct contracts. I
don't know the answer to that question.

Q You mentioned a moment ago your office's review of the RFP and the sole source, and the fact of the kind of abuse I inserted in my most recent question would be picked up in that.

Could you turn to Exhibit 7, please, in the book in front of you?

Is this the processing questionnaire used within your office to review RFP and sole source contracts?

A Yes.

Q Now, this questionnaire is a number of pages long, is it not?

A Yes.

Q And it contains several sections, each of which is designed to serve -- or to fall into place at a different point in the process, or with respect to a different aspect of the process?

A Yes.

Q The first page looks as though it could be filled out right on the document, and sort of track the document and tell you where you're supposed to go.

A Yes.

Q Section B, on the second page, for proposed
RFP's or RFQ's, which I take it is a Request for Qualification; is that correct?

A Yes.

Q Section C for sole source, Section D for the actual contract after the RFP process has been completed, and on and on throughout this questionnaire, these look as though they are discussion-type questions where there will have to be some type of an essay answer in response to, say, Question 1 or Question 2; am I correct about that? Do you collect more essay-type answers in response to --

A In response to some of them. Question 4 asks for the date of the proposed issuance, and that's merely a date. In some cases, you're correct --

Q "State the scope and objective of the proposed" --

A That's correct.

Q You get a paragraph or two in response to that?

A Yes.

Q "Discuss the need for the proposed contract"; you get a paragraph or two in response to that; is that right?

A Yes.
Q The agency goes through their own internal process in accordance with their own guidelines, and sends it off to you?

A That's correct.

Q And this is a cover sheet to the package they send to you?

A This is in the case of a proposed RFP, they would send this questionnaire. In the case of agencies that could do a significant amount of RFP's, they have this on their word processor. We do not see this form, but we see Question 1 with the space, and it's all part of this system, but they would send us this questionnaire as they have redone it, and they will also send us the RFP.

Q I understand that your office has just issued, this past month, standard RFP guidelines which are to be implemented by all of the agencies.

A By all Mayoral agencies, yes.

Q My question has to do with prior to the time those guidelines came into effect. In fact, are they in effect yet?

A Yes, they are in effect.

Q If an agency was going to award a contract pursuant to an RFP, the Charter requires that that agency
have its own guidelines; isn't that right?

A Yes.

Q Was your office looking to see whether the agencies were complying with their own guidelines, or were they looking for some other information?

A In January of 1986, the Mayor created the Contract Review Committee, which was one of the functions which came to the Office of Contracts when it was established in January of 1988.

The Contract Review Committee has been, at times, using this form, at times using a prior form, but essentially asking these kinds of questions, for the past now, well over three years, and a body of common law, if you will, has developed what is the appropriate conduct in different cases; how much time should there be between the date of the issuance of an RFP and when the proposals are due; what kind of criteria are appropriate; who should be on a selection committee; all of these things are now codified in the guidelines and some changes made, but essentially codified that history into the guidelines, and that's what the Contract Review Committee, and now my office, is going to do.

Q My question to you was whether your office was looking to see if the agency personnel were complying
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with their guidelines --

A No, we do not.

Q So, what you have been doing, and the Contract Review Committee before you has been doing, if I heard your answer correctly, is developing, on a case-by-case basis, applying some variation of these questions or criteria that are in this questionnaire, your own common law of RFP procedures?

A I can't tell you whether, prior to my assuming responsibility for this function, the Contract Review Committee approved the guidelines of the agencies, and what that interaction was. So the answer to your question is -- without knowing that fact, the answer to your question is yes, we have been looking at our requirements.

Q Did you not try to find that out when you took over for the functions of the Contract Review Committee?

A No. I did not try to find that out.

Q Did the Contract Review Committee have its criteria spelled out, in any written way, that it had provided to the agencies?

A There were some writings more about the process and how you bring things to the Contract Review

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Committee, rather than the kinds of things the Contract Review Committee is looking at, although you should understand that the Contract Review Committee, in my office, deals generally with a set of 10 to 12 to 14 agencies on a regular basis.

Last year we reviewed approximately 1800 items, and lots of them were with the same agencies over and over again, and so there are no mysteries here. The agencies know what we are looking for, and they know how they should be pursuing it.

Q At least now, you have all figured out what you should be looking for and what you should be pursuing, but at the beginning it wasn't clear; is that right?

A In January of '86?

Q Yes.

A It was very clear. This is all new -- from what people told me of the history, the City was reacting to a situation, a very, very serious situation. It was acting as responsibly as it knew how to act, created the structure of reviewing the contracts, and the people who were involved in the Contract Review Committee were trying to assess what needed to be done.

Q But until you put forth the RFP guidelines
on September 2, 1989, the specific steps that you
expected agencies to be going through, and the specific
criteria that you were going to apply in evaluating
whether all of this information met your standards of
review, none of that was written down and sent to the
agencies; is that right?

A You're right. It wasn't written down, but
it was, for the most part, known to the agencies. Those
guidelines were developed in conjunction with the
agencies. They weren't developed in a vacuum. There
were no secrets here. There were no mysteries or
surprises.

Q In your judgment, that was sufficient?

A No. It wasn't sufficient. That's why we
wrote guidelines. It's better to have guidelines, there
is no question about it.

Q Now, who looks at this questionnaire in your
office? Who actually reviews the paper?

A The questionnaires come into the office.
There are two analysts, and we have divided the agencies
between the two analysts. They do the initial review.
They have a supervisor who meets with them, or who also
reviews the paperwork, who goes over -- they discuss
together what issues to pursue with the agency, what
questions are not clear, what else needs to be done, and that takes place.

Then finally, I have a meeting with all three of them, along with the Deputy in my office, so there are five of us, where I review an agenda and a memorandum. And the memorandum either says where there are problems with a particular submission, or for every sole source it describes the situation. Every sole source contract is addressed.

That memorandum is reviewed by myself, discussed with these people, and forwarded on to the First Deputy Mayor, who does a final review of these contracts.

Q Now, this --
A This is a process that it takes. It happens in less than 10 days.

Q Let me make sure I understand you correctly. For RFP contracts, the analysts go over it and they are supervised by the Deputy who is in charge of the office?
A No. they are supervised by their supervisor. The Deputy and I then meet with them to go over their review.
Q And on RFP contracts, you, yourself, don't
go over them one by one, but on sole source contracts you do?

A On sole source contracts, each one is addressed in the memorandum. On RFP contracts, either the issuing of the RFP or the selection are not always addressed in this memorandum, although they are in an accompanying agenda which is a computer printout of every item we have been asked to review. And now, if we review them, they can be calendared at the Board of Estimate.

I see the agenda and review it, and ask questions about most of the items on that agenda.

Q It's basically a list of what the agency is and what the contract is; summary information about the contract; is that right?

A Yes, a computer printout of the agency, the contractor, if it's a 349, which section of the Charter the contract is being awarded through, the dollar amount of the contract. And then there's a code for the type of contract, whether it's an RFP, a sole source, an amendment.

Q Summary information?

A Summary information.

Q These analysts who are going over the actual paperwork, what are their backgrounds?
A They are both -- a young man and a young woman in their mid-twenties who are college-educated, who have had prior work experience; one worked in a bank -- I think they both worked in banks, although I don't recall because it has been a couple of years since we've hired them. And they are analysts just like analysts used around the City all the time in various functions, and in many other places, all the time.

Q Do either of them have a contracting background?

A Neither one of them does.

Q Does either one of them have contracting training?

A Have they received training since starting with our office?

Q I mean, apart from the on-the-job training --

A Have they gone to any of these courses, no, they have not.

Q What about yourself, by the way? What is your background?

A I graduated from law school, Boston University in 1972. I worked for the Greater Boston Legal Services, which is the civil legal services program.
in Boston, from 1972 to 1980, both as a staff attorney in
Dorchester, which is a part of Boston, serving low income
people in a variety of cases; landlord-tenant, welfare
cases, a few cases in Federal Court on different issues.

I spent the last four years in legal
services between 1976 and 1980, when the type of legal
services was expanding and new offices were being
created. And I was involved in managing a new office in
a town called Quincy, which is really in the south of
Boston --

Q Excuse me. I am really looking for
background which is pertinent to what you're doing today.

A This is all pertinent to what I'm doing
today.

I spent four years creating new offices,
establishing new offices, developing systems within
Boston Legal Services, and how we do our intake and
understanding the system.

I left there and spent two years at the
Kennedy School at Harvard, and received a master's in
public administration.

In 1982, I started work for the City, and
spent three legislative sessions in Albany as a lobbyist
for the City, working on a wide, wide range of issues.
I then spent two years in the Mayor's Office of Operations as one of the Deputy Directors, one of four Deputy Directors in that office, again involved in a whole range of issues relating both to specific agencies and also Citywide issues; employee safety issues, involved in the voter registration process; a variety of different issues in that office; insurance. And in 1988, I assumed this responsibility as Director of this office.

(Continued on next page.)
Q Did you have any specific contracting background before assuming the responsibilities of Director of the Mayor's Office of Contracts?

A Well, as a lawyer, yes. As someone who worked with agencies who had contracts when I was at the Mayor's Office of Operations, yes. As someone who created offices for Greater Boston Legal Services and there were a number of contracts involved in that, yes. So that is the kind of contracting experience that I have.

Q Are you yourself a member of any of the professional organizations which relate specifically to government contracting?

A I'm a member of American Bar Association, the Public Contracts Section of American Bar Association.

Q That's the section of ABA which has developed the Model Procurement Code; is that right?

A Yes.

Q When did you join that section of the ABA?

A Some time after taking this job.

Q After taking this job, did you join any of the other specifically procurement related or management related professional associations?

A No. If I may, when I was selected for this
job, I believe, although I didn't hire myself, I believe that what I brought to this job was not my knowledge of specific contract experience. But, rather, what I brought to this job was an understanding of the City, an understanding of how the City works, an understanding of who the players are in the City, good judgment and good experience, like very many people.

We all know people who have jobs where they did not have that specific experience, and whether it's the new head of the American Stock Exchange, who doesn't have a financial background, or the former commissioner of baseball, who was a university president, we bring different things to a job. I brought my experiences to this job, which were not contracting experiences.

Q I understand that. What I would like to do is get back to the question of your analysts. I'm wondering whether your analysts themselves have attended any of these courses or joined any of these professional organizations?

A The two analysts which you have referred to have not. The deputies in my office -- when I created this office -- and recognize that I did not have the kind of background that you're alluding to -- the deputy in my office has extensive contract experience in the public
sector, worked for various hospitals in the City in the procurement area, worked at the Convention Center in the area of procurement, and has fifteen or sixteen years of background in this area. The deputy who is responsible for the -- the assistant director responsible for guidelines has extensive contract experience with the Transit Authority. So I brought people into the office who have that kind of experience. Those two analysts who you are referring to, do not.

Q Now, in this respect, you described that your office had inherited, in a sense, the duties and the responsibilities of the Contract Review Committee, and you described the Contract Review Committee as having established and beginning to find its way in its task as a result of everything that happened in 1986. Can you tell us what you're referring to by that statement?

A The scandals at the Parking Violations Bureau involving City source and the --

Q So the Contract Review Committee and that portion of the Mayor's Office of Contracts which is involved in the step-by-step review of the RPF process is a direct response to the corruption scandals that the City experienced; is that right?

A It is both a direct response and it is, by
all accounts, by everybody who has reviewed the workings
of that Contract Review Committee, and I believe the
workings of the Contract Review Committee, good
management and a good practice.

Q Are you familiar with the New York State
Comptroller's Office audit that was issued in September
of 1986 which looked at New York City's contracting
procedures?

A I am familiar both with that audit and the
follow-up audit that was done a year later.

Q Did those audits not suggest that the
Contract Review Committee was not using sufficiently
specific criteria and not documenting its decision making
process sufficiently to satisfy the State Comptroller?

A The initial audit in 1986 absolutely
suggested that. The follow-up audit done in 1987
indicated that we corrected that problem and indicated
that the City had adopted over 90% of the recommendations
of the State Comptroller. The recommendations not
adopted went to the Board of Estimate. So that the City
adopted State Comptroller's recommendations.

Q Is it your sense that the City did adopt the
State Comptroller's recommendations completely?

A The State Comptroller said we did.
Q I would like to go to some of the other functions of Mayor's Office of Contracts, and in order to do that --

A I want to make that clear. On December 8, your Exhibit 18, 1987, when the Mayor's Office of Contracts was created, the State Comptroller said, and I wish to quote, "The initiative the Mayor is announcing today to establish an Office of Contracts is a good step towards establishing a sound framework for managing a City contract process that spends over $5 billion a year, almost one-fourth of the entire City budget.

In my 1986 report, I noted that there was a virtual vacuum of reliable data, procedures and documentation with respect to the approval of more than $2 billion in non-competitive contracts awarded annually.

Based on my follow-up study, the City appears to be providing much better oversight in the contracting process."

I believe in that, again, he commend -- he goes on to commend the Mayor, the City Council and the Comptroller for establishing a comprehensive contract information system. When it is in place, the City will finally have access to essential information on the number and dollar value of contracts awarded, with all of
the improvement in the existing contract process evidenced by follow-up review. I think the people of the City of New York can be assured that their tax dollars are being well spent.

Q Mr. Copperman, you're referring to a press release, are you not?

A We can talk about the audit, too, if you want.

EXAMINATION CONTINUING

BY MS. CUSHMAN:

Q Let's move on. What I would like to talk about now is the other functions of the Mayor's Office of Contracts.

A I wanted to make sure it was clear where the State Comptroller was on this particular issue.

Q We will come back to that later. I understand that the State Comptroller, when your office was set up, said that that was a step in the right direction.

A He said that the City had complied with over 90% of his recommendations in a 1986 audit.

Q We can review the documents at a point when we have all the documents in front of us.

What I would like you to do now is turn to Exhibit 31.
A Yes, I have it.
Q What I would like to talk about is the Mayor's Office of Contracts as all of it's functions have evolved. This document is a summary, is it not, of the work of your office and the responsibilities of your office?
A It is both a summary of the work of my office and includes some notations of where the office ought to be going over the next -- in the next period.
Q In --
A It assumes that the Charter Revision is going to be adopted and how we might want to deal with Charter Revision's changes and begins that aspect of those discussions.
Q Now, the first statement that I see is that your office plays a central role in New York City contracting policies and procedures; is that right?
A That is the first statement.
Q Okay. And the components of that central role, I take it, involve contract review, which is referred to on the second page.
A Yes.
Q Procedures, development and training, which is referred to on the second page and going on to the
A Yes.
Q Vendex.
A Yes.
Q Which is then discussed with its different phases. Contractor performance evaluation, which is discussed.
A Yes.
Q Vendor relations, human services agencies, that's the task force and human services contracts; isn't that right?
A Yes.
Q And then a variety of other contracting issues which have to do with things like the South Africa rider or private collection agencies' contracts, particular issues; isn't that right?
A In very broad strokes, yes, that's the general topics of this. Within each one, there are some discussions, yes.
Q Now, the individual reviews of the RPF and sole source contracts were, at the time your office was created, already being done by the Contract Review Committee; isn't that right?
A Yes.
Q And Vendex was already, at least in its early phases, being developed by the Department of Investigation; isn't that right?

A The Department of Investigation had undertaken some studies. There was no RPF done. My office put together an issue on RPF and has awarded the contract and is now managing the work. So, yes, some background information had been done.

Q In fact, when Vendex was first created or when the idea of Vendex was first surfaced, it was thought to be a DOI function, was it not?

A It was initially envisioned more as a corruption investigatory tool. Now it is evolved into a comprehensive management information system which clearly and most definitely and very importantly includes the DOI component, if you will.

(Continued on the next page.)
Q And the Task Force on Human Services is something that had already been set up by the Deputy Mayor and was in place at the time --

A Well, as you see, it was established in October of '87. So while it had been the Deputy Mayor and the Executive Vice-President of the United Way had agreed to do this, the work -- very little of the work had been done, and our office is now taking that forward, yes.

Q And the vendor relations aspect, basically, prior to your office coming into existence, vendors had gone to various agencies, or some vendors had complained to the Mayor's Office, where there really was no real Office of Contracts, with regard to problems with contracts. Your office is now taking that over; is that correct?

A That's correct.

Q These other miscellaneous issues, the South Africa rider and these various other contracts issues, those had all been dealt with in some way or another by other contracting agencies or the Mayor's Office --

A The City did and does its business before the Office of Contracts was created. As issues came up, there had to be a way of addressing those issues, and of
course, if there was an issue relating to South Africa that arose before 1988, the City didn't say, let's wait until we have an Office of Contracts. Of course these issues were addressed.

Q    Is it fair to say that, with the exception of the development of the uniform guidelines which your office has been attempting over the last year and a half, your office has for the most part simply collected in one place, things that had already been in progress in other offices, done by other people, and were now just being brought together under one roof?

A    Well, I don't agree with the characterization "attempted."

I think our office has achieved a tremendous amount in a very short period of time. It goes well beyond "attempted," and has brought to fruition a number of successes.

Yes, we did incorporate some activities going on in the City, but these were the activities -- this is the essence of what both the Sovereign Commission, the IPA, the State Comptroller, this is carrying out exactly what they suggested; that the City needed to bring these different functions together.

Of course, these functions were going on
before. The City needed to bring them together so that we could begin to have a comprehensive look at the City's contracting processes. When it was fragmented in the way it had been, this couldn't go on. So it's fair to say --

THE CHAIRMAN: Excuse me. I would like to ask the reporter to read back the question.

I think you have gone far beyond the question.

(Read back.)

THE CHAIRMAN: Can I see if I can understand your testimony?

I take it that that part of the question that he relates to your collecting a lot of things that were taking place, or had been taking place in City Government prior to the establishment of your office, is now part of your office; correct?

THE WITNESS: Correct.

THE CHAIRMAN: I take it that, in addition to collecting what had been in place, you developed uniform guidelines --

THE WITNESS: Correct.

THE CHAIRMAN: Aside from collecting what was in place and developing uniform guidelines, what else has your office done?
THE WITNESS: The act of doing that, the act of having a central place for the City to deal with contract issues, can be referred to simply as collecting a lot of different things and putting them in their place, but it doesn't seem to me to focus on the tremendous value of doing that. And so what my answer tried to do, was to try to make sure that it was clear that there was value in doing that.

In terms of other specific things that have been collected into the office, focusing on different issues, focusing on South Africa, again these were dealt with before.

THE CHAIRMAN: Putting aside the judgment on the value of what was done, just remove that from the equation.

Aside from collecting all those facets in place before the creation of your office, and developing uniform guidelines, what additional steps, if any, were taken?

THE WITNESS: The other major thing that our office has done is, on behalf of the administration, we were the lead agency office having to do with Charter revision. I spent an
enormous amount of time, as did other people in the City -- I surely don't mean to take full credit or blame, as the case may be, for the administration's position and our involvement in the revision, but I know that it was our office that was primarily involved in that specific responsibility.

THE CHAIRMAN: Developing uniform guidelines, relationships with the Charter Revision Commission, and bringing together a lot of different things that were happening at the time of the creation of your office, is essentially what you said?

THE WITNESS: That's correct.

BY MS. CUSHMAN:

Q Mr. Copperman, I would like to go back to a question you were asked in our offices the other day, and that is: What is your view of what the mission or the mandate of your office is? And if you can do that without -- you know, in a few sentences instead of, you know, in a page and a half, it would be helpful if you could boil it down to its nugget?

A Most simply said, it's to do the things we've been doing. Generally stated, it's to provide the
City with a comprehensive approach to contracting. That's what our office has begun to do. I believe most simply stated, that that's the purpose of our office; a comprehensive approach to contracting with the goal of obtaining goods and services at the best price and in a fair manner, and following a fair process as much as possible.

Q When we discussed this in our office, the three things you mentioned initially were, that you were to implement the IPA report, the report of the Institute of Public Administration; you were to gather information in some consistent uniform way, by which, I gather, you were referring to the Vendex project; and you were to deal with vendors.

As we continued in our discussions about the IPA report, your emphasis was, throughout the discussion, on the RFP and sole source aspects of the IPA report.

Do you take issue with that at all?

A I think I may not have, when we did the interview in your office, stepped back enough to give you the kind of broad answer that you want, that I believe you were seeking then, and so I'll try to give a broader answer at this point in time, but I don't believe that's necessarily inconsistent. It was to carry out the IPA
report, and to do all those things I was saying.

Q And as we were discussing particularly the IPA report, your focus was particularly on the need to develop guidelines in the RFP and sole source area; isn't that right?

A That's the focus of the IFP report.

Q You mean the IPA report?

A The IPA report, yes, and that's the focus of all the studies that have been done.

If I may -- if I just might for one second:

The Sovern Commission report, another group that also looked at contracting in the City of New York, among other issues, headed by Mike Lazar, if I can just quote from him on why our office focused on RFP's:

They said, the system of competitive sealed bids raises few questions of law, and fewer issues of corruption. Greater attention must be paid to other areas of contracting.

This is the documentation I looked at when I was given this responsibility. This is the kind of thing I looked at.

Q I would like you to turn, if you would, to Page 21 -- Exhibit 21, rather, which is the management summary of the IPA report, and I would like you to turn,
if you would, to the recommendation summaries which begin
at Page 7.

A Yes?

Q Recommendation 1 is: The Commissioner of
each line department should appoint, at a top managerial
level, a chief contracting officer with extensive
experience in professional experience with contract
design and contractor selection processes.

Has this been done?

A This has been done -- yes and no. More no
than yes.

At the Department of General Services this
has been done. There's a chief contracting officer at
the Department of General Services, probably the most
important contract agency in the City.

In other agencies, there has been some
centralization of the contract function. No, not at the
level, the top managerial level as suggested by the IPA
report.

I would say now, with hindsight, and having
thought about this extensively, especially with these
hearings coming up, that if I had to do it all over
again, I would have pushed the agencies harder on this.

I would have focused more on this particular
recommendation and tried to make it happen.

My thinking was, that we needed the
guidelines that we have now produced. We needed at least
an initial set of guidelines in place before we could, if
you will, impose this upon the agencies. I am not sure
that that's wrong, but I think that, in hindsight, I
would have done it differently. There was enough
information, a body of information where this could have
happened, and probably should have happened, more
extensively through the dozen or so contract agencies --

THE CHAIRMAN: I take it from what you have
said, that you consider this recommendation, and
I'll read it: The Commissioner of each line
department should appoint, at a top managerial
level, a chief contracting officer with extensive
experience and professional commitment to contract
design and management in the contract selection
processes.

I take it that you consider that a very
important recommendation?

THE WITNESS: I believe all the
recommendations in here are very important. Yes,
I do.

Q The second recommendation is: There should
be a sustained effort to build widespread professionalism for contracting activities among program managers by recruitment, training and clarification of contract management responsibilities.

Has this occurred?

A Yes. I mean, you heard yesterday from the panel of agencies that were here, the training that's going on in the agencies.

I can amplify that: The training going on in the agencies is primarily on the procurement side, if you will, and not contracts that go to the Board of Estimate.

In addition, my office, through its involvement with the agencies through the Contract Review Committee to the development of the guidelines, has involved a significant amount of training, not classroom training, but training in clarification of responsibilities.

That's what those guidelines are about, and now that the guidelines are out, we have planned training. Training is scheduled on those guidelines and the implementation of those guidelines, and all the essential elements of those guidelines.

So I believe that, to a great extent, this
has gone on in the City. I cannot take credit for all of it. I don't seek to take credit for all of it. The agencies are doing their job.

Q When we talked last week and you answered questions along these lines, your answer was somewhat different. What you were saying at that time, was that the training that goes on in the agencies is enough that the agencies are orienting their staff to what they need to do on a day-to-day basis; that your office has not done anything to encourage other City employees who have a direct contracting function to become certified by any of the professional associations; that the training that you envisioned as a result of the guidelines on RFP's that you had promulgated, was essentially gathering these people together and instructing them on how to implement these guidelines, rather than any other kind of professional training.

Is your answer now different than it was a week ago?

A I don't think that answer is consistent. These guidelines address all the kinds of issues that go into the role and responsibilities of Contract Managers. It talks about the selection process, it talks about how to put together a bidders list. It talks about how to do
a price and cost analysis. It addresses all the kinds of
issues I believe you're referring to.

These are all contained in the guidelines.

I don't know which exhibit they are.

Q There's an exhibit in here that is an
excerpt of your RFP guidelines. I believe it's Exhibit
17, and there's a table of contents.

A It's not 17.

Q It's Exhibit 19. There's a table of
contents.

A Yes.

Q And if you look at the table of contents, it
becomes clear that you are talking primarily about
contracting by way of Requests for Proposal --

A Absolutely.

Q -- that you have left room for future
guidelines for noncompetitive contracts over $10,000;
that you have left room for service contracts by way of
competitive sealed bids. But there is not a general
central Contract Management function and professional
criteria set forth for Contract Managers.

A No. That's not correct.

Q Tell me where I am wrong, please?

A Part 16, these guidelines, as I recall, are
general -- they are called general contracting procedures. The four sections are key contracting personnel, the presolicitation review, development of specifications, price analysis and cost analysis.

These sections apply to all kinds of contracts. Part 2 are contracts via RFP's. Part 3 is noncompetitive, et cetera. The general contracting procedures, both the structure within the agencies and just good contracting procedures, are addressed in a general way in these guidelines, and don't relate just to RFP's.

Q Is it your testimony, therefore, that the Contract Managers and the chief contracting officers, which these guidelines now require the agencies to put in place, are people who are going to address the full range of contracting issues in each of the agencies?

A No. They all have different responsibilities for contracting issues in the agencies, and the training sessions are not limited to the two groups you identified.

Q You have now called for the appointment of a chief contracting officer, and you have now spelled out some duties and responsibilities of Contract Managers, and things like that.
Public Hearing

Are you addressing here the people who will do all of the contracting functions in all of the agencies, or are you addressing here the people who will be responsible for RFP contracts?

A These guidelines seek to address the different contract functions in the agency. They do not address the competitively bid contracts for goods. We felt that that was very separate, and very distinct, handled by the agencies separately.

We sought to address the other primary aspects of contracting in the City, so that these particular four chapters that I read, the general chapters, are to address all aspects of contracting except for the bid for services, the supplies -- I am sorry -- except for the goods and supplies kinds of contracts, yes.

(Continued on next page.)
Q Everything except bids for the things that DGS handles?
A I don't want to be caught in semantics.

These guidelines are to address the following items:
RPFs, non-competitive contracts over 10, service contractors over 10, renewals, extensions and amendments. These guidelines will address all of them.

The first four chapters of these guidelines, part 1, are not just focused on RFP's, but, rather, are focused on those four types of contracting in the City, which, taken with bid contracts, is the primary way we do our business.

Q But they still don't address the full range of contracting duties and responsibilities, either within the agencies or throughout the City as a whole; is that right?
A They don't address emergency contracts, they don't address contracts for under $500; absolutely correct, absolutely.

Q And they don't address under $10,000 bid contracts and they don't -- so that the responsibilities of the chief contracting officer, as you've outlined them in this document, which is your thinking to date, doesn't encompass the whole range of contracting faced by even
any one agency; isn't that right?

A    I don't believe that chief contracting

officers in the agencies are going to be particularly
worried about the immediate need for an easel, the $250

easel that has to be purchased. Our attempt was to find

the areas of contracting where the City does its most

business, where there is the most opportunity for

judgment, for corruption, if you will, for abuse of

judgment, for -- where there is a need for education,

training, et cetera, and that is what we decided to focus

on first. That seems to me to be a logical decision.

Q    Let me move on to another recommendation of

the IPA report. It was that it is recommend -- it is

Recommendation 4, that a contract policy advisory panel

should be appointed by the Mayor, and that it should

include at least three outside experts representing

experience in public contracting and knowledge of the

City, that it would be staffed by what turns out to be

your office, that it would review draft guidelines, and

it would propose policies to the Mayor.

The explanatory language following it does

say that it would be a temporary body, pending Charter

change, if necessary, and that it should provide the

Mayor and the First Deputy Mayor with continuing expert
advice during the crucial period of developing the city-wide guidelines.

That panel has not yet been appointed, has it?

A That panel has not been appointed.

Q And your office was to have taken the initiative in appointing that panel; am I correct?

A That's correct.

Q Can you please explain the reason for not appointing that panel?

A The purpose of the panel, as I saw the purpose, and I think it's clear from this recommendation, was to get the assistance and advice of outsiders -- people who do business with the City, experts in public contracting -- to get their expertise and bring that to bear on these guidelines.

I believe we have to recognize the time period that we were in. The initial draft of the guidelines was in April of 1989. The decision on the Board of Estimate, the Morris decision, was -- decision was made by the Supreme Court on March 22nd of 1989. It became very clear, very early on, that the structure that the Charter Revision Commission was going to propose included this Procurement Policy Board. That has been a
part of their proposals from the beginning. There's been some changes, but the essential structure that was -- that came out in the first draft and even -- well, in the first draft of the recommenda-tions -- I believe from the chair it was the first draft -- had this structure in place, it hasn't changed.

Discussions were going on with people about being on the panel, but as it took us a little longer than I had hoped, than I had anticipated, to get out the next draft of a set of guidelines, and as I became more involved with Charter Revision and as we moved into the summer, when it became clear that we didn't -- that we knew there would be a new Comptroller -- I don't remember when the Comptroller made his announcement, but I think it was fairly clear to all of us involved in this that he was not running for Comptroller and that there might be a new Mayor, that to go forward with the contract advisory panel did not seem to be a wise decision, that we were getting the benefit of that policy -- we were getting the benefit of outsiders, because I did circulate the guidelines to many people, many of them outside of the City structure, social services agencies, one of the drafters of the Model Procurement Code, and to many, many others. We were getting that expertise.
To bring people onto a panel and to bring their knowledge to bear on this when it would be -- when it may be only for a temporary period of time -- I'm assuming Charter Revision is going to be adopted -- it would be only for a very short period of time because there would be a new Comptroller.

There, in all likelihood -- or there may have been, I shouldn't say in all likelihood, I apologize. There may be a new Mayor, and it seemed to me not to be wise, good judgment to bring these people in at that time to leave a set of guidelines. We left these as guidelines. We left these as is.

I assume the policy board will accept them. They know the process we went through and they will accept them. It didn't seem necessary to do this at that time.

Let me add one more thing. By your comments to me and by comments to other people, the guidelines are excellent. No one has said these guidelines are not a very, very good job. So that we did do a good job and we did a good job without having this specific panel in this structure in place.

So I take it that what you are doing is consulting on your own with outside experts, selecting
among the things that they say, implementing them in a
guideline and putting out guidelines which are based in
large part on material that's already out there; it's the
ABA report, and various others, the Model Procurement
Code and a variety of other things that are already --

A Yes, many other things, City experience,
yes.

Q But all of the things that are specific to
RPF guidelines, by and large, were out there in the
marketplace before you came in to redesign the City's
contracting system; is that right?

A If you are asking me did we draw upon
experiences of the Model Procurement Code, which took
years to put together, and did we draw upon experiences
of the federal government and other state governments and
other municipalities, of course we did.

Q And all of that was new to you when you
arrived in the job, you didn't know anything about the
Model Procurement Code and about the National Institute
of Government --

A I didn't. Many people in my office did.

Q I would like to talk just for a moment about
Vendex, if we could. Vendex started out, did it not, as
a Department of Investigation responsibility?
A: I believe that's correct, but I was not involved in it.

Q: And in 1986, when the questionnaire started to be circulated and people started filling out those questionnaires, that was under the supervision of Department of Investigation; isn't that right?

A: That is correct.

Q: And the questions that were included on the questionnaires were put there by the Department of Investigation?

A: I'm not sure that's correct. I believe, I'm not absolutely sure of this, I believe they put together a task force, called the City's Law Department, probably the Office of Construction, DGS. Other people had something to say on this topic. I don't think they did it in a vacuum.

Q: And then it evolved into a contract management tool?

A: Yes.

Q: The questions about -- which are here, in Exhibit 12, which contains your draft of the updated questionnaire, the questions about the background of the company and who the company shares space with, and -- question number 5, and question number 7, are those
contract management questions or are those essentially corruption prevention questions, in your eyes?

THE CHAIRMAN: What questions are you referring to, 5?

MS. CUSHMAN: 5, 7.

With regard to these questions, as we have discussed --

THE CHAIRMAN: Can we take them up in order, and if you can respond to the question, it would be helpful.

The question, as I understand the question, has to do with the purpose of the inquiry relating to corruption consideration; is that correct?

MS. CUSHMAN: Yes.

Question 5, with regard to sharing office space, occupying real property. As we have discussed, corruption prevention and good management are two sides of the same coin, so that to the extent that we can see, by a question such as this: Does this business share office space, staff, equipment or expenses with any other business? To the extent that from this kind of a question we can see that the three bids, five bids, four bids, whatever it is that we have received, are in fact from people in the same space, in the same -- sharing the
same staff, et cetera, et cetera, that is not only
corruption prevention, but that is good management
because we are going to get --
Q There's a dual purpose?
A Yes.
Q And No. 7? Let me move on. Let me assume
that there's at least a dual purpose in all of these
questions.

THE CHAIRMAN: Why don't we get -- I take
it that with regard to number 7, that would be the
same answer, essentially, that you gave to number
5?

THE WITNESS: Yes. It's more or less on
everything, but I think that it generally would be
true of most of these questions, that they serve a
dual purpose.

Q At the moment, and as these Vendex question-
naires have been collected since 1986 or so, they are
collected for each contract in each agency; is that not
right?
A For each contract over $100,000 by the
agency, yes.

(Continued on the next page.)
Q And actually, your new rules require them to be collected for each contract over $10,000?

A No. Our new rules will require, and we expect this to go into effect as of January of next year, we require for contracts that will require Board of Estimate approval -- if the Charter revision is approved, my understanding is that the Board of Estimate continues until September of this year -- we have the expert here, but -- so that for those contracts -- and this would continue whether there's Board of Estimate or not. We are talking about RFP and sole source contracts.

Q Some thresholds have been moved back from $100,000 to $10,000; is that right?

A For those contracts where the judgment is exercised --

MR. THOMAS SCHWARZ: Sir, can you answer the question yes or no, if you can? We'll be here until 4:00 o'clock --

THE WITNESS: I am trying to give concise explanations. My understanding of this Commission --

MR. THOMAS SCHWARZ: Ask the Chair, and he will permit you, if he deems necessary.

THE CHAIRMAN: There has been a suggestion
made to the witness.

Is there a question pending?

(Read back.)

THE CHAIRMAN: Can you answer the question simply?

THE WITNESS: Yes.

Q What is happening to all of the questionnaires collected up to this date? Are they being entered into the data base?

A When the new questionnaires are circulated to the agencies, those questionnaires will be collected so when the data base is up and running, they can be entered.

Q I am asking you about the ones collected over the past three years.

A There is no data base, so they are not being entered.

Q When you establish a computer system, is it your intention to collect, from the agencies, the boxes of Vendex questionnaire responses that they have?

A We'll only collect those that are -- these new questionnaires. The old questionnaires will not be entered into the system.

Q Where are the questionnaires sitting right
now, that have been collected up until now from --
A In the agencies.
Q Are there copies with DOI?
A The agencies receive the questionnaires.

There's communication between the agency contract staff and the Inspector General in each agency. I believe a copy of the questionnaire is provided to the Inspector General, or the questions that that Inspector General wishes to see, where he does a check of his files. He reviews this information and makes judgments about it, to the extent that it's corruption-prevention information, makes that review and makes judgments about it, consults with Central DOI; they do a check of their files, and a recommendation is -- I am sorry. It's not a recommendation. That review based -- based on that review, further discussions may or may not take place, depending upon the information elicited.

Q So, your answer is no, it's not sent to DOI, but something else is done; is that correct?
A That's right.
Q Do the agencies have, themselves -- I would like to turn away from the questionnaire now, which I understand is processed through the Inspector General's system in DOI, and they do what they want with it, and
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turn to the Vendex caution list you addressed a moment ago.

Now that is, as I recall it, approximately 100 pages of very small type names of vendors who have encountered problems of one kind or another with an agency, and there's a contact person down there, so that if a particular buyer sees the person's name or the firm's name, they can call the other agency and find out what happened; is that essentially right?

A It's right, except that you did not indicate that it includes information from some Federal agencies about problem contractors as well.

Q Is there any guidance issued by your office, by your office as to what weight the agency contracting personnel should give to the information that is either contained in the questionnaire -- I mean in the Vendex caution list, or provided to them by the person that they end up speaking to at the other agency, who has had the experience with the vendor?

THE CHAIRMAN: Are you referring to written guidance?

MS. CUSHMAN: I am referring to written or unwritten.

A While there is no information, there are no
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1 guidelines, it has been my experience that when either
2 the caution list or the DOI background information
3 indicates some kind of derogatory information, that the
4 decision on how to proceed usually moves fairly quickly
5 up the agency to the Deputy Commissioner or the
6 Commissioner level.
7
8 So, no, there are not written guidelines
9 from my office on how to use that information. The
10 decision -- the judgment has always been, that this is an
11 agency decision which may best balance the need to
12 purchase this particular good or service against the
13 information that they have now received.
14
15 Q And this is a discretionary decision which
16 is made agency by agency, weighing whatever factors,
17 their need versus how bad the conduct was of the vendor
18 that they are considering -- based on their own judgment,
19 without any specific criteria issued by your office; is
20 that right?
21
22 A Yes. And, as we discussed when we met in
23 your office last week, I think this is something that the
24 City needs to consider and analyze, whether it's
25 appropriate to give more direction in that area.
26
27 Q But you have not considered it as yet?
28
29 A We have not.
Q Now, I am going to summarize a little bit some of the things you described about your approach to your job and the direction that you got from the beginning, and you tell me if I am saying anything that's inaccurate.

What I recall you testified to us earlier in our office was, that when you took on the job, you did not receive particular instructions, either from the Mayor or from the Deputy Mayor, concerning what your mandate was. You, instead, understood what that mandate was, because you had been a participant in the overall decisionmaking process earlier on. You had read the IPA report, and you did not need to specifically be instructed by them as to what they wanted to accomplish; is that correct?

A Two weeks prior to the announcement, the Mayor stood at a press conference and announced the creation of the office and what the functions of that office would be. Two weeks later he announced my appointment as Director.

Yes, I took my cues from that announcement of the Mayor, and all the data that was part and parcel.

Q In the course of your work since that time, the Deputy Mayor, First Deputy Mayor, is generally aware
of what you're doing, and would tell you if you're doing
something wrong, but you and he do not sit down
periodically and review anything along the line of goals,
timetables, and when to accomplish a particular thing?
A Right. I have Commissioner-level status in
the City, and --
Q I was really asking for a yes or no answer.
A No. We don't sit down in that kind of way.
Q Nor do you sit down with DOI
representatives, or the Auditor General, or the
Comptroller's Office, or the agency contracting heads, or
all of the agency people together in any systematic way.
What you do is, as needs arise, or as you believe that it
would be helpful, or as they indicate to you that it
would be helpful, you put together some sort of a less
formal meeting process, or discussion process, to address
that particular issue that is brought to your
attention --
A The process that may be used is sometimes
very, very structured. The Vendex system is very
structured.
Q You have a Vendex task force for Vendex, but
in terms of assessing the overall contract needs for the
City and developing an overall game plan to deal with
them, it's a much more informal process than a formal process; is that right?

THE CHAIRMAN: Is that substantially correct?

THE WITNESS: Yes.

THE CHAIRMAN: Next question.

Q Now, I would just like to go back to one other thing that we talked about last week, and that was the jail barge contract and the RFP for the jail barge consultant contract, the services contract.

That did not come to your office for review, did it?

A That's correct.

Q And so your office did not have an opportunity to assess whether there was sufficient outreach, or an adequate procedure was followed; isn't that right?

A That's correct.

THE CHAIRMAN: Just as a matter of information, is the reason it didn't go to his office, because it didn't fall in to the category of contracts to go to his office?

Q It's my understanding that it fell in the category of contracts that ordinarily are processed
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through your office; is that correct?

A  That's correct.

Q  And in this case, it did not go to your office at all, prior to its being let?

A  That's correct.

Q  In fact, you only learned of the existence of that contract after it had been discussed at the Board of Estimate and reported in the papers?

A  That's correct.

Q  Now, when we asked you about that last week, you indicated to us that the reason for that was that it was being -- the contract itself was being supervised or managed by another Deputy Mayor, Mr. Esnard, and that you did not see it as your role to intrude on his processes; am I misstating that?

A  Well, I am assuming that. It didn't come to me. I can't tell you why it didn't come to me. The Deputy Mayor was overseeing this project, and he made the judgment for -- there was nothing for me to do. I had heard the contract had been approved by the Board of Estimate, so there was nothing for me to do at that point. Of course we didn't get involved.

Q  Did you ever receive an explanation as to why that contract did not come to your office, from him,
or someone at that level?

A The Deputy Mayor has since told me that this was an emergency situation. They were -- he had never seen an emergency consultant contract situation like this, before or since. He believed that he didn't have time to come to this process.

Q Where is his office in relation to your office?

A I am four blocks south of City Hall. He is in City Hall.

MS. CUSHMAN: I have no further questions.

THE CHAIRMAN: Commissioner Magavern, you have a few questions?

COMMISSIONER MAGAVERN: Mr. Copperman, in the interests of trying to speed this up, I am going to ask you a lengthy question. I would prefer to do one at a time, but time is running out, so if you excuse me, I'll ask you a lengthy question. If it seems too long, I'll try to break it up.

There have been about, among others -- I have counted seven problem areas that have been identified in this hearing, and my question is going to be what your office has done to address
each of those problem areas, if anything, and what
you think your office maybe should do to address
each of those problem areas.

THE CHAIRMAN: Let me make a suggestion,
Commissioner Magavern. I think this is an
important area of inquiry. I would suggest that
you take up each area seriatim, and I'll ask the
witness to do the best as he can in his comments.

THE WITNESS: If I can group them together,
it might be easier that way.

COMMISSIONER MAGAVERN: We'll give it a
quick try in the omnibus form, and if that doesn't
work, we'll break it down.

The first was the need for simplified
understandable bid and contract documents.

Second, which is really a variety of the
first, would be standard set of general conditions
for construction contracts, and perhaps for other
contracts, Citywide, that is. So the contractors
can be familiar with them, and incorporated by
reference, and used in every contract.

Third is an outreach program to identify
potential bidders and compile a list of bidders
which corresponds to the areas for which contracts
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are to be let, with affirmative notice to them when contracts in their area come up.

Fourth is a problem that at least some contractors have encountered; delays in getting the contract started; delays in the notice of award, delays in the notice to proceed, delays in the assurance that the budgetary sources are there and that the City is ready to go.

Fifth, which is a very prominent problem, at least in the minds of some contractors, delays in payment and difficulties in getting paid.

Sixth is the lack of an effective dispute resolution procedure, and maybe more broadly, procedures for clarification of contract issues, waiver of requirements, and the like.

And finally, seven, comprehensive training policies for all people involved in the procurement office that would include use of the professional associations, external programs encouraging employees to become certified and the like. And in that context, I'll note that as I understood Mr. Diamond's testimony yesterday, I think three of fifteen people in his unit had become members of one of the associations. And to
illustrate the kind of policy I am talking about, it would be a policy of encouraging all fifteen. Those would be the seven areas, and if you can take them quite briefly, one at a time, and tell us what your office has done to address them, and what you think ought to be done.

THE WITNESS: Sure.

THE CHAIRMAN: May I make the suggestion that if your office hasn't dealt with the area, that that should end the inquiry on that matter.

THE WITNESS: As I understood the question, you wanted me to address what ought to be done in that area.

COMMISSIONER MAGAVERN: I think I'll take the Chairman's suggestion, to start with what you have done.

THE WITNESS: With respect to simplifying contract documents, our office has focused on RFP's as opposed to bid documents --

COMMISSIONER MAGAVERN: But with RFP's, you haven't prepared contract documents --

THE WITNESS: We have developed a model RFP, which is part of these guidelines, so that a model RFP, that's the document issued that the

NATIONAL REPORTING INC. (212) 732-3120
vendors -- of course it doesn't have
specifications or things like that, but some of
the boilerplate developed by my office is part of
those guidelines.

With regard to simplifying contract
documents, the Vendex efforts is part of that.
The Vendex questionnaire is part of the contract
documents. We have taken steps to incorporate,
for a peculiar history, the rider, the South
African rider was always a separate document. We
have taken steps to incorporate that into the body
of the boilerplate of the contract.

We are working with the Department of
Finance to incorporate, in the simplest way
possible, documentation on whether any City taxes
are owed, and to make the simplest possible back-
check, which the City attempts to do.

So, we have moved in the area of trying to
simplify the documents in certain areas that
vendors have to face when dealing with the City,
and that's an essential part of the task force
focusing on human services contracts that our
office leads on behalf of the City.

Standard set of conditions for construction
contracts: That falls within the purview of the Mayor's Office of Construction. I have not been involved in that.

Outreach programs for potential bidders, we have not been involved in that kind of effort, although with regard to the contracts that we see that go through my office on their way to the Board of Estimate, if you will, we do look to see that there has been sufficient outreach in those cases. And if the agency is proposing a sole source contract and we think it's inappropriate for a sole source contract, we require them to come up with an RFP. So it does reach out to vendors in those kinds of situations, but for the broad range of contracts and goods, we have not done that.

Delays in getting the contract started; notice to proceed, notice of an award, we've been involved in a limited way with the contract administration process. We have worked with the Comptroller in a cooperative way to try and handle the emergencies, if you will, contracts that need to be registered immediately, and we have been reviewing those and passing that on to the
Comptroller's Office.

We have reached an agreement with the Comptroller's Office --

COMMISSIONER MAGAVERN: How about after registration?

THE WITNESS: We have not been involved in that, but we have made attempts to have the process run more smoothly.

Delays in payment: We do receive numerous complaints from vendors, stating that they have not been paid, and we try to, on a case-by-case basis, expedite that. Also the Auditor General is looking at this in a more general way. We focused only on a case-by-case basis, and someone from my office has been involved in the discussions with the IG.

Lack of effective dispute resolution procedure: Disagreements, whatever level they rise to, we have not been involved in those issues.

Comprehensive training, professional associations: As I had indicated earlier, that has been primarily a function of the agencies. In other agencies, the numbers are much different.
than three of fifteen as you have indicated in the Fire Department.

In the Department of General Services, I believe everybody who is, virtually, involved in purchasing or contracts, goes to contracts or may be a member of the associations, and the City pays for the classes --

COMMISSIONER MAGAVERN: Do you think oversight of that area would be proper within the jurisdiction of your office?

THE WITNESS: I think that with the adoption of a new Charter, it will more properly fall within the jurisdiction of my office. It may very well fall within the jurisdiction of my office now. It's not an issue that we've addressed yet, and it sort of becomes moot.

COMMISSIONER MAGAVERN: Thank you, Mr. Copperman.

THE CHAIRMAN: Mr. Schwarz?

MR. THOMAS SCHWARZ: What is the budget of your office?

THE WITNESS: $2 million.

MR. THOMAS SCHWARZ: You mentioned two Deputies before; one came from one -- I think you
said Transportation, and another came from somewhere else in the City?

THE WITNESS: No. Neither one had worked for the City. They worked for -- one was involved with the State, first for the hospitals, and then for the Convention Center, so that State contracting rules and procedures were the ones that he followed. And the other person came from the Transit Authority, again not a Mayoral agency.

MR. THOMAS SCHWARZ: Are they your Chief Deputies?

THE WITNESS: The person who came from the State and Convention Center is the Deputy. The person who came from the Transit Authority is one of a number of Assistant Directors.

MR. THOMAS SCHWARZ: When you hired these people, did you undertake any search outside the City, the State, through any organization, to find people who --

THE WITNESS: All the hiring that was done in my office was in response -- yes. That kind of a search. Also an ad -- several weeks of ads placed in the New York Times, and people responded to those adds.
MR. THOMAS SCHWARZ: When you say, "yes, that kind of search," what do you mean?

THE WITNESS: We contacted -- we contacted the schools -- I am not sure --

MR. THOMAS SCHWARZ: You're talking about the high-level people?

THE WITNESS: Yes.

MR. THOMAS SCHWARZ: Did you hire those people?

THE WITNESS: Yes.

MR. THOMAS SCHWARZ: Did you undertake a search for those people, of some duration and expense, looking for a particular expertise?

THE WITNESS: Yes.

MR. THOMAS SCHWARZ: What was the search?

THE WITNESS: It involved placing ads in the New York Times, and perhaps the Wall Street Journal, although I don't recall; contacting universities and schools. To be honest I don't recall, because it's two years now, whether we contacted the various associations referred to here. But that kind of a search was undertaken to fill those positions.

THE CHAIRMAN: I think that's it. I would
just let you know, as your counsel is well aware, we will receive any additional statements that you might want to provide us with.

THE WITNESS: Do you want me to go on?

THE CHAIRMAN: That you.

(Continued on next page.)
THE CHAIRMAN: The Commission calls the next witness, William Van Note.

Mr. Van Note, would you raise your right hand.

WILLIAM G. VAN NOTE, JR., called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Please be seated.

EXAMINATION BY

MS. CUSHMAN:

Q Could you please state your position for the record?

A Say it again.

Q Could you please state your position for the record?

A I'm the First Deputy Comptroller of the City of New York.

Q In that capacity, have you been involved in the past two years in developing a new contract tracking system for the City?

A Yes. I think you're referring to a system we call ICCIS, which is a contract reporting system. I want to make a distinction between that and tracking.

Q What, in your mind, is the difference
between those two?

A I look at -- I think of tracking more as being able identify where in a process a contract is, as opposed to a reporting system, which compiles information and reports out. Perhaps a subtle distinction, but I wanted to draw it because I wanted the Commission not to get the understanding that we have been unable to track contracts prior to two years ago.

Q This ICCIS system you mention is the same ICCIS system we heard described a little bit earlier this morning; correct?

A Correct.

Q Is it true that this system came into being by virtue of a local law passed by City Council in 1987?

A Correct.

Q Can you tell me why it took a local law to do that.

A Well, I think that, as we all are aware, the scandals that broke in the City in early 1986 alerted City management to the absence, if you will, of comprehensive contract information. And so, the management of the City, including the City Council, worked towards developing something that could remedy that situation.

And the Council in its wisdom decided that they wanted a
local law, and so, in essence, that came out of that
process.

Q You mentioned just a minute ago that there
was in place before you developed ICCIS some kind of
computerized system for the City; is that right?
A Correct.

Q And that is colloquially known as the IFMS
system?

Q Can you tell us what ICCIS adds to IFMS?
A I think I know what you want me to say. The
IFMS system, for those who are not aware of it, is the
City's accounting and budgeting system and was developed
during the period of fiscal crisis and has functioned
adequately ever since.

At the time that ICCIS was conceived, or the
bill was passed by the City Council, there was a
determination made, which I can get into later, to simply
use the IFMS system, add certain data elements to the
collection of data, and, by definition, that would create
ICCIS.

Q So those additional data elements plus IFMS
equal ICCIS; is that right?
A Correct.
Q What are these additional data elements that are added to the IFMS system?
A They are the ones that are identified in Local Law 52. I assume it's in the exhibit somewhere.
Q There's an Exhibit 26 that specifies what is contained in the local law.

Is there an exhibit book there for the witness?

Mr. Van Note, I think it may be that notebook in front of you, the hard bound version of that, Exhibit 26.

A Okay. Local Law 52.
Q The elements are in there. I don't need to have you spell them out again unless you would like to.

What I'm getting at is: This new tracking system known as ICCIS was created to implement Local Law 52; is that correct?
A Correct.
Q You were not looking to add data elements that were not specified by the Local Law; is that right?
A Correct.
Q In point of fact, as I understand it from some of our prior discussions, when the ICCIS system was created, you did not view it as your role or your
office's role to go out and try to inquire about how
other states or cities went about structuring a contract
reporting system; is that right?

A That's correct. Let me amplify, if I may.
You have to go back to that period of time and remember
that there was a good deal of public discussion, at least
among city officials and state officials, regarding the
status of the City's contracting process, so -- and
during the enactment of Local Law 52, the City Council
held numerous public hearings, several of which I
testified at. So there was a lot of discussion about
what should be added to Local Law 52 in order to build
this system that we are talking about.

In point of fact, the City Council pretty
much specified what they wanted in the bill, and then the
people who put it in -- I'll get into those later, if you
wish -- determined that it would be to our best interest
to implement as quickly as possible. So, therefore, we
made the decision to follow the bill and add on to IFMS
and go rapidly to get information flowing.

Q I think it would be fair to say that the
labor law, in setting up ICCIS, was your agency in
conjunction with the Financial Services Agency?

A And OMB. When the bill was passed, I
believe it was August 4th, 1987, I met shortly thereafter with the First Deputy Mayor, Stanley Brezenoff, and asked of him, essentially, that I wanted someone that the Office of the Comptroller could work with representing the mayoralty side of the house so that we could move quickly and cooperatively, and he was very cooperative.

He appointed -- identified someone that I had worked with before from OMB and said that OMB would represent the mayoralty side of the house. So there was a group of individuals, a working group comprised of people from my office, from OMB and from FISA, the accounting and budgeting data center, who got together to implement ICCIS as far as it's gone so far.

Q One of the things that we've heard a fair amount about both yesterday and today is a discussion of the extent of the competition for the City's goods and services. I wonder if you could tell us what kind of information ICCIS will be able to generate on the question of the degree of competition in the letting of City contracts.

A Well, we can basically tell you whether it was a competitively bid contract or a request for proposal, whether it was sole source, whether it was single bid. If it was multiple -- and by definition if
it was multiple bid -- and from a multiple bid, whether we awarded to the lowest responsible bidder or other.

(Continued on the next page.)
Q Within the category of competitively bid contracts, is it fair to say that the ICCIS system can distinguish only between whether there was one or more than one bidder, but it can't tell you whether there were more than that?

A Correct.

Q My understanding is that the State Comptroller has a contract reporting system, and that that system collects information on that issue, the extent of competition on competitively bid contracts; are you aware of that?

A I am now.

Q Were you aware of it two years ago when you set up the ICCIS system?

A No.

Q Have you had any discussions since that time with the State Comptroller about the usefulness of that information?

A No. I have not discussed it with the State Comptroller at all. I was aware of it when you started to ask me questions within the last week.

Q I take it that that means that you did not have the input of the State Comptroller into the design of the ICCIS system; is that righted?
A No, but I want to emphasize that the State Comptroller takes some credit for developing Local Law 52. They were much at liberty to demand that in the legislation, if that's what they wanted.

Q Other than in the legislation, they did not share with you some of the designs of their own computer systems; is that right?

A No, they did not.

Q Now, there is some discussion from Mr. Cooperman about what kinds of information will be accessible from ICCIS, and there was some discussion about whether or not the ICCIS system contains data on contracts the City awards that are under $10,000.

My understanding is, that Local Law 52 does not require the information on those kinds of contracts to be included in ICCIS; is that correct?

A That's correct.

Q Is there somewhere else in the City where someone could go if they wanted information on contracts awarded under $10,000?

A Well, with some degree of effort, we could probably produce for you, information out of IFMS, the accounting side of the house on those contracts.

The technical details of how we go about it
actually escape me, but it could be done.

Q I don't mean to go into the technical
details, but we asked Mr. Copperman if it would be
possible to get information on multiple contracts of
under 10,000, awarded to the same vendor. He thought it
was part of the IFMS system, but it would be cumbersome
to get that information --

A No. You cannot get that information. Let
me add this qualification: ICCIS contracts over $10,000
are the ones required to be identified as to the type of
bid. That information had not previously been collected
in the accounting system, and therefore we would not be
able to extract it from the accounting system, which
would have the under 10,000 contracts in it.

Q That information is neither in ICCIS nor
IFMS; is that correct?

A I do not believe so. I could be corrected
on that, but I don't think it is.

Q If you do find that you should be corrected,
we would be happy to supplement the record with a letter,
or something of that nature.

Just to go back what is in ICCIS for a
moment, I understand from our prior conversation, that
you have, for example, all the Mayoral agencies
information in the ICCIS system if it's a contract over $10,000, with one exception, that being requirements contracts for the Division of General Services; is that correct?

A  Correct.

Q  And is there some plan in the future to add the Department of General Services requirements contracts to the ICCIS system?

A  Yes. We are beginning to pick that up now for fiscal '90. We are entering requirement contracts from DGS. You have to appreciate that the requirement contract has no dollar value, so it's a little tricky to get the requirements section to recognize the non-dollar contract. But we are doing that now.

Q  Are you putting in the estimated value for requirements contracts?

A  I believe we are putting in a dollar and dealing with it from there as additional increases come in.

Q  Going back to the question of what ICCIS is able to tell us about the degree of competition for the City's competitively bid contracts, if it's decided down the road that it would be useful to try and mirror the State Comptroller's system and report information on the
number of bids for competitively bid contracts, do you have any idea whether that would be a difficult thing to add to ICCIS, or an easy thing to add to ICCIS?

A I would have to say, off the top of my head, it would probably be relatively easy to add, if that information were demanded or required, if you're talking only about the data processing system.

However, we would then also have to change the forms on which information is collected, and after training the people who use those forms, I would find that probably more difficult, and I suspect that you would get a degree of error in there.

I don't know what the information would be used for, so it's hard for me to tell how critical it would be, or how much effort we would have to put into it.

Q Can you tell us a little bit about what kind of access the public will have to the ICCIS system?

A According to my understanding of the Local Law, the Public Law to access to information in the system is by inquiry to the Comptroller, and that's what we intend to continue to do, as we have in the past, for other information coming out of IFMS.

Q Has there been any effort to publicize the
availability of this kind of information?

A Not yet. The first report out of ICCIS was
done a month ago, and so it's really still early in the
development cycle.

My plan is to go along with OMB to ask the
City Council for another committee hearing, and use that
as a vehicle to publicize what I think is a significant
achievement that we have made so far. Beyond that, quite
frankly, I haven't focused on the publicity.

Q There has not, as far as you know, been a
press release from your office, announcing the
availability of this --

A As far as I know, that's correct.

Q I would like to cover the registration
process with you, which has been mentioned at various
points here as kind of the end of the road for the
vendors in terms of what allows them to start work for
the City.

Can you explain to us, kind of in a
nutshell, what it means to register a contract?

A Well, the basic purpose of registration is
an accounting function. It encumbers the funds which, in
an accounting sense, means that the funds are reserved so
the vendor can be paid when the goods or services are
Again going back over the last several years and the increased emphasis on the contracting process, we have begun to more formalize, if you will, what we do, and we have been asked by City management to take a look at various other aspects of it, to see that all supporting information is complete. We have been asked to be alert to situations that we should draw to someone's attention, but the ways basic purpose of registration is an accounting encumbrance.

Q Making sure the funds are there to pay the vendor?

A Yes.

Q Again in a nutshell, can you walk us through what steps are involved at the present time in the registration process?

A Sure. A registration package, when it comes in, includes three essential elements; one is an Advice of Award, which is a City form, it's a transmittal form which contains summary information about the contract.

The contract itself, of course, is the second part of the package. And the third is whatever enabling piece of documentation allows it to be a City contract, either a Board of Estimate resolution or a
competitive bid package.

Those three documents are received, they are reviewed against the checklist, which I believe you have copies of in your exhibit. In the event we find that there's something missing, we will, depending on the nature of it, return it to the agency or ask the agency for the piece of information. And then, when we are satisfied, we'll forward the Advice of Award form itself up to FISA --

Q Which is physically in a different location from your office; is that right?
A Yes. It's located Uptown. They make a data entry, go into the accounting system, and assuming there's sufficient funds. They'll stamp the Advice of Award "approved," send it back to us, and we'll send it back to the agency.

Q We heard discussion about an audit that the State Comptroller did in 1986 about the City's approval process, and there was some mention in there about how the registration process was handled at that time by the New York City Comptroller's Office; is that right?
A I am sorry. There was some discussion at that time about how the State --

Q No. The State Comptroller looked at how the
City Comptroller went about registering New York City contracts; do you remember that?

A I remember there was a State Comptroller's audit --

Q What I am getting at, is whether you would agree, that in the wake of that audit, your office accorded perhaps a higher degree of scrutiny to the various registration documents, responding to some of the criticism in that State audit.

A Well, yes. Let's face it: You know, when things began to break, and we were asked to start pulling contracts out of the archives and provide them either to investigative agencies or the media, it was in our best interests to make sure that those contracts would have been complete. So, it was a natural tendency, and I think a correct one, to try and scrutinize them more thoroughly. And the State Comptroller's audit was another facet of that operation.

Q In fact, you set up another office within the Comptroller's Office that was going to focus on the registration process; is that right?

A Well, we registered contracts all along. So there was the function that existed. What we did in order to give it more prominence, if you will, is that we
pulled out from where it was in the bureaucracy, made it
a separate office, had it reporting directly to me.
Doubled the staff, I moved their physical location into
new quarters.

We rearranged the flow of information so it
would shorten the time it would take and there would be
less of a bottleneck. I believe with help from OMB, we
got several hundreds of thousands of dollars of
additional money for it. We made a significant effort to
beef up and speed up the registration process without
losing any accuracy.

Q I believe at the same time this was going
up, you were developing a new Advice of Award form,
corresponding to the information to be put into the ICCIS
system; correct?

A The Advice of Award form we were developing
was developed during the early part of 1988 so that it
would be used for the fiscal '89 contracting year.

Q Would it be fair to say that the process of
breaking the agencies in to using that new form had some
initial difficulties; would that be fair to say, in
essence, that, for example, it took awhile for the
agencies to get the hang of filling out the new forms; is
that right?
A Yes.

Q As a result, there was some degree of slowing up, perhaps briefly, but there was some degree of slow-up in the process, in the sense that if the agencies submitted an Advice of Award to you, the contract package, if it had a date in a form that your computer wasn't prepared to accept, for example, if the Advice of Award said the date would be 10/24/89, the clerks in the registration unit would send it back to the agency, saying that the date needs to be four digits, such as 1989; correct?

A Arguably, if you introduce a new form and try to implement it in a reasonably short period of time throughout the City, there will be some degree of confusion. I am not particularly aware of any confusion that resulted in significant delays.

One of the things that we had done repeatedly, is meet with individual agencies and with their contracting people, invite them over, show them the process, conduct training sessions, formal or informal, and we do this on an informal basis.

Yes, there was a long period of time there where people were getting used to the new regime or the new process, if you will.
The particular example you're talking about, with respect to the use of 1988 or 1989 versus the last two digits, such as 88 or 89, is one of those situations that occurs, and you wonder why and how it happened, but in point of fact, we register contracts to go forward into the next century. The computer is programmed to recognize only a four-digit year code.

So I am sure, because I know the people, that many of the clerks up there would have simply written 1989 themselves in, and there were other situations where they were either totally behind in terms of the workload, or in the frustration load, and they might have sent it back. It happens either way.

Q I understand, as you have described, there was a period of time in which the kinks were being worked out, and hopefully that period is behind us; do you agree with that?

A Hopefully.

Q What I would like to look at, is some of the numbers you have provided us with on the length of time the registration process has taken, looking back a year -- and I understand that this may include some of the time frame in which the kinks were being worked out -- and that's in Exhibit 16.
What I would like to understand is, why does it take more than a minimal amount of time to register a contract? Why does it take more than a week to do that?

A Well, the number of steps it has to go through. I don't think it can be done in a week. By the time you get the contract in, have someone review it, pull the information and the Advice of Award up, and send it on to FISA for a data entry, keypunch, it and it goes back to the agency, the way it is now established, I don't think you can do it in a week.

Q You do have a procedure, though, in your office, for expediting the registration of contracts where there's some degree of emergency on the agency's part; is that right?

A There are two times during the year when we take special notes of agency needs; January, and the May-June period.

Primarily, HRA has various and many -- has thousands of social service type of contracts which they need to get registered as quickly as possible, because the City's social services are depending on it; payroll, food, whatever. So we do make an effort at that time to shift priorities.

I think Mr. Copperman testified earlier that
we work with the Mayor's people. The Mayor's people are
the program people, and we attempt to accommodate our
special needs at those times of the year.

Q Now, you described, when you described the
registration process, a step which requires the contract
documents and whatever their degree of volume is, to be
physically transported from the Comptroller's Office in
Lower Manhattan up to FISA Uptown; correct?

A The transmittal sheet is the only one that
goes up, yes.

Q Is there a reason for that step to continue?
Is it possible to avoid the moving of paperback and
forth, and simply do that step somehow directly into a
computer in your office, or in one of the agencies'
offices?

A Absolutely.

Q Can you tell us about that?

A Okay. We have in mind, and we hope to pilot
a project beginning approximately next April, a pilot
project with HRA, in which HRA will do its own data entry
of the Advice of Award. That will go directly into FISA,
but it will not go into the system. It would go into a
suspende or a holding pattern, if you will, while they
send the documentation to us for review. And obviously,
when our review is complete, we can electronically release it from suspense and put it back actively into production immediately.

Q You expect to do this at one agency when, next spring?

A We hope to pilot at HRA beginning with the April, May and June crunch next year, 1990, for fiscal '91.

Q Do you know when that might be extended to some of the other agencies?

A No. I have no idea what the difficulty will be in doing training. I don't know what the workload will be on the computers. There are too many unknowns. We'll certainly handle -- if you take HRA, you have got a reasonably large part of the City's contracting process anyway, construction being another large part of it. And even if that were as far as we would go, then it would take that load off the Comptroller's people, and we could arguably speed up to some degree ourselves.

MS. LOWE: Thank you.

I have no further questions.

THE CHAIRMAN: Thank you very much.

We'll take now a 15-minute lunch break.
Public Hearing

I am asking the Commissioners and staff to return here at 1:20 so we can resume here at that time.

(Continued on next page.)
(Thereupon, at 1:40 o'clock p.m., the following proceedings were had):

THE CHAIRMAN: Commission calls its next witness, Paul Kofmehl.

Would you raise your right hand, please.

PAUL KOFMEL, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Please be seated.

Thank you for your participation in these hearings. I express our regrets that we are getting started a little late this afternoon because of the length of time it took us this morning.

THE WITNESS: Thank you for inviting us here to describe the work of the private sector survey.

I might start off by introducing you to the survey. I'm Paul Kofmehl, Executive Director and retired Vice-President of the IBM Corporation. The private sector survey was organized as a result of Mayor Koch's request to Frank Carey, retired Chairman and Chief Executive Officer of the IBM Corporation, to lead a private sector
effort to identify opportunities to improve New York City operations; the efficiency and the effectiveness.

The work began in May, 1988 with a preliminary review aimed at identifying issues and problems with sufficient promises to warrant further study. I might say from that that what we decided was that we would concentrate on operational matters where we felt we had an expertise in the private sector and that we would not be focused on programmatic issues. There were more than 80 companies that participated in our effort, by contributing either staff or funding or both. Our staff included approximately 150 private sector executives and some 35 City executives, more are less full-time, the great number of more city employees.

The survey was organized into eleven study teams covering a wide range of subjects, and the eleven study teams were capital project management, Health and Hospital Corporation, housing preservation and development, Department of Corrections, information systems, space planning and acquisition, fleet management,
procurement, warehousing and distribution, police information systems, treasury management and personnel.

Although we only studied a small portion of the City's operations, we have confidence that our recommendations have broad applicability to the rest of the City operations. In fact, after doing our initial review, we selected these study areas because of their applicability.

For example, we did a study in police information systems of certain information systems applications to demonstrate the value of cost-benefit discipline, of being able to assess a capital investment against expense returns; study in the Correction Department to demonstrate the value of cost determination as a method of keeping control on overall inmate per day cost; and a study in capital project management to demonstrate the advantage of project management disciplines to improve schedules and reduce construction costs.

We should point out that our studies were directed to identify opportunities for efficiency and effectiveness improvement and we did not specifically look for evidence of malfeasance. It
was an effort toward improved operational efficiency.

In that respect, our conclusions were that, as the City is facing a service crisis, that there is a demand for services at a time when revenue growth is slowing, our present system of annual budget management, which is well disciplined and well implemented and offers a strong base on which to make further improvements in management control, that system, by itself, today, is not sufficient to meet today's needs for optimizing the use of the resources that are available.

We've got to get more out of what we have, and to do this, we have to understand better the costs of various activities in the City, use data and information better, understand what costs are. And once the cost of an operation or an activity is understood, compare the cost of those operations across the various agencies, be able to compare those costs with other cities, and to compare those costs with the private sector, and, thereby, set reasonable objectives for the improvement of costs.

I'll give you some examples.
I'll comment that we found cost data lacking in virtually every study area that we got into and we had to construct cross information in order to come to the conclusions we did, but, once again, we are confident that the data that we have and the analysis that we've made is reliable.

In the case of light vehicles, the operation and maintenance cost of the automobiles, for example, we put together a data base that showed that the cost of operating and maintaining a vehicle in the City varies considerably over the various agencies. I believe from $0.26 per mile to a $1.16 per mile over a spectrum of agencies. That doesn't include all of them. That would compare to about $0.10 a mile in the private sector.

In every instance, we didn't think that it would be reasonable to assume that private sector costs should be comparable to public sector costs because of the necessary scrutiny and controls and disciplines that have to be put on in the public interest, meeting a different requirement.

In this case, we felt, however, that if the average cost of the City, for example, was reduced
in half to the differential to the cost in private sector, which is within the range as costs as experienced today in some City agencies, we could demonstrate -- we could have a management opportunity to recover about $224 million in operating costs of light vehicles over the next five years. That's a good example of the use of cost information to set an objective to achieve improvement in the future.

Another example was in the area of real estate. We looked at 3.3 million square feet of leases in lower Manhattan. By accumulating the lease data base ourselves, and scheduling that by lease expiration, we discovered that there were 2 and a half million square feet of those leases that are expiring in the next five years. The 3.3 million square feet involves 100 leases in -- 97 leases in forty-three different locations, which means that there are a lot of departments and agencies that are spread over multiple locations.

So we saw this as an opportunity to consolidate. We looked at what consolidation to private sector real estate standards would cost, either through lease, lower Manhattan or the
boroughs, or through build or buy, and we were able to determine that without considering the productivity of the departments, any one of the six alternatives that I just mentioned would be less expensive than simple renewal of existing leases with considerable improvement in the working environment to the City employee.

(Continued on the next page.)
BY MS. CUSHMAN:

Q. Without wanting to interrupt you, what I would like to do is focus a little bit on the kinds of concepts you're talking about on the particular contracting areas --

A. I am going to come to it right now. I wanted to give that as a backdrop to what we studied, particularly.

So, in this context, what I am speaking today about is cost control, the ability to reduce expenses through better use of resources, as opposed to controls to insure the availability of funds or proper use of funds.

The last form of control is vital to any enterprise, and we do not recommend relaxation of budgetary control or protection against malfeasance.

In the interests of resource optimization, however, we do recommend, where deemed appropriate, the use of different techniques such as pre-audit -- post-audit automation use of standards of procedures, and post-audit to shorten the cycles in many instances.

You have asked this afternoon that we speak briefly on our studies on procurement, warehousing, and distribution, management information systems in this
light.

In procurement, warehousing, and distribution, we did a top-down review of the systems in selected parts of the City's operations. In general, when we compared them to the private sector, we found procurement procedures that could be streamlined, and warehousing in need of a coordinated overall materials management system.

I'll put up the storyboard here, which shows what we recommend be included. We know that meaningful performance measurements are lacking -- I'll come back to that in just a moment.

In the City, in many areas, Citywide supply planning is not centralized, nor have uniform standards and procedures been provided and enforced for warehousing and distribution activities. As a consequence, there's an overlapping of inventories, extensive stockpiling to circumvent delays, and duplicate inventory control systems in development. By private sector standards, back orders are high, 30 percent against 10, and inventory turnover is low.

The distribution objective is to deliver items in stock within 21 days. That objective is met only 71 percent of the time. The objective itself is not
sufficiently challenging compared to the private sector, where five days is common for hard goods.

We presented seven major recommendations regarding the materials management function. They are outlined here:

That there be a better system of analyzing supply requirements so there's a more continuous flow and it can be made more efficient.

That there be a purchasing strategy developed to meet the particular supply requests.

That they determine the most cost effective delivery system, in some cases directly from the supplier and in some other cases the use of common carriers, for example, and that they rationalize warehouse usage.

About 50 percent of the items we found are common, and they are rather routine, what I'll call commodity items. They are to be put in the warehouse most efficient, and this all ought to be supported by an inventory control system.

From your point, we had a recommendation which was to shorten the procurement process. We found that procurements between $10,000 and $50,000 take two and a half months. Greater than $50,000 take an average of five months.
We determined that oversight reviews add eight to ten weeks to that process. The Bureau of Labor Services takes 47 days, or a third of the time, for example.

We have determined that that could be reduced by about 13 days through a quick pass. If there was a supplier who had been approved within the last two years and existed as meeting City standards and requirements. That if there's a contractor bidding who has a good record, and he is bidding through a subcontractor, to accept a release of that contract from that contractor who has less than 50 employees, for example.

There are a number of cases like that, and through automatic solicitation of new employment reports at the end of the three-year period of qualification of contractors, that if they anticipate issuing new reports, we could anticipate the flow of orders against that newly approved list.

That we reduce the time that it takes for the Comptroller's review, in many instances, from four weeks to one week by having big agencies that order a number of items, like DGS and HRA input for compliance tests to the information system directly, instead of, in
other words, requesting the procurement, passing it on to the Comptroller's Office, and having them find, by testing the file, that certain requirements are missing, have the agency test against the ICCIS file directly, and come to that determination, and submit a proper request. And, by the way, that's a good disciplinary process for the agency itself.

And then prequalification of bidders: Have people step up and go through the requirements testing process to qualify themselves, before the release of a purchase order given directly.

Those are some examples in warehousing procurement.

Let me shift to capital projects, and I've got a storyboard that shows the value of reducing the capital project completion time, which we take from the time an original budget estimate is considered, or is placed in the budget, until actual completion of the project, which includes the pre-design phases and their approvals on design phases, and their approvals in the actual construction time.

That if that process, which is largely a pre-design/design approval process, and only about 18 months, on the average, would be construction time, if...
that could be reduced to an average of 14 months, it
could result in a reduced capital expenditure to the City
of about 3.8 billion dollars against the six major
capital agencies we reviewed. That's about 33 billion
out of the 57 billion capital budget, and that would be
through faster completion, completing the job with a less
inflationary effect by better costing to reduce the cost
of change orders and things like that.

Therefore, what we proposed is a single
projects -- by the way, let me go back. In this time,
the oversight groups consumed one to one and a half years
in a pre-audit mode of this total five and a half year
time. The project responsibility is diffused and
circumscribed, and projects are not managed to
objectives. We therefore propose a single project
manager, responsible from start to finish for each
project, accountable to meet cost and time goals
established early, and rewarded for achievements.
Operational authority would therefore be vested in the
agencies.

As project control shifts to agencies,
oversight groups assume post-audit mode -- a post-audit
mode to insure agency compliance with clear, uniform
operating guidelines, and the Office of Design and
Construction would play a key coordinating role.

Now let me give some examples: In consultant selection, now subject to Office of Contracts review of the process, and later approval of selected consultants plus Board of Estimate review and approval, if greater than $15,000, plus Corporation Counsel approval of contract, plus OMB approval of the consultant's fee, plus Bureau of Labor Services and Department of Investigation approval, would now be left to agency discretion, based on the use of pre-qualified contractors and consultants, and following a pre-approved selection process, subject to later audit for compliance by a group or groups out of the agency.

So, what we are saying, is that we can have a file of pre-qualified consultants which gets the BLS reviews, and other compliance reviews, done ahead of time. And by proceduralizing the process, and setting the standards required, delegate to the agency, and audit their compliance on a postaudit basis.

COMMISSIONER MAGAVERN: I don't want to interrupt. Are you going to say more, later on, about how the pre-qualification process works?

THE WITNESS: It's a matter of inviting contractors and consultants, engineering companies
in the case of capital, to come forward and present themselves as potential bidders for City projects.

The qualification addresses whether they meet Bureau of Labor Services requirements and Department of Investigation requirements, certain financial requirements, and they are qualified and have proper experience in various areas of expertise. All of which, today, is done after the fact, and could be done before the fact, and could, along with improved management relations through a project manager with a contractor, encourage more people to engage in the bidding process for the city.

COMMISSIONER VANCE: Would the individual who is pre-qualified, or the organization, periodically requalify itself, so it would be kept up --

THE WITNESS: Yes. It would be subject to some time limit, as is done today, for example, on some of these requirements; a three-year time limit, or something like that.

MR. THOMAS SCHWARZ: What happens in that situation where you have one that is qualified,
and one who would like to bid who has not gone through that process?

THE WITNESS: Well, what I you would like to do, is encourage people to qualify themselves and set themselves up for the next round of bidding. And what you'll do --

MR. THOMAS SCHWARZ: You're assuming this where you're dealing with peas and beans and stuff that's going to be bid out, and not on contracts that are the usual?

THE WITNESS: No. We have, today, a capital plan for the City over the next ten years -- I am not specifically talking to commodities. I am talking to capital projects. I want to make that clear.

MR. THOMAS SCHWARZ: I understood that.

THE WITNESS: We have a capitaling plan. The fact that we have engineering work on bridges or rote work to be done, or buildings and facilities to be constructed, is all pretty much in the capital plan, so there's the opportunity to review that plan and present yourself as a supplier.

MR. THOMAS SCHWARZ: If a new firm is
formed, or if a minority contractor now feels he is large enough to do that work, he would, in effect, preclear; and if he didn't, he wouldn't be eligible?

THE WITNESS: There's always a judgment that can be made along that line. Basically, you would like to have them precleared so you can move the construction project ahead.

And, by the way, very often they are confronted today by a very large body of bidders. Bidding on many of these projects is a very expensive process, where it costs a lot of money to put together a bid, and then the longer that bid goes before approval, the more money you keep putting in it to keep it up to date and revised.

So, in all, we feel that would be the recommended approach.

A (Continuing) On the design process -- now, this is the engineering work: Agencies are required to submit plans to OMB, at several stages, for review and approval, and the Community Board. At design completion, OMB goes through a process of -- I'll call it kind of value engineering the design, to reduce the project cost. The designs must meet certain criteria, in our opinion,
which are not today clearly defined in advance.

So, that's sort of developed as this process goes along, and there's a process of testing, and it should be defined very well.

We ask that OMB issue one approval on scope, cost, and schedule, with no further reviews unless those goals are exceeded by the defined limits.

Design criteria would be established in advance by the Office of Design Construction, with final plans subject to their review. So that says that there's financial approval on the one hand, and approval as to the use, scope of the project, and what we are doing it for. And if you define cost objective beforehand -- contractors are now obtained through open bid solicitation with no prequalification process. The low bidder is awarded the contract. The only requirement is a bond. This I have basically spoken to, which is pre-qualification.

These few examples illustrate steps that will significantly reduce project time, and therefore cost. It puts new responsibility, and thus accountability, on agencies, without removing any necessary financial controls or oversight. We have not removed any of the controls that are in place. We have
subjected them to a little bit different discipline by
shifting the time and location of the exercise of same.

Now, there's also reviews by external
groups, by the Arts and Landmarks Preservation
Commission, and we recommend that time limits be
established for those reviews and that they be
disciplined to do that.

And there's a process of reviewing change
orders after a construction project is completed. We
tracked 114 hundred change orders, and found that it took
31 separate steps to conclude that 25 are superfluous,
and it also took six months.

This is holding up a payment of some kind,
and engaging a contractor in a difficult procedure. The
solution is to give agency personnel the discretion to
negotiate and settle claims with approval levels tied to
the size of that claim. Also, rather than forcing
disputed claims to be settled in a court as is now the
case, we suggest alternate dispute resolution processes
should be instituted within each agency.

Now, a few words on information systems. We
made several recommendations regarding planning,
consolidation of resources, and establishment of good
cost benefits.
Public Hearing

Of greatest interest today are the establishment of an information systems plan and budgeting process, so that the purpose of the project, the priority of the project, and what we'll get out of the project, gets reviewed at the early part of the budget process, and we are going ahead with a well-known project with a lot of the approvals taking place as a part of the budget project, and finally the acceleration of the procurement of information.

The information system planning system would accelerate the approval. The procurement itself involves eight City agencies today, and takes an average of nine months. We suggest expanding the use of requirement contracts for commodities and supplies regularly purchased, so that there's a requirements contract that applies Citywide, and the various agencies can use that.

The prequalification of vendor lists, one against which eliminates duplicate vendor filings, the same vendor filing a number of times, and we have used the Office of Contracts and the Bureau of Labor Services, Investigation, and the Comptroller's Office, each time those submissions are made.

We suggest further, that work be done with the Comptroller's Office to assure a completion of their
reviews within 30 days, and we suggest limiting reviews
on the larger projects; the ones $100,000 or more, or the
projects which have been prior approved, and are now ten
percent over submitted plan. And through a number of
procedures, the whole process of procurement could be
reduced by six months.

That, basically, is some of the work that we
have done in the process of doing our emphasis on cost
control, where we think that without dilution of control
on the part of the City, we could shorten processes, and
thereby save a considerable sum of money.

THE CHAIRMAN: Thank you for a very
impressive presentation.

This may be a question you can't address:
You made reference to some analyses that you made
of what something would cost in the private sector
and what something would cost for the same item in
the public sector. And then you made a statement
about taking the differential between the two and
perhaps reducing it in half to reflect the
additional controls you might need in the public
sector to deal with that.

In those analyses that you made, comparing
the costs for the same item where the government
purchased the item and where it's purchased by a private employer, did you come to any projections as to what the savings would be to the public if that model actually worked that way, where you could get it down to that midpoint?

THE WITNESS: We have made recommendations concerning the eleven specific studies that would address the benefits of knowing the cost of doing work in the City, and setting reasonable objectives for the City, off of those eleven studies.

We feel that we have looked at around ten percent or less than ten percent of the City's budget, and over the next five years there's to be an expenditure reduction in the area of 1.8 billion dollars by applying the techniques that we are recommending, and setting the objectives in the nature of those we are recommending. And if those objectives are met, we could derive a benefits of around 1.8 billion dollars; an annual return of about 500 million dollars in the fourth year.

THE CHAIRMAN: If you take the ten percent, and I think you said before that you think -- at
least you argued that your conclusions with
respect to the ten percent may be equally
applicable to the other 90 percent --

THE WITNESS: They'll be applicable to a
lot more than the ten percent we looked at, but I
can't say the whole 90 percent.

THE CHAIRMAN: I am wondering if you took
the analysis that led to your figure of 1.8
billion in savings, and just pushed it across the
whole system, what the figure would be. And,
again, I realize that we are dealing --

THE WITNESS: No. That would be conjecture
on my part, but I would say it would be a lot more
than 1.8 billion dollars.

MR. THOMAS SCHWARZ: Just following-up on
the Chairman's question, did you test any of this
against, let's call it, political reality?

The Grace Report made a lot of
recommendations, and if carried out, theoretically
we would save, I don't know how many hundreds of
millions of dollars. Many of them were pointless
recommendations from the beginning, because they
had no political realism behind them.

Did you test any of your proposals with
people in government, to determine which of these, for one reason or another, if any, had absolutely zero potential, because of one reason or another?

THE WITNESS: I really appreciate that question, because the way we went about our work was to, first of all, assume that there would be no changes in the laws or operating requirements; any legal requirements. We didn't feel that was realistic.

Secondly, we asked for the engagement of agency personnel and were very well supported by the City; very good, knowledgeable people, who helped us come up with these recommendations.

We have reviewed these recommendations several times with each of the agencies involved and with the Deputy Mayors and the Mayor himself; I think perhaps three or four reviews in the Mayor's Office with the appropriate -- with the Mayor and the appropriate Deputy Mayors present, and I would say we have no dispute as to the applicability of our recommendations.

We may come to a difference of opinion as to exactly the way to do it, or exactly the management opportunities and the savings that may
be derived from that, but, conceptually, I have not been confronted with an objection.

(Continued on following page.)
EXAMINATION BY

MS. CUSHMAN:

Q One question has to do with the fact that you had to construct your own data base. For the City to implement changes on this order, will the City have to construct systems which will lend themselves to this kind of management practice?

A Yes, the City will may have to start maintaining data bases. However, everything we constructed, we constructed from available City information.

Q The information is there, but it's not yet organized?

A It not in historical form where you can see trends and make comparisons. When you do this, you have to set up certain standards of how to record this information so that we don't get into disputes as to what it includes and what it doesn't include.

But, basically, we recommend that they do have to establish a set of measures that will result in their knowing the cost and effectiveness of their work, and we have provided examples -- we've given the City all of the data bases we constructed and how we constructed them. We've provided procedural background and supporting information that would help them install...
against these eleven recommendations.

I want to hastily add that we haven't done anything in the realm of advanced sciences. This is all rather fundamental stuff and I can point to good, qualified City people who know how to do it.

Q My second question has to do with the fact that you're talking about taking away, in certain instances, from some of the procedural scrutiny during the course of the project, whatever it is, the purchasing project, or the construction project, and replacing it with a post-audit kind of situation. And my question is: Does that necessarily require clear, uniform, spelled out procedures against which you can conduct such a post-audit and on the base of which you can delegate to agency personnel the autonomy to go forward with the project as they are involved in it?

A Without question. You have to document procedures. You have to establish the guidelines. You have to insure compliance with those procedures. The person at the other end has to be accountable for delivering the results within the approved method of operation.

Q And is this format suitable for a situation where you have a wide variety of tasks being done by a
wide range of agencies in a somewhat decentralized environment?

A Yes. In the examples we are citing here, of identifying the cost of maintaining light vehicles, having a standard measure of how you evaluate real estate space and what it's costing you per square foot, warehousing standards of how you operate and recording what the cost of putting things in and taking things out and storing items are, those are all common city activities. They are quite common, by the way, with the private sector. We have to do the same things and we are amenable to proceduralization and standardization.

Q Do you say that integrity in these processes need not come at the expense of operational effectiveness in every sense?

A No, I think that you improve upon operational effectiveness and you place a greater accountability, and I don't think it is necessary to compromise on the degree of control. I don't think you can, I don't think you should. We have not recommended that the City in any way relax its budgetary control or its controls protecting against malfeasance.

MS. CUSHMAN: Those are all my questions.

COMMISSIONER VANCE: Are you generally
familiar with the proposed Charter revisions?

THE WITNESS: Yes, those regarding contracts.

COMMISSIONER VANCE: Will they -- will the changes to be made, in your judgment, help address some of the issues that we have been talking about, the need to simplify?

THE WITNESS: They will. We work with the Charter Revision staff, and we submitted our recommendations as to prequalification of contractors and the establishment of guidelines for various types of procurement, and they are basically reflected in the Charter Revision recommendations that we see today regarding contracts.

MR. THOMAS SCHWARZ: Aside from your involvement with the Charter, proposed Charter, have you in any way monitored the recommendations that you have made in this report with respect to their implementation, if any?

THE WITNESS: With respect to their implementation, if any? We just submitted this report at the end of September, so we are just a few weeks after submission. But I'll say that a
lot of the recommendations in here have been picked up as we went along. Some of the consolidation recommendations are already under way, and, in the fleet management area, some of the reductions in the number of vehicles is under way. It is a small start. I found a lot of interest in implementation.

MR. THOMAS SCHWARZ: Is it your view that there is an acceptance in the -- I don't mean specifically in the Mayor's Office, but, rather, in City government with respect to these proposals?

THE WITNESS: Yes.

COMMISSIONER VANCE: Where does it stand now? You've submitted your report. Where does it stand in the City; who is doing what and is there any time schedule about how soon people are going to act?

THE WITNESS: No. There is not a schedule at this moment in time. However, the First Deputy Mayor has requested of all the agencies and Commissioners that have been affected by our report to address implementation in their transition documents, and he is working to
establish an implementation schedule before
certainly leaving office, but in the next number
of weeks.

COMMISSIONER VANCE: Does your group
continue to exist so that it can be available for
consultation as they try to work out the
implementation?

THE WITNESS: Yes. The supporters to the
survey have quite an investment in the survey and
we are making ourselves available at least through
the end of the year, and if requested by the new
Mayor, we will use our good offices to assist
implementation into next year.

THE CHAIRMAN: Thank you very much for your
participation.

THE WITNESS: Thank you very much.

(Witness excused.)

THE CHAIRMAN: We have arranged for a panel
of experts to interface with the Commission and
its staff on the subject of contracting practices,
and I would like to call now Carla Lattatin, who
previously testified this morning, Annmarie Walsh,
Institute of Public Administration, Karen
Burstein, Auditor General of New York City.
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I would like to ask the two witnesses who weren't previously sworn to raise your right hands, please.

ANN MARIE WALSH, called as witnesses, having been first duly sworn by the Chairman, was examined and testified as follows:

KAREN BURSTEIN, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Good afternoon. Sorry for the delay. I know we had you scheduled to testify a little earlier.

MS. CUSHMAN: First let me ask each of you to briefly tell us, except for Ms. Lallatin, who has already told everybody, what your professional background is and what your present basis of expertise is. I guess, where you are now.

MS. WALSH: I'm the former President of the Institute of Public Administration. My background is in government research and advising in state, local, federal government and, in the last fifteen years, overseas. I'm currently called the Scholar In Residence and I'm working on a research project for the Twentieth Century Fund in relationship
between private and public participation in urban management projects.

MS. CUSHMAN: Miss Burstein.

MS. BURSTEIN: I'm sure you can hear me without the mike. I'm currently New York City Auditor General, a position created a little more than -- a few months less than three years ago to establish general audit functions in various Mayoral agencies, to establish rules for the conduct of internal audits, to coordinate external audits and implementation that flows from that.

I'm an attorney who graduated from this law school. Before I came to the Office of the Auditor General, I was the President of the New York State Civil Service Commission. Before that, I was head of the Consumer Protection Board. Before that, I was member of the Public Service Commission. Before that, I was a member of the New York State Senate.

My expertise now is having spent the nearly last three years looking at internal control systems in the City and, in particular, focusing on the issue of prompt payment.

MS. CUSHMAN: We have all had a chance to
discuss the matters this hearing has focused on at
some length over many months, as each of you has
been most helpful to the Commission's staff in
understanding the problems, and we have all come
pretty much to the conclusion that they are
complex but not intractable, and yet, at the same
time, that if we wanted to sit down and spell it
out in great depth, we could go on for longer than
the time available this afternoon, for sure.

What I would like to do is ask each of you,
in turn, to engage in a dialogue, really, with us,
in which we concentrate on the key feature of what
can be done to move New York City forward in its
contracting processes.

Before I do that, I first would like to
get -- Miss Walsh, if you could please just make
clear on the record what it was that your famous
IPA report did do and did not attempt to do, since
it has been frequently cited to us as the bible in
procurement reform in New York City.

MS. WALSH: I might introduce the subject
by saying that we call the Office of Contracts the
Office of Some Contracts. IPA was asked in a very
short period of time and an extremely limited
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MS. CUSHMAN: How much?

MS. WALSH: Less than $200,000.

-- to look at basically the process that the City had rapidly set up with the Contract Review Committee, looking at certain kinds of contracts, those were mostly non-competitive sealed bid contracts.

Our original proposal was to look in depth at ten departments. We looked at two. I think we did the best that we could with what we had. But it should be pointed out that that study did not deal with competitive bidding, which is still an enormous area of unknowns in city contracting. It didn't deal with purchasing in contracting by the Department of General Services and the Department of Municipal Services within it. It didn't deal with construction and construction-oriented contracts. There is no definitive data as to how much of the $6 billion in annual city contracting is the kind of contracting processes we were looking at accounts for. So I think there is still an enormous amount of study that needs to be done to understand the whole system.
MS. CUSHMAN: Ms. Lallatin, I understand that you are presently involved in a significant procurement needs analysis for the State of Hawaii.

Can you tell us, please, what the steps are in the procurement needs analysis when you're looking at an entire government system?

MS. LALLATIN: For both this project and similar projects we have done in the past, the steps are basically the same. I spoke about them earlier in my testimony.

We have a data-gathering phase, if you will, where we look at -- especially when you're in an environment that's largely decentralized -- where we look at what the activities are.

We work with a study or a management group to define, after we've gathered a lot of data, see who is doing what, to define what the goals of the remainder of the project are. And, as I said this morning, they usually fall within the areas of legislation, organizational structure, rules and regulations, automation and training.

And frequently, within organizational structure and rules and regulations, you'll have
jurisdiction-wide type contracting issues that come up.

What we look for is what works best for the particular environment, and how can we build on the strengths and get rid of the weaknesses, instead of just dumping everything.

MS. CUSHMAN: The scope of the study, Ms. Walsh, that you were involved in, was not the same scope Ms. Lallatin was talking about a moment ago?

MS. WALSH: No. It was a much more concentrated effort to jump as quickly as we could from analysis of what we could see was going on, to recommendations that would move the City fairly quickly and fairly well, with better control of the processes.

MS. CUSHMAN: Speaking of control, I was going to ask Ms. Burstein if she could, in a nutshell, tell us what the concept of internal control is, and how it pertains to this whole problem that we are talking about?

MS. BURSTEIN: It's very difficult to talk about this. We tend to use language in such generality that nobody can get a hold of the implementation in practice.
Simply stated, internal control, and all the rules of practice and procedure by which an entity is able to assess its capacities, carry out its mission, preserve its assets to assure that the resources that it has are being used efficiently and effectively -- everybody has internal controls. There is no way to run an entity without some practices and procedures.

The problem is the quality of the controls and the understanding of the institution with respect to the controls, and the investment that the institution has over those controls.

It seems to me, as a useful analogy, to think of the City as having an infrastructure that is as critical as its physical structure. It's almost as exciting until it falls down. This is even less compelling for most people to focus on, and people find it -- administrators, people who get elected to office, top level officials, are compelled by policy considerations, and want that structure to be there. And since that's the case, it mostly works on an idiosyncratic basis.

There's talk about procedures manuals.

There are fundamental rules of control. You have

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to document what you're doing. You have to segregate function. You have to make accessible the documentation. You have a regular system of going back and looking at what is going on as to whether or not all of those former things are in place.

In the City, to the extent documentation exists, sometimes it's just readable. There's a good procedures manual on purchasing produced jointly by the OMS and Departments of General Services, Division of Municipal Supplies, but when you get it, it's from a Xerox machine in its 77th generation, and it's blurry.

That, I think, is fairly typical of what goes on. What happens is, that the internal control system -- I must say that the City is not here sui generis. Most government entities don't pay particular attention to internal controls, because most of the internal control work done for years in the field had to do with the private sector area. There was a bottom line you could look at, but it's not true in government. It's only recent in government.

So, the fact is that the City is only
beginning to look at this question of
standardizing the procedures and simplifying them,
establishing a clarity of procedures and also
assuring that they are disseminated and people are
trained in them.

As I say, it has only begun, and it seems
to me a long process, but a do-able one; not
overwhelming, but it will require a resource
commitment that is going to be hard to give on
fiscal constraint, but without which -- having
been a lot of other things in government and
having run agencies, I am convinced that without
this we are doomed to competitive cycles of
corruption, of terrible waste and abuse in
government.

I am not saying that this will necessarily
keep that from happening, but we have to contain
the range of abuse if we are going to implement
rationale internal control systems with respect to
cash, receivables, inventory and personnel.

MS. CUSHMAN: Dr. Walsh, you have, in the
famous report, suggested, recommended an office of
contracts and a procurement policy board, some
kind of general contracting central office.
Could you please articulate for us what your vision of such an office and its function would be in the City's current environment?

MS. WALSH: Well, I think it could be built on the current Office of Contracts. I think it would have to be managed for the first challenge of the future, which is the management leadership of the City, and deciding how much of these other aspects of procurement and contracting will come into the leadership system, to whom the Office of Contracts is going to report, and how much backing it's going to get from City Hall.

It will need a great deal of backing from City Hall to exercise the coordinated strength over the whole larger range of City contracts than it has now. We did envision it developing the rules and guidelines of the clear framework which it has begun to do with the guidelines that we just issued.

There are still, I think, three or four sections of those guidelines yet to come, and of course they have simply adopted the Office of Construction portion, the guidelines for construction, and that will be a challenge.
That won't work in the future if the Charter goes through. If it goes through, there will be a very different approach to construction in the City. It will not be limited to competitive sealed bidding. The need for skills will be much more important if the Charter goes through.

We also envision the office becoming a kind of central stimulus to leadership in the agencies, providing technical assistance, providing liaison, counterparts whom they can call who would be knowledgeable, helping with the development of training assessment plans, helping with the selection of training programs when their help is called upon.

Fourth, we envision them as developing a post-audit capacity to be able to flag those kinds of contracting processes that might be specially looked at beforehand, but other than that, to move more and more of the review process to post-audit.

So, I would say in those terms, it's a broader function, and they have a long way to go.

COMMISSIONER VANCE: Connie, can I ask a question?
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MS. CUSHMAN: Certainly.

COMMISSIONER VANCE: Is there general agreement among the three of you that the place to put such an organization is in the Mayor's office?

MS. BURSTEIN: Well, there's a Charter requisite, if the Charter passes, which will leave it to a board which is kind of a joint effort, a joint product under joint leadership of the Comptroller and the Mayor.

I believe that you have to have somebody whom you can hold accountable, and some of our problems have been precisely, not only from the Mayor and the Board of Estimate, but through this terrible scattering, where nobody really has authority and everybody can hand it off to somebody else, and no one, in the end, can be forced to stand up, either: I didn't do this right and I am going to fix it, or: I did do it and I am going to take the credit.

COMMISSIONER VANCE: Ms. Lallatin, what about you?

MS. LALLATIN: That's a good place for it. It should be in a fixed place so the office can be held accountable.
MR. THOMAS SCHWARZ: Maybe I misunderstood you this morning. I thought that you questioned putting it in a political office.

MS. LALLATIN: I don't question putting --

putting the setting of policy in the political office, and we were speaking in terms of the Charter revision.

I do question having the chief purchasing official, if you will, be an elected official.

MS. BURSTEIN: I would agree with that.

COMMISSIONER VANCE: Thank you. That answers my question.

MS. CUSHMAN: What I would like to do, is basically ask each of you to reflect on what the City could or should do now. What should we doing now, and what should we be calling upon the leadership to do? And if you can be as specific as possible, it would be very helpful.

Does anyone want to start?

We'll start from right to left, then.

Ms. Lallatin?

MS. LALLATIN: there are several areas on which to focus. First of all, someone needs to be put in charge of this whole procurement process...
that currently is sort of all over the place, and which varies from agency to agency. So you need, again, with the Mayor's backing -- and I stress that as critically important -- someone in charge of the process to get a handle on it, and start streaking it out, if you --

MS. CUSHMAN: Is that the whole process, you're talking about?

MS. LALLATIN: Yes, contracting for the City of New York.

MS. CUSHMAN: The under-10,000's that the agencies do, the RFP's, sole sources, construction --

MS. LALLATIN: Everything.

MS. CUSHMAN: What DGS now does, the whole shebang?

MS. LALLATIN: Yes. By saying "putting someone in charge," I am not talking about having someone process all the paper. I am talking about having someone manage that function for the City.

In addition to that, as has been stated a number of times in the last couple of days, there needs to be Citywide policy and there needs to be the balancing of the centralization/
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decentralization issues, and post-audit, to insure compliance of those delegated actions, if you will.

There needs to be attention given to how to shorten the process to make it more effective.

The previous speaker, in talking about the prioritization report, was talking about some pre-qualification in order to shorten the BLS reviews. I think the City might not only look at doing pre-qualification, but doing some post-audits to see that that overall contracting process, the recognition of such, can be shortened.

I think attention needs to be given to the resources that are responsible for contracting.

Are there adequate resources, human resources? Are they adequately trained? Do they have the tools they need to do their jobs, and do they have the support of things like automation to be able to be effective in doing their buying for the City?

MS. CUSHMAN: Is there anything you would like to add, Dr. Walsh?

MS. WALSH: Well, I would stress skills. I think the best thing, after organizing the senior
management responsibility for this field, I think that the next Mayor has to have this management leadership thinking about a very aggressive recruitment and training plan, and a recruitment and training needs plan, budget it and move forward to it.

There are inadequate resources at all levels. The top City group, at the time when we first looked at the Contract Review Committee, had minimal staff, none of which had contract experience. That's beginning to change in the Office of Contracts which has built up a staff which is focusing on the contracting system.

At the next level down, in the departments where the real leadership should be, I think for operations you have the senior officials in the departments in charge of this area who are also in charge of a lot of legal responsibilities or Deputy Commissioners for Administration or for Finance. So, contracts was a fairly minor part of their concerns, except for the times when prices would shoot up.

Then we got to the operating level. It was very difficult to find people who knew -- the
program managers did not know where to turn to get help in writing specifications. The simple skills and experience of forecasting costs so you can measure the proposal that comes into you, and the other studies in the suppliers market, knowing what you're going out for, if these skills are in place, then I think a lot of the opportunities for corruption are reduced.

The pressure for expedience to knock everything out of the procedures is reduced, because you have people there who know what they are doing and they have done it before. If they are going out into a market that they don't know, they do know that they have to hire somebody to help them with that market.

So, I think that that's absolutely key and I would go back to establishing the chief contracting officers in the departments. That was the first recommendation, and I still think it's important. I know the budget problems are going to come up, but it's penny wise and pound foolish, because it's 60 billion dollars and it's going to go higher than that.

That means a one percent saving is 60
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million a year. So, a one percent saving is 60 million a year and I have estimated that pretty much everything I can recommend for a Mayor to do, if he was the most aggressive and successful, would cost about 22 million in the first year. And the savings could go -- that's only a one percent saving. The savings could go to five percent, and the last witness was talking about much higher. I am being very conservative.

MS. CUSHMAN: When you're saying everything being most aggressive could cost 22 million, what are the ingredients of that?

MS. WALSH: It would be chief contracting officers in every major contracting department, who would cost at least $100,000 each.

It would be a series of studies or information gathering, data-based operations costing about 2 million dollars.

I am doing an annual, you know, if we were really revving up.

I would say an aggressive training program. I think the information system is going to take maybe 10 million to get them tied together and in the right order.
And when I wrote it out, it came to about 22 million.

I think, in fact, the City could not spend anymore on that on these improvements in a year, and it would probably take them two to implement them.

MS. CUSHMAN: And two years to spend that 22 million dollars?

MS. WALSH: Well, it might.

MS. CUSHMAN: One of the observations that has occurred to us as the hearing has progressed, is that we hear over and over again that the City is paying more than private sector rates for its goods. That for whatever it's that it is buying, people are charging the City more than they charge the private sector. And yet at the same time, we have heard that the City is paying less than the private sector rates for it is people. And I am wondering if you can comment on the relationship between where you invest the dollars and where you can potentially save the dollars?

MS. BURSTEIN: To the extent we pay more, is largely part of the transactions and the delays and the Byzantine nature of our procedures. I
must say I see some light in the last period of
time in that regard, because when I first came to
the City in this position, everybody was still
shell-shocked from the PVB scandal, and what we
saw was the layering on of control and checkpoint,
and control and checkpoint really without regard
to the cost effectiveness of those layers, and, in
fact, without regard to the perverse incentive
that the layers gave them to get around them, to
escape their constraints.

And now I think there has been an
understanding, and what you have to do is
rationalize the procedures to get them to the
point where some of the transactions are simply
moot.

On the other side of it is, what do you pay
people? A lot of the work is done in this City,
critical work in the area of procurement and
payment is done by very low-level clerks, I mean
people who are low in pay, without a great deal of
training, with a few background requisites, and
under awful physical circumstances, they are in
the ugliest places in our agencies. I think it's
complicated to solve this problem. It's more
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complicated than saying let's simplify the procedures.

I would like to draw the attention of the Panel to two documents; one was the new bid book and standard contract by DMS, and the other was the contracting standards.

Now, I happen to think that both those documents are in fact quite excellent in form. I make this comparison by virtue of other City things, but I am the Vice-President of my co-op, and we recently had a contract, and we used the form which is certainly more lucid than the one presented by Commissioner Frank.

The City uses its purchasing activity to vindicate a number of social purposes. Maybe that isn't the best way to assure that people of ethnicity are hired; you file the right BLS thing and you're going to have to observe the prevailing wage. Maybe there are other mechanisms by which to reach that end, or they are good about South Africa. That is one thing. I am not sure even how to weigh that. I have to put that aside, because that's in the nature of government.

The second thing is how many different...
entities have to sign off on something in the City. It's impossible for one entity to have responsibility, and again that's not only typical of the City, but it's typical of the State as well. Some entity had responsibility, and then a new entity was created as a result of a crisis. Instead of collapsing the first one, simply the second one becomes an addition to the first, and then everyone, of course, has a turf to protect and everyone gets offended if they are not enlightened into the approval process.

If I go back to my analogy of the physical infrastructure, 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.

I think there's a great opportunity, because of the Charter and because, in fact, "that there will be a change in administration, with more light and less heat, to do a couple of things, and generally in the whole area of the
administrative infrastructure. They hate to devote themselves regarding manuals of the kind Joel brought up. There should be consistent standards for everybody in the City of New York, and every agency will have it; whether it's personnel, payroll, and what have you, and then there will be training, and the training program will be developed around that manual. And then you have the possibility of doing the oist-auditing you're talking about, so you can remove a lot of the internal procedures, because now you know you have something you can audit for compliance against.

The second thing we have to do is maybe we won't be able to collapse the control agencies, but I think it should be stopped. OMB and --

MS. WALSH: Charter has added a few.

MS. BURSTEIN: I recognize that, but what you can do, and I thought it was an interesting suggestion, you can take BLS and say you have a place, and you can move that out of the actual stream of contracting -- direct contracting for a particular project.

Really, you expect the same thing will
happen as long as you keep checking to make sure that people stay where they were when they reported at first. If you can't get rid of all these functions, in advance of them imposing themselves on agencies -- agencies go crazy because they get three forms from different entities requiring the same information. They say, why can't we have one form with a tear-out sheet so you can all get your own coaches and use it however you want it?

I believe what one has to do, is put together an internal audit committee for the City of New York, internal to the City, not dealing with the City's bonding and financing, but dealing with its internal control structures, made up, comprised of these control agencies, to negotiate with one another, and then use their resources --

MS. CUSHMAN: Who would be part of this internal audit being committee?

MS. BURSTEIN: The Office of Contracts, Office of Construction, DGS, the Department of Personnel, OMB, Office of Operations, DOI and --

MS. CUSHMAN: The Auditor General?

MS. WALSH: Actual, I believe the Auditor
General should be at an elevated level, but at the moment, in fact, should be sort of a general auditor for the committee. He ought to go out and do most of the audits that those entities would do, and they can pick up some of them, and then what will come out of it will be generic programs.

If you had a procedures manual, I could write the generic program.

THE CHAIRMAN: Mr. Vance?

COMMISSIONER VANCE: Am I correct? I hear each of you saying that very substantial change is needed, and that it can be obtained without excessively jeopardizing the question of control.

MS. BURSTEIN: Yes, but I would go a step further. I think the substantial changes we are talking about are to reduce the opportunities for corruption.

MS. CUSHMAN: Could you say a little bit more about that, please?

MS. BURSTEIN: Well, loose and unclear procedures, left to the discretion, provide the opportunity for side deals.

If you want me to refer, for example, to the jail barge case, apparently there was nothing
irregular or directly corrupt, but it certainly is 
a scenario that could be duplicated in a situation 
where it was a side deal, and that, I think if you 
have more professionalized staffing, better 
leadership, more resources, the pressure for 
expedience is reduced, and I think parts of the 
development of the chief contracting officers 
would be to draw on the professionalization, the 
accreditation; people whose careers are in the 
public.

You build checks and balances into the 
decisionmaking system. You kind of coordinate the 
controls that were talked about before, which can 
make a more effective control. If controls get 
too complicated, they make people break the rules 
to survive. The report brought that out. Good 
management is not -- basically, corruption can 
adapt to red tape.

MS. CUSHMAN: CouId you talk a little bit 
more about the LEAA report? I think it's in our 
exhibit books, about Exhibit 28.

(Continued on next page.)
MS. WALSH: There were a number of LEAA reports in the era in which they were giving grants and contracts, and it was interesting that many of them came down on the side that management was a crucial aspect to reducing corruption.

MS. CUSHMAN: LEAA being Law Enforcement Assistance Administration?

MS. WALSH: Yes.

MS. CUSHMAN: Dr. Walsh, would you identify who they are?

MS. WALSH: They were within the United States Department of Justice, I believe they are no longer. I believe the funding program was eliminated.

They gave assistance directly to law enforcement agencies for special projects, as I understand it. They also sponsored a number of studies, research projects and studies. This one that you have in here, if I remember, had some very specific recommendations for management control and management leadership that would lead to corruption control.

MS. CUSHMAN: It was "Maintaining Municipal Integrity," that was the name of the study. And
it was a nationwide study, as I recall it, that came over a period of several years, developed some key principles and then turned those into a training program and turned them into sort of a summary document about how a municipality can go about setting up systems to maintain its own integrity, and this was all back in the 1970's.

And, basically, I think I've asked each of you to quickly look at it and give some comment about whether it retains its vitality or its pertinence in today's environment.

MS. BURSTEIN: It basically restates the principle on first defense against corruption. And management is ultimately possible to install control systems Appellate Division, an honest management committee can assure people use these resources which are very limited.

I do want to say one thing that seems to be critical. I'm not suggesting, and I know nobody is suggesting that we have to invent wheels. This stuff came out in the '70's. If people were listening then, we wouldn't be in this situation.

The fact of the matter is the Comptroller, since '82, has been issuing for completion by
agency heads a directive called Directive 1, Financial Manager Integrity Compliance Statement, New York City Comptroller. What you're required to do is go through a check list and have good controls.

People have been filling this out since '82, and we know as a result of some of the audits we've done that there's a major gap between understanding and reality, and people report, For example, they don't have any capital assets as if they don't have desks. There are some things that have gone over one or three years that are properly capitalized. People say they are not responsible for EDP costs because somebody else is supposed to do it. That process, the outline for it is there.

There are lots of manuals that are present. The problem is getting people to sit down in some kind of concentrated way, pull that material together, get rid of the part that's obsolete, remove references to the Board of Estimate if the Charter passes, see what kind of variations might be necessary for large and small, capital intensive, non-capital intensive agencies.
With an understanding from the Mayor's Office, with a high ranking person running the project, that something is going to come out of it. I think the life cycle of this project is about two years, but it is doable.

People who do the work in the City, who write the vouchers and who go out and ask for bids, it co-opts them into the plan.

COMMISSIONER EMERY: We heard from the previous witness and from you that the budget gap that everybody speaks about in the papers now on the campaign can be eliminated with this one set of reform.

On the other hand, we hear that ten years ago or so, a report was issued with all the solutions that would have avoided this budget gap and given us a surplus for the last ten years.

There's got to be some other problem here that we are not hitting on. Cy has been trying to focus on it from point one, which is where the political will comes from to wipe away the resistance.

You outlined in your discussion this oversight and turf battles is what the resistance
is. What should give us any confidence at all
that a new administration and new Charter and our
recommendations, assuming they are progressive in
a way you're recommending they ought to be, will
make a difference? Are the turf battles and are
the bureaucratic little fiefdoms just too powerful
and will they continue with this overextensive,
overburdensome, inefficient system? What is the
key to wiping it away?

MS. BURSTEIN: Political will. It's a
difficult will to invoke because it requires
expenditures of political capital with very little
immediate return.

There's no glory. The only elected
official I ever heard of willing to spend
political capital was Jimmy Carter. And what
happened to him? To be fair about it, he looked
at Civil Service reforms. Notwithstanding that
this is a propitious moment, we are going to be up
against it for a while.

So we are going to have to do as much as we
can about money. That doesn't impose institution-
al disciplines. We will have a new administration
with new people and they are less threatened about
the current circumstances than people who have
been there for twelve years.

COMMISSIONER EMERY: I'm more worried about
the culture that government is like a faucet for
people politically connected to take a drink. It
really is a question not of corruption, but of a
kind of culture of the easy ride for opportunistic
contracts or opportunistic vendors, or for people
who are placed in political positions with
discretion to have say over contracts to get
political support for doing it a certain way. I
mean, we've struggled with this for three years
now.

Our Commission is about dealing with this
political culture, and the question is -- maybe
you're right. Maybe the economics of the
situation is the only way to eradicate the
political culture. I'm not sure the reports that
you say are ten years old and promises the answer
are the answer.

MS. WALSH: I don't think any report is
going to change the political culture. I agree
that perhaps in terms of propitious moments, it's
the only one. When you're going to have new
Commissioners and a new Mayor and a transition people -- there's another aspect of the culture of the City that is very difficult. That is, for an employee organization with over a quarter of a million employees, it is remarkably informal, remarkably based on oral tradition, remarkably free of rules and incredibly loose, and it is incredibly insulated.

Reinventing the wheel drove us crazy in our work. We started going to different cities and states and drawing on precedents. If I didn't hear once, I heard fifty times "New York is different." They say we don't want to recruit somebody from outside because we don't know how the City works. If the City isn't working in certain areas, you have to break that open. I think that is a very tough management culture to break.

(Continued on the next page.)
MR. THOMAS SCHWARZ: Let me ask this question: Leaving aside the Charter, and whether it passes or doesn't pass, one thing that keeps coming out, which is in the IPA report, you have said it, you have said it, everybody has said it, and yet it doesn't happen, and that's the hiring of expert people who have a background and career in this field, for the administration of this area.

For example, the crisis occurs and the Mayor decides to establish this department. He picks a man -- and I don't mean to take anything away from what he may have done and how intelligent, hardworking, or anything else he might be -- but he picks somebody who has no particular background in this area, and, you know, the same indeed could be said of you; that you have a wealth of experience in government. Everybody knows that you are honest, of the highest integrity, that you are a workaholic and everything else, and I have known you for all these years, and yet you didn't have any particular background in this, and I assume that there was some learning task for you, as smart as
you are.

Now, we are supposed to make
recommendations for change, and while all of this
is interesting, sometimes I wonder why we sit
here, and are we really adding to anything.

Shouldn't there be some sort of
recommendation, and if it's in the Charter and the
Charter passes, great, and if it doesn't, it's not
our problem, but that this office be established
and that there be a person in charge of this
office who does have certain educational and
experience history in this field, so that we do
not get another situation where a Jeffrey
Lindenauer becomes the head of the Contracts
Division of the City of New York?

MS. BURSTEIN: You know, it depends on the
notion that there is a certain kind of expertise
that you can parse to an infinite degree. I have
become somewhat agnostic on this. For about three
months, I was terrified that there was something
really mysterious that I didn't know about this
field.

What I discovered was, that it was simply
the application -- certainly reasoning lawyers are
taught to marshal the facts and make an analysis.

Very importantly, the training that people had in this area, while essential for the kinds of work we do, was often too limited at least at the policy level. The people didn't even see the forest for the trees; they didn't see the trees, they saw the leaves.

I would like to say something about Joel, and I suppose the same thing applies to me. You don't get someone who is an expert who comes in and who easily lays out the things. The problem with experts who lay out things which you discover from auditors coming in from the outside, is that everyone who is going to do the thing gets his or her back up: Who the hell is this person to tell me, where I have been here for so long. And one of the things you need when you try to effect change in the City -- remember, we are talking not about an elephant. We are talking about a mammoth. To move this thing, we want to move it all the way over here. We are lucky if we can move it one --

MR. THOMAS SCHWARZ: The same can be said whether it's Dinkins' or Giuliani's person, that a
person comes in, and isn't that person going to
get the same response from the people who have
been there for 12 years?

You're saying Joel should stay, because he
has been there. Maybe he should stay and maybe
you should stay, but really, isn't that an answer
of those who are inside the government where you
shouldn't go out and do a nationwide search and
find a guy in California and bring him in?

MS. BURSTEIN: I don't mean it that way.
People have expertise, and it's appropriate to
bring them. When you're trying to effect
change -- this woman has the expertise. You can
bring her in, but you can't bring someone in with
theoretical knowledge.

One thing that's so critical, which is
missed too often in government, and that's that
there's an immense expertise out there. It
doesn't get reduced to writing, and this is really
not -- you asked the question regarding political
culture. I don't think you change the political
culture. I think what you have to try to do is
create -- if I decide -- you have these
institutional protections, these operating
procedures which don't implement policy, but which
become slow building blocks of a system that, over
time, in fact, makes it more and more difficult
for the political goals, which I happen to believe
are healthy ones in our society, you know --

THE CHAIRMAN: Commissioner Vance?

COMMISSIONER VANCE: I think, and this is
my own view on this, that you have to have both
the expertise at the operating level, and the
political will has to come from the top. If you
don't have it at the top, the top won't back those
at the operating level.

MS. WALSH: I agree a hundred percent.
It's going to be on the Mayor's desk as to whether
any of these guidelines and changes take place,
because the Commissioners are going to go their
own way, and an Office of Contracts won't go
through unless the Mayor says to his
Commissioners, I want you to do it.

Now, I do think, at the departmental level
we need some lateral entry, and we need some
expertise. People will not resist it. We have
found program managers who have said we can't make
any sense out of these; who can we turn to? I
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think we are going to need, at that level, qualifications. I don't think it can just be the counsel for the department.

MS. CUSHMAN: Dr. Walsh, you mentioned a little bit earlier the jail barge situation and the lessons that can be drawn from that. And I am wondering if we can go into that just a little bit more, with the understanding that the assumptions that we are departing from, or that we are basing the discussion on, are the state of facts that were found in the Department of Investigation report as to what transpired in the hiring of the J.J. McMullen Company. And assuming that there was no corrupt motivation on the part of any of the participants, can you, or any of you, discuss what lessons we can learn from the situation that occurred there?

MS. WALSH: The extent of my knowledge is that report.

MS. CUSHMAN: I understand that.

MS. WALSH: It's, I think -- it illustrates the factors that we have been talking about in our other experiences. It illustrates informality when people get together and they are
well-meaning, and say, how are we going to handle the situation?

Two, it illustrates that if you don't have certain things in place, necessary expedients, and it can be done right just as fast, it illustrates the lack of manuals and rules that will say straight out: You must give the same information to all potential contractors.

It illustrates, I think, the City's insularly not knowing what it doesn't know. It had to go outside and get better data about the naval architecture market.

And it illustrates to me that when you have, as I had worked with the Contract Review Committee and impressed this upon them, that the paperwork trail is not going to make you corrupt-proof. There can be side deals even when you have procedures like that. It doesn't look like there was, but it's a procedure conducive to it.

MS. CUSHMAN: One of the things that occurred there, as the DOI report found, was that in the beginning stages of the work being done by the J.J. McMullen Company, under-$10,000 contracts
were used, which, in fact, were not accurately reflecting the scope of the work that was being undertaken at that time.

Is that something that, in anybody's experience, is a common phenomenon in a City where people who are in contracting positions who are frustrated, or need to get things done quickly, need to resort to structuring contracts so they can fall within the under-$10,000 category?

MS. WALSH: It's the contracting analogy and provisional appointments of personnel.

MS. CUSHMAN: Can you elaborate on that a little bit? Is that something that people from your experience, Ms. Lallatin, find to be the only way to get things done in some cases, and in some cases they need to shape the facts of the relationship a bit in order to get it approved or to get it through as an under-$10,000 contract?

MS. LALLATIN: I think that it's a mechanism that agencies have developed in order to fulfill their mission. Most agencies in the City of New York's mission is not good procurement in contracting. It's the delivery of some type of public service, and the unfortunate part of this
is, that there has been a lot of focus on procurement contracting, a lot of safeguards put into it.

So, while these agencies are trying to deliver the public service in a timely and efficient way and meet their mission statements, they still have to be concerned with the procurement of contracting, because that's just a way of life, and because it's so informal and diluted, it has so many layers of approval, et cetera, et cetera.

I have seen contracts take up to two years to be awarded. The public can't wait on the service for two years, and so as a way to do anything about their mission, they have developed little ways to define a real small part of an overall project to do another $10,000 contract.

MS. WALSH: I would add one point to that, and I think you run into the same thing with purchasing. People will do small purchase batches in order to avoid going through DGS, but the delays that lead to these end runs, a lot of the delays are not the fault of the overhead agencies. The overhead agencies that have been described
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here, good management can make those approvals less time-consuming.

A lot of the delays are within the operating agencies. You can have a small contract buried at HRA for a year, wandering around low-level offices, fussing with insurance and the scope of the work, and you'll find program officers or contract officers with a pile this high on their desks, that have been sitting there, and that doesn't solve the problem.

A lot of this delay is harder to get at and lower down.

MS. LALLATIN: I agree with that. And what complicates that problem, is there's really -- it's really very difficult to identify that delay, because the blame for it gets dumped in one of the oversight agencies.

As an operating person, I filled out a requisition, because I needed pencils, two years ago, and where are my pencils? DMS never bids pencils, and the warehouse never delivers them, or the vendor can't get BLS approval, but in the meantime, they only had it a week and a half, because it finally wandered through the agency to

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get there.

It's very difficult, though, without clear procedures and a way to be able to fix accountability.

MS. CUSHMAN: That's what you were talking about in terms of what the Contract Manager within the agency, or the chief contracting officer within the agency, and the procedures manuals within the agency, would be addressed to.

MS. BURSTEIN: Again, this is analogous, but useful. When I came to Civil Service for ten years, the State of New York has been trying to create an Affirmative Action manual. People from all over the State were devoted to the production of an immense amount of paper, all of which got lost. And It seems to me that the simplest way to do Affirmative Action is to produce a manual. We produced a manual in a couple of agencies, and then ended up in a tracking program, and then all of a sudden, people were forced to pay attention to the issue.

I think that's true, consistently, in places like with payment of goods. We don't break out all of the elements of people. People don't
understand -- we discovered that agencies were
making up the rule in various cases, because they
forgot that the last time it was sent out was ten
years ago or six years ago, and there was the
pressure to look good in reports. And they always
had all the other agencies; DGS, FISA or the
Comptroller to complain to.

Because the cost factor had not been a
classification in the process, there hadn't been
appropriate training and a post-audit which would
identify these pieces enough to say that this can
be fixed.

You know, this could go on for a long time.
I think it's important to say that the agencies
are responsible as oversights, but you wouldn't
have to have it get lost for so long with a
contract in HRA if they had a readable consistent
contract that wouldn't weigh more than this book.

MS. WALSH: To say nothing about what
review in form in the Corporation Counsel's Office
is. There are hundreds of lawyers who would like
their papers to go through the Corporation
Counsel's office without them coming back. I
think the Mayor is going to have to sort those
rules out. We haven't talked about the
Corporation Counsel, and that's one of those.

THE CHAIRMAN: We have an expert on that
subject who will be testifying after you.

MS. CUSHMAN: Is there anything that we
haven't addressed that any of you feels is a key
ingredient to changing life in the City of New
York as it relates to the contracting process?

MS. BURSTEIN: We talked about training.
Bringing people in laterally. You have to be able
to be promoted up. Otherwise, why invest in
learning this business? And that goes to the
personnel structure of the City and the
rationalization of it. People have to understand
why they are placed in a particular way and in a
particular job, and what the pay scale is. I
mean, it's an immensely integrated question,
although addressable in bits. I think that's no
attempt to, you know, solve matters by focusing on
procedures and avoid the human element, personnel
structure questions.

MS. WALSH: The major symptom we'll be
feeling, if we don't make the change, is not too
many bids, but too few. There is no decent
competition for a very large part of the City purchases.

MS. CUSHMAN: Can you address the area of competition as it relates to the process?

MS. WALSH: It's key. It's the basic check and balance of the marketplace in any procurement situation.

THE CHAIRMAN: I would like to thank you for participating in these hearings, and also for the assistance you have given us before today, and I know in the future.

Thank you.

Our final witness of the day is Frederick A.O. Schwarz, Jr.

(Continued on following page.)
THE CHAIRMAN: The next witness for the day is Frederick A.O. Schwarz, Jr.

F R E D E R I C K A. O. S C H W A R Z, JR., called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Please be seated.

THE WITNESS: Can I have Linda Gibbs, who is our counsel, who worked particularly on the Charter, if you want to swear her in, you can.

L I N D A G I B B S, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: I recognize Mrs. Lowe.

MS. LOWE: You've had a distinguished year in many capacities with the City. I think today we would like to focus particularly on your present role as Chairman of the Charter Revision Commission.

I would like to invite you to speak both about what is in the proposed Charter that deals with contracting and later respond to some of the comments we've heard in the course of today about the proposed Charter in the contracting area.

Maybe you could start out by explaining to
the Commissioners what are the key principles that
underlie the Charter's proposal and proposals in
the area of contracting.

MR. F.A.O. SCHWARZ: I think there are six.

The first that you should clearly fix and
differentiate between executive and legislative
responsibility. The current Charter doesn't do
that, and we hope, in ways that I could describe,
to fix that.

Having done that, then I think the next
five principles are to clarify and make consistent
the rules of contracting, have those rules written
and known to everybody and have them the same for
all agencies and all contractors.

Next, an emphasis on maximizing
competition, which is fuzzy today, as to whether
competition is maximized.

Next, efforts to decrease delays.

Next, enhance internal agency controls.

And finally, better public access to
information relating to the subject of
contracting.

So the first of those is a structural point
which I think, until solved, you cannot have
efficient contracting in New York City. The others are, assuming the structural change has been made, how do you try to enhance contracting efficiency.

THE CHAIRMAN: Two areas I don't specifically see and we've had a lot of testimony about, one has to do with the dispute resolution and clarification of issues where issues arise, and there was a lot of emphasis early today on the subject of training.

MR. F.A.O. SCHWARZ: Subject of payment.

THE CHAIRMAN: Training.

MR. F.A.O. SCHWARZ: Training.

On dispute resolution, we provide that there shall be rules on dispute resolution which shall be known, and we also try and simplify and in some ways enhance the opportunity to debar contractors. But disputes between contractors and the City right now, there is an inconsistent system for resolving those, and that is frustrating to both sides, and we provide for rule making on consistent dispute resolutions.

Now, on training. Remember, we are creating a Charter and not the dotting of the "I"s
and crossing of the "T" s underneath it. But we do
call for the Procurement Policy Board to review
the implementation of the contract procedures with
each agency and I think subsumed within that would
be training. Whether we use the word, Linda,
"training" in the Charter, I'm not sure, but I
know it is subsumed within the more general review
how the agency implements contracts.

MS. GIBBS: The proposals for the
Procurement Policy Board, which will be the entity
responsible for doing centralized rule making for
all agencies, one of their specific responsibili-
ties will be to oversee the personnel structure of
the procurement function and make recommendations
to the Mayor for improvements in the personnel
structure. So they will not be dictating the
qualifications of contracting officers, but they
will be looking into that and responsible for
analyzing it and making recommendations.

MR. THOMAS SCHWARZ: Is it assumed that the
rule making that would occur with respect to
dispute resolution would be consistent for all
agencies --

MR. F.A.O. SCHWARZ: Yes.
MR. THOMAS SCHWARZ: Or are there
differences --

MR. F.A.O. SCHWARZ: Tom, I think the
basically philosophy is there should be consistent
rules. I mean, that is our objective. We are
convinced that is good for both efficiency and for
anti-corruption. Does that mean you have to have
a straight jacket and you can't have -- let's
assume -- I could imagine in a -- maybe a dispute
resolution for social service and a dispute
resolution for construction might logically, in a
rule making procedure, develop into two slightly
different rules.

Just a footnote on the rule making. Under
the City's Charter change of last year, we have
regularized -- this was Dick Ravitch's Commis-
sion -- the City's rule making procedures in a way
I think is very healthy. There has to be a notice
of the proposed rule, a waiting period of 30 days,
a public hearing, and then the promulgation of the
final rule.

You can already see -- in Henry Stern's
rules on how the homeless and others are dealt
with in the park, under the old system, it would
have been announced and ultimately would have ended up in the Appellate Division and would have been struck down. But after the rule making proceeding which had this public comment and sharpening, I think they came up with some very much more sound and defensible rules.

MS. LOWE: You outlined six principles that you believe underlie the changes. Can you take us through what you think are the salient changes?

MR. F.A.O. SCHWARZ: I distinguished between the first -- the first is heading A and the second B with five subheadings.

The first is structural change, and that is the sine qua non, in our judgment, to improving the City's contracting process. Right now, you have this unique to New York City system of the Board of Estimate approving contracts other than bid contracts. It is a very inefficient system that results in delays and does not provide the benefits of independent elected officials looking at policy.

It's structurally flawed. The independent people, the eight members of the Board, don't come to apply their intelligence or will to the matter
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until the very end of the process, and then they
basically -- I mean, they basically apply
standards which do not have much to do with
contract efficiency and have more to do with
agendas that they may be individually seeking to
accomplish.

It is -- if you put this in a business
context, it is the equivalent of having a Board of
Directors approve individual contracts, but it's
more anomalous than that, because it's the
equivalent of a Board of Directors consisting of
the CEO of the company and the head of the union
and five people who are all executives of five
separate companies who are ambitious to take over
the corporation. It is as if those seven or eight
people sat and resolved the City's contract
problem. It doesn't make sense.

And in terms of integrity, one of the
problems it leaves for the City is, if something
does go wrong, nobody can be held responsible
because each of them can say, "Well, I don't know,
we all did it," and then they point to each other.
Specifically, it let's the Mayor off the hook, and
I think that is a severe fault from an integrity
point of view, but I think the major problem is a management one.

Now, having reached that conclusion about the faults and deficiencies of the Board of Estimate, which is illegal for other reasons, but I hope we would have changed it, anyway, on this subject, even if it weren't illegal, having reached that conclusion, we also said that you do want to have independent elected officials concerned with the City's contract policy; it's just that under the Board of Estimate, they were concerned in the wrong way, at the end of the process and in an ad hoc fashion.

So we said the City Council should become concerned with the City's contract policy, but it should be concerned at the start of the process, and in a policy-oriented way and not at all in an ad hoc way, so that the City Council, the fifty-one people in the City Council, would never pick the winner of a contract situation. That's done in Chicago, and it's led in Chicago to both corruption and delay.

It would be even worse than the Board of Estimate to have fifty-one people sitting down
there with fifty of them being the chief executives of the corporations trying to take over the government or take over the business. But it is right to have independent elected officials to think about the subject of contracting because we spend 6 billion on the expense side and 3 or 4 billion on the capital side on contracts each year.

There are policy questions that are presented by contracts as well as the fundamental, "should we be contracting out?" So we provide that the Mayor has to present to the Council during the budget cycle, a contract budget broken down into units that are meaningful -- that's not a problem with the City's management today, the units in the budget are much too big.

You have HRA, this multi-billion dollar entity, and it comes in the budget with two units of appropriation for personnel even though it has ten or fifteen different functions. So the Mayor has to present a contract budget for each separate unit which says, "Here is our proposal as far as contracting for the future year. We intend to spend the following amounts of money to achieve
the following objectives, and these are the general terms in which we intend to contract."

The City Council then accepts, rejects, or modifies, putting the independent elected officials' policy judgment at the start.

Now, if they reject, the Mayor has the veto power, the same as on a regular law, and to sustain the Council's view they would have to get two-thirds to override. We think that is an appropriate time for independent officials to think about contract policy. Then the Mayor and the Mayor's agencies have the obligation and responsibility for entering into contracts pursuant to procedures I could come to on the other five elements.

COMMISSIONER EMERY: Can I ask a question about that first, before you go on?

(Continued on the next page.)
COMMISSIONER EMERY: Can I ask you a question about that before you go on?

In the contract budget system that you have just described, in hearing the witnesses just before you in terms of centralizing and changing the culture and changing the way this has been done in the past, do you think that will automatically change things because it has to be thought of from a centralized, Citywide point of view in that budgeting process, or what?

MR. F.A.O. SCHWARZ, JR.: Richard, I don't know if I catch your words, centralized Citywide. I'll put the change as things have to be thought of in terms of a policy-oriented approach.

Now, if by centralized you mean would it be out of balance for someone to, during that process, worry about the distribution of contracts through the City, is there some sense of fairness in terms of where the City is putting its contract resources, no. I think that would be within bounds. I think that's a legitimate inquiry for the independent elected officials.

COMMISSIONER EMERY: What we have heard about, is a lot of inefficiency, and each agency
reinvents the wheel for a lot of goods and
services that could be used for all of the
agencies, and a great savings could be achieved.

MR. F.A.O. SCHWARZ, JR.: We absolutely
agree with that, and when we come to how the
executive branches responsibility is implemented,
we try and build in consistency, uniformity and
common contracts picking up on something --

COMMISSIONER EMERY: But this budgeting
process will help that?

MR. F.A.O. SCHWARZ, JR.: I would think so.

Now, having this overall scheme of the
contract budget as proposed by the executive
branch, and passed, changed, or rejected by the
executive branch, then implementation by the
executive branch, in terms of entering into
contracts which is the classic American system;
New York has been an anomaly, we strongly believe
in the availability of the post-audit. I think
AnnMarie Walsh used that term, the post-audit
examination of the appropriateness of the contract
award, the possibility of looking for
improprieties, and so forth.

And the Comptroller's role as well as the

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City Council's role in having the power, and, in the case of the Comptroller, the obligation to worry about cost effectiveness of the individual contract -- contracts is another method of building in independent elected official oversight, but to make it very simple, it's the policy at the front end involving the legislature, implementation by the executive, and then oversight by the Comptroller as an obligation, and the Council as it sees fit, and the Procurements Policy Board, which is an institution which I'll mention in a minute, looking at the implementation of the City's contract system.

THE CHAIRMAN: For my own knowledge, in terms of the policy part of the process you mentioned, under the Mayor's proposed budget, where he or she would have to lay out the budget in terms of different units, still isn't there a lot of room for movement? Because it strikes me that that will be very generally expressed; in other words, I want to spend $X dollars to take care of bridges or take care of tunnels --

MR. F.A.O. SCHWARZ, JR.: Or to take care of foster children, or whatever.
THE CHAIRMAN: So, one makes the statement in the general category, and then the policy is how much to spend on that particular --

MR. F.A.O. SCHWARZ, JR.: Yes, and the Council has another question which is legitimate to ask, which is: Should we be contracting out? I mean, that's an issue which should be debated periodically for each of those matters. Is it more cost effective to contract out or not? Those are questions which sometimes are close.

Then they also could look at general terms and conditions of -- let's take foster care. I mean, they could say, after having the appropriate hearings, that all foster care agencies, if we are to contract out, shall comply with certain kinds of regulations.

Now, the advocates of the Board of Estimate, when asked if it has ever made a difference on contracts, have a very, very difficult time coming up with any either specific examples or generalities where that process has made an affirmative, positive difference.

The assertion is made that it has helped with Equal Opportunity and that the intervention
of the elected officials at the last minute has been a device with pressing the City to do better on Equal Opportunity, either in terms of the ownership of the contractor or in terms of the employees of the contractor.

Now, in fact, the record suggests that the Board of Estimate has, in fact, done relatively little on this, as well because the City's record remains very poor on contractors. It's quite advanced on employees of contractors, but it remains very poor on contractors, which is not to say that there haven't been episodic situations where the Board of Estimate or its members have raised this as an issue.

Anyway, we felt it sufficiently important as a policy matter for the City, where we should entrench in the Constitution, in the Charter, attention to the subject of Equal Opportunity, and did that so that it doesn't depend on the episodic attention being given to it, but that the attention is systemic and regular.

So, we provided for the creation of an Office of Economic and Financial Opportunity, whose function it is to increase the ability of
women-owned businesses and minority-owned businesses to compete for City contracts, and increase the awareness of City agencies of the presence of such contractors.

This is not a guarantee to anybody of prevailing. It's designed to enhance the ability to compete, and we thought getting that as a regular obligation known from the beginning, is a better way to get at, and a more likely to succeed way, to get at the subjects than episodic intervention at the end.

The office will be, as I say in the Charter, and we think should have a favorable impact on that subject, but it was the only sort of general assertion as to favorable policy impact of the Board of Estimate. We said it isn't in fact happening enough, and we can do it in a better way.

So, that's the structural change, which, in our judgment, is vital and necessary for all the rest that follows.

Now, on the rest that follows, first I should mention the Procurement Policy Board which we require be created under the Charter, and it
becomes a driving force for the implementation of most of these principals; the basic structure is, the broad principal is set forth in the Charter, and then its implementation is assigned to the Procurement Policy Board, and then underneath that, the agencies enter into contracts. The Mayor has a certain specific role and so forth.

The Procurement Policy Board would consist of five people, three pointed by the Mayor and two appointed by the Comptroller. Of the five, one appointee of the Mayer and one appointee by the Comptroller must be people who are not otherwise employed by the City.

In other words, getting back to the dialogue you were having with the prior panel, we thought it was important to require that at least two of these people be from outside the City Government, and perhaps outside of the City physically, but outside of the City Government, and all five are required to be individuals who, by education and experience, have expertise in the field of contracting.

Linda, maybe you can call our attention to the exact language on that, but there is precise
language. One of you was questioning the prior
panel on that subject, and we thought it was
important that these individuals have those
qualities.

I think you were questioning, Tom, and I
thought the answer which came back also had some
force to it. I mean you can't be a high
government official and be naive about government.
The right mix is a person who both knows
procurement and has a feeling for government.

THE CHAIRMAN: I take it you're indicating
that in the proposed Charter, there's some
statement as to qualification --

THE WITNESS: There is.

MS. GIBBS: The language is essentially
picked up from the model procurement code by the
ABA, and requires that the members have
demonstrated sufficient business or professional
experience to discharge the functions of the
board; their professional qualifications will have
to be considered by the appointing officials in
making the determinations of who should be
members.

THE CHAIRMAN: I don't anticipate our
Commission getting into it, but I thought I would mention to you, if you want to briefly respond: There was some criticism of this feature of the proposal placed on the record here this morning, as to the absence of a fixed term, or staggered terms for the five people serving on the Board. And I would just provide you with a brief opportunity for any response you might care to make.

MR. F.A.O. SCHWARZ, JR.: Well, you know, I think you're dealing with a tension between two values, and we opted for one more than the other. One is that tenure gives people a measure of independence, but I think the ball we had our eye on to a greater extent was fixing responsibility and accountability, and we looked at contracting. Our basic philosophical point is to make the executive responsible, and we rejected the idea of tenure here. We put it in, in some other areas; the City Planning Commission was given tenure for five years. The people who oversee Equal Employment are given tenure, but we didn't do it here.

I suppose, in a way one is always fighting
the last war and can sometimes -- sometimes that leads one into error, and I know the war we were fighting here was really the conviction that it was necessary to make contracting an executive responsibility.

Maybe after a time, someone would say we pushed it too far, and perhaps as people reflect upon this in the future, maybe they should have a period of tenure.

COMMISSIONER MEYER: Has any thought been given to the fact -- you mentioned foster care. There's the whole regimen of Federal regulation that governs upon what the City does, and that impacts on what you're trying to do; lobbying to bring change, et cetera.

MR. F.A.O. SCHWARZ, JR.: I'll give you an indirect answer, and then maybe Linda will be able to give a more direct answer, but my indirect answer comes out of my experience as Corporation Counsel reviewing the case involving foster care. (Continued on next page.)
COMMISSIONER MEYER: Was any thought given to the fact that in a fair number of situations, you mentioned one, foster care, there is a whole regimen of federal regulations which governs what the City does and how that impacts on what you're trying to do, the extent to which you lobby to bring about change, et cetera?

MR. F.A.O. SCHWARZ: I'm going to give you an indirect answer and maybe Linda will be able to give a more direct answer. But my indirect answer comes out of my experience as Corporation Counsel in doing a case on foster care.

Foster care is regulated by the federal government, the state government and the city government, each of whom have, for good will reasons and no doubt in every case coming out of some horrible scandal that occurred in which some child was beaten or killed or abandoned or unfairly and improperly handled, each one of them has enormous reporting and paperwork requirements, and they are all different. The result of this is, that agencies whose job it is to help children have their employees spending more than 50% of their time filling out forms, and that has to be a
swing of the pendulum that's foolish.

I think the same point can be made when we think about the topic you are on right now, and that is the balance between efficiency and integrity, and that -- you could make the same comment, that one reason for this proliferation of regulation and review is the understandable and natural reaction of which I think I was part of when I was in the government, as we had the horror of the PVB scandal, so that one pushed so hard on the side of enhanced regulation and enhanced review, that, probably, it is one of the reasons why the efficiency side and the let's get going and let's get these things done before the next century, that is, entering into contracts, has become as cumbersome as it has.

Linda?

MS. GIBBS: The only thing I would add to that, there's not a statement saying that the policy board will coordinate state and federal regulations. It's implicit in the policy board's responsibilities under the proposals the policy board would not only do the rule making, but really is put at the center of the contract.
procedures for the City.

So now, where you see that there isn't one office or one official whose responsibility it is to look at the whole thing, the policy board is really intended to be that official. So the policy board will look at contract language and bid documents and make recommendations for improvement of those, and the policy board will look at agency contract files and establish standard ways for managing those files.

In this way, I think that the policy board will have general -- will be looked at as the head of the ombuds on all contracting issues, including working with being the liaison to the state and federal government in trying to work out problems where their procedures are conflicting or contradicting the City's procedures.

COMMISSIONER MEYER: There are a number of situations in foster care situations where three or four different agencies are involved; for example, in the provision of preventive services, Division of Youth, DSS on the State and local level and various other agencies. Has any thought been given, so far as the policy board is
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concerned not just on the procurement end of things, but to their making some effort to try to bring together -- as I understand it, for example, the expenditure of a quarter for preventive services would amount to a dollar in terms of savings. If one can gel the planning for preventive services in advance, then there's a good deal of savings to be done.

MR. F.A.O. SCHWARZ: I think, hopefully, by increasing the attention given to the policy of contracting, one may have issues like that bubble up and be resolved. This Charter does not directly attempt to deal with that, and I don't think the Procurement Policy Board is probably the place at which it ought to be dealt with.

But I do think that one of the natural side benefits of forcing this policy-oriented review of contracting in a systematc and comprehensive way once a year with the budget is going to be that questions of that sort naturally surface because the Council and the executive branch, as they are preparing what they present to the Council, ought to be observing phenomena of the sorts you mention, and then both, for the interest of saving
the City money and for the interest of performing
better services, ought to say what can we do to
reduce a little bit more.

COMMISSIONER VANCE: Would you say a word
on what the authority and responsibility of the
policy board is?

MR. F.A.O. SCHWARZ: It has very, very
broad responsibility.

Have we provided to the members the
relevant chapters of the Charter?

MS. LOWE: We have them.

MR. F.A.O. SCHWARZ: Which number?

MS. GIBBS: Section 311. It's on page 2.

MS. LOWE: We have it as an exhibit,
Exhibit 35.

MS. CUSHMAN: In the folders you received
today.

MR. F.A.O. SCHWARZ: And -- it's 13-2, so
it's the second page.

First, as a general answer, this body is
designed to be the regularizing and consistency
making element of the City's contract process. It
is explicitly not to itself entered into contracts
nor to have anybody that's a member have
responsibility for entering into contract.

You see in Subsection B it goes down the headings of topics for which they have to promulgate rules, must promulgate rules, and then on line 18 of page 13-13, "such other rules as appear appropriate or are required."

MS. GIBBS: Scattered throughout the Charter, there are additional procedures established and standards where the board is required to promulgate additional rules.

So this really is somewhat of a summary of the rule making authority and explicit responsibilities appear throughout the chapter.

THE CHAIRMAN: Can the rules as promulgated by this board be overturned by action of the City Council?

MR. F.A.O. SCHWARZ: They can be overturned by a local law of the City Council since the City Council retains the City's residual legislative power, and, of course, they are public, so they are known, and if there is cause to overturn them, they can be overturned.

I want to say something. You asked me about some criticism, which I would say is
criticism on the margin of what we are suggesting
to do. You should be aware that there is
fundamental criticism of what we are proposing to
do, and just for the interest of disclosure I
should say that and say why I think it is
fundamentally wrong.

Principally, three of the existing borough
presidents and some people who I would say are
allied with the existing borough presidents
characterize our contract proposals as creating an
imperial mayor and say that for that reason they
should be rejected, and, indeed, it is their
principal argument against the Charter.

The other argument is those who want to
keep the Board of Estimate as it is. But their
principal rhetorical argument against the proposed
Charter is that the contract proposals create an
imperial mayor.

We say in response, first, that it creates
a responsible mayor, and that's desirable.
Second, that we have built in more effective
independent elected official review. But as you
analyze this subject, it wouldn't be fair to leave
it without your knowing that there is that
criticism as well. We just reject the label and say, yes, sir, we have made the mayor responsible and that's better, and we've built in better controls than you have today.

MR. THOMAS SCHWARZ: Can we go --

THE CHAIRMAN: Just to finish my one thought and then I'll pass it to Tom.

Throughout the hearings yesterday and today, there were -- yesterday, we had a number of vendors who testified and we also had people involved in City administration in the contracting area share their views with us. There were areas identified as problem areas, and my reading of the powers of the board suggest to me that the board would have the power to deal with each of these areas, and I want to see if you agree with me.

We had complaints about the time period involved in getting paid, which discourages people from getting into the system in the first place. We had testimony concerning the absence of adequate notice so as to put in a proposal. We had testimony as to requirements that insurance and other requirements that people suggested

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weren't reasonably related to the City's interest under the circumstances.

MR. F.A.O. SCHWARZ: Insurance?

THE CHAIRMAN: Insurance was one, liability insurance and bonding. We also had observations made that it would be very desirable to prequalify the audience or the constituency to go out to that particular purchase or service situation.

My reading of the powers of this board suggests that the board would have the power to adopt a uniform standard governing those kind of subjects.

Do you agree with that?

(Continued on the next page.)
MR. F.A.O. SCHWARZ, JR.: First, the answer is yes, and let me expand a touch. Let me start with the last, because I managed to pull a letter out of my pocket which I got today. It comes from Frank Carey, the former Chairman of IBM, who ran the Mayor's private sector survey, and I know you had four or five people testify from there.

Frank starts the letter by saying, "We strongly support the Charter Revision Commission revision of the Charter." After praising a number of other things he says -- well, it's the third paragraph: "We feel that the proposed pre-qualification criteria are meaningfully broad, and the procedures will continue to safeguard rights of bidders which are presently" -- He says it will save an enormous amount of money for the City.

I would like to give you a copy of that for the record.

MS. CUSHMAN: We have a number. We'll number it as the next numbered exhibit.

THE CHAIRMAN: Maybe for purposes of the record, Fritz, can you just identify the document by date?

THE CHAIRMAN: We'll receive that letter and make it part of the record.

MS. CUSHMAN: That's No. 36. We have been previously provided with copies of it, which we'll make an exhibit.

MR. F.A.O. SCHWARZ, JR.: Now, on time period, let me speak from my own experience. In the private sector, as Chair of the foundation, we had to create, and it's a great thing, because maybe we can go out of business, we created a revolving loan fund to help, particularly, not-for-profit agencies who had severe cash flow problems because of slow pay.

I am convinced from that experience, but also many witnesses who came before our Commission, that the slowness in payments and slowness in registering the contract, which, in effect, delays it from getting going -- and just to pause on that for a minute, many of these contracts are renewal contracts, so that the work
is being done and the business or the not-for-profit doing business with the City is paying their workers, and it's not as if they are just failing to be able to take advantage of an opportunity because of delay, because they are actually putting cash out, and then they are not getting paid. So both -- and the State has this problem too, by the way. It's not unique to New York City.

Both the delays in registration and the delays in payment are very harmful. We think it's not that they are just unfair, but we think it results in ultimately the City losing money for two reasons: There are many people who will not do business with the City because of its reputation for slow pay or slow registration.

Secondly, it has to be the case, although I can't offer unimpeachable evidence here, but it has to be the case that people raise their prices in order to accommodate the anticipated delay in the City payment.

So this is one of those nice things where it's sort of a double win: Getting at slow pay and slow registration ought to be fair to the
contractors and ultimately should save the City money.

    We, in this document, have a whole section on prompt payment, which is toward the end of it, and it calls for rule-making by the Procurement Policy Board setting deadlines and providing for the payment of interest if those deadlines are not met, and providing that the interest comes out of the budget of the delinquent agency, because if it came out of the City covers, there would not be an incentive for the agency to be faster.

    MR. THOMAS SCHWARZ: Just to follow-up on that: I take it that once a contract is encumbered --

    MR. F.A.O. SCHWARZ, JR.: Registered?

    MR. THOMAS SCHWARZ: Yes. Is the converse of that true also, that if there's a savings on that, it doesn't go back in to the treasury, and it stays in the agency? In other words --

    MR. F.A.O. SCHWARZ, JR.: No. It doesn't stay in the agency. The incentive on delay -- if from a shortsighted point of view there's a benefit to delay, it doesn't benefit the agency. It benefits the City as a whole, because there's
continuing interest on the money that's not paid
out.

MR. THOMAS SCHWARZ: Maybe that's the
answer, but suppose there's a contract that's
approved and encumbered for $100,000, and
ultimately it's a $90,000 --

MR. F.A.O. SCHWARZ, JR.: What do you mean
by --

MR. THOMAS SCHWARZ: You only have to pay
$90,000 by virtue of a change order --

MR. F.A.O. SCHWARZ, JR.: The change orders
usually go in the other direction.

MR. THOMAS SCHWARZ: I understand that, but
just as the interest comes out of the agency, is
there anything in here about the saving remaining
in the agency, or does the saving go into the
general treasury?

MR. F.A.O. SCHWARZ, JR.: I would think --
and Linda, you -- I mean, my belief is that it's
the City as a whole that garners such savings.

Do you have anything on that?

MS. GIBBS: When the Comptroller registers
a contract, what they do is draw down on the
allocation made to the agency. So, if the amount
of the contract is less, there's more remaining in
the agency's budget. What I don't know is what do
they do with that money? Do they let the agency
keep it?

I don't know.

MR. THOMAS SCHWARZ: That was my question.

MR. F.A.O. SCHWARZ, JR.: On the second one
of the four that you mentioned, Mr. Chairman, the
absence of notice to bid, we do get at that and
increase the knowledge of potential suppliers that
there's an opportunity in general.

We also build into the Charter so the rules
of priority can say that you must use the most
competitive means available, and if you go down
from the most competitive sequentially to less
competitive, starting with sealed bids and ending
up with sole source, you have to justify in
writing your movement to the less competitive.

But even with sole source contracts where
now they can be entered into and, let's say, for
good reason, but let's hypothesize for good reason
that it's a sole source contract, there is no
effort then to say, well, okay, the next time can
we find someone who would be interested in bidding
here.

So we build in requirements of, even in that circumstance, a public act that is designed to increase the likelihood that the next time someone will come into the process.

Now, in bonding, the only point I have in my head, and Linda may have others in her head, relates to the area of contractors where we heard testimony that there was a problem on bonding, and that was small businesses and minority and women-owned businesses. And with respect to them, we require the Office of Economic and Financial Opportunity to address the issue of bonding.

Now, do we address the issue of bonding in a more general way?

MS. GIBBS: The bonding and insurance rates are generally set as a condition of sealed bid contracts, but it would also extend to construction contracts in general, and that would be a regulation that would be part of those bidding procedures.

THE CHAIRMAN: I just used bonding as one example. I think there was testimony as to other requirements as well.
COMMISSIONER VANCE: Insurance was one, John. They talk about contracts for under $2,500 where they wanted a million dollars of insurance.

MS. GIBBS: That's why the proposals on the Office for Financial and Economic Opportunity are particularly relevant, because their mandate is to look at how these general standards impact on those businesses which are likely to be small businesses, and particularly harmed by policies that aren't maybe cognizant of their effects.

MR. F.A.O. SCHWARZ, JR.: This body is also designed to -- and I think this sort of relates to the same subject -- make the contracts more uniform and make each agency's contract procedures more uniform. It, again, is a real problem, and a deterrent to do business with the City, that you have these sort of separate baronies who each go along, probably for historically good reasons which probably grew like Topsy, but they all go along with their separate, different and therefore frustrating for someone trying to do business with two of them, or learned how to do business with the Police Department and then seeks to do business with HRA, and hypothetically I don't know
if those two are different, but I know the agencies are different. We have a whole new process to learn.

THE CHAIRMAN: I think this whole area that this new body will address is vital, because without it, it seems to me that you have an in group, and it's very hard to become part of the in group.

MS. GIBBS: It was an interesting thing yesterday. Your witness from the elevator company who said a lot of things, and I think a couple of things I took note of, one was the fact that he said, I don't subscribe any more to the City Record.

I said, I wonder what his experience with that has been, and one of the proposals in this document is that you should just try to read the City Record now and figure out whether the City wants what you make. It's incredibly difficult. They list them under agencies and not by goods or service.

The proposals would also require the Policy Board to look at the organization of the City Record and make it a more meaningful document, so
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that vendors will start looking at it again and
find out more about what the City wants.

MR. F.A.O. SCHWARZ, JR.: Just picking up
on the access to information and generalizing a
touch, this chapter, the one on procurement, first
of all, there's rulemaking about uniformity and
availability of information, and there's a
separate section on requiring the Mayor to insure
that all contracts are readily available, so forth
and so on. But we have a whole other section of
the Charter on access to information, and give it
a great, great priority, and maybe the philosophy
which we had is probably marginally relevant to
some of the philosophical questions you have to
consider.

I think it's good government for any
government to have the check of public access to
information. It's probably particularly important
in New York City where it appears that we are
going to, have had and going to have, a one-party
government, as far as anyone can foresee. Maybe a
chief executive from another party gets elected,
but essentially we have a one-party government and
will continue to.
So we don't have the competition of ideas that come from two political parties coming forward with their own competing agendas. That makes the role of the public advocates and the public and newspapers, I think, even more important in New York City than anywhere else.

We have talked about public access to information, decreasing delays, making consistent rules of contracting, emphasis on maximizing competition.

What is the relationship between the role of the Mayor, as an individual, and the role of the agency heads?

We make the Mayor, as an individual, responsible for specifically approving certain kinds of very large contracts, but the principle, I think in a way we apply the same principle within the executive branch as we do between the executive branch and the legislature.

I mean, just as we believe moving the Board of Estimate out of specific approval was the right thing to do, moving the Mayor as an individual out of too much specific approval is also the right thing to do. I mean, again, surely the Mayor has
to be accountable and responsible, but we have
thousands of contracts in New York City, and you
can't have, in any meaningful way, the Mayor, as
an individual, sign off on all those contracts.

So there's a principle of trying to move
responsibility into the agencies, but the Mayor is
held accountable for certifying or agreeing -- I
don't remember the word we used -- that each
agency to which some of these powers are delegated
has, in effect, the appropriate procedures and
personnel to carry them out.

So we were there working on a tension
between the principle of holding that individual
responsible, and yet not clogging the system by
making that individual do more on this subject
than is humanly possible.

I think -- I mean, you set off this
questioning, and I think I have tried to either
directly, or in answer to the questions, lay out
the principles that we had in mind.

MR. LOWE: There are a few things, perhaps,
that you would like to respond to that we heard
from the panelists today. One of the earlier
witnesses was concerned that the Charter was, in
fact, adding layers of review, rather than
stripping them away from the contracting process
process --

MR. F.A.O. SCHWARZ, JR.: I don't think
that's correct. I think my last answer is
responsive to that. Our vision would be -- our
vision would be that, assuming the guidelines and
rules have been promulgated by the Procurement
Policy Board, and the Mayor looks at the capacity
of the given agency, the given agency would enter
into the contract.

Now, we are silent on whether or not there
should be a contract review office, believing that
decision is up to the executive to make and
perhaps review from time to time, but if there's a
philosophy on that question, if there's a
philosophy on that question which one could deduce
from the document, I think it would be that the
tendency of the view that's in this document is
that you should push it down as far as you can and
try to avoid having that extra layer.

MS. LOWE: You're aware of, and perhaps you
may be able to say something about your own
involvement in the setting up of the Contract
Review Committee in the Mayor's Office. I take it you're aware, and we heard today that that office, at least for Request for Proposal contracts, is involved in reviewing some aspect of that process; not only once, but twice at the present time; are you aware of that?

MR. F.A.O. SCHWARZ, JR.: You know, after we talked last Friday, I went back and reviewed my own memorandum to the Mayor of February 10, 1986, which was about a 25-page memo, a 30-page memo, on proposals for addressing the issues of corruption and so forth. I would be happy to give it to you. It's at least of historical data.

MS. LOWE: I think we'll make that Exhibit 37.

MR. F.A.O. SCHWARZ, JR.: It reminded me that I was not involved in the creation of the Contract Review Office. I thought I had been. I am not being critical of that in the slightest, but this memo assumed the existence of that office, and noted that it had been something that other people in the government were working on as their contribution to this problem.

It's worth saying again: What an enormous
impact the PVB contract scandal had on people's state of mind. You know, was every reaction proper? Were enough things thought of? I think one would have to say, you know, in both cases, but that it did attract people's attention, it certainly did. Maybe one can say, you know, it attracted so much attention that other values were left to be second-shifted.

I actually warn against that in this memo, you know, the danger of doing so much to have perfection which you can't get on anti-corruption, that you result in eating into other values.

THE CHAIRMAN: I think it was either James Madison or Thomas Jefferson who noted that we can deal with inefficiencies in government, but we can't deal with the absence of integrity.

MR. F.A.O. SCHWARZ, JR.: Yes.

MS. LOWE: I want to come back to the contract review point for a moment. The new Charter, it has been stated, is going to give impetus to continued review by the Contract Review committee, because people will be so nervous that they won't be doing it right, that they would want the assurance of having it go through the Contract
MR. F.A.O. SCHWARZ, JR.: I think the new Charter is neutral on whether there should be a Contract Review Committee.

Linda has a little piece of language which could have the implication, but not the explicit that it should not be.

Could you call their attention to it?

MS. GIBBS: One of the things Fritz has mentioned is that the Mayor should certify that agencies have followed the appropriate procedures, but then it goes on to say that if agencies prove themselves capable over time, and this can be seen as more of a transitional provision, as they develop their expertise in dealing with the new procedures, dealing with the more competitive process in making the documentations required along the way, as they prove they are competent in that, the Mayor will then delegate this responsibility down to the agencies, and that they'll be able to, once proven capable, to enter into contracts on their authority without having to have the Mayor certify their procedures.

So here it is intended that there should be
clear rules. There should be a consistent
procedure, but there is time required for agencies
to grow into that, and until that time, there
should be a check, a review by the Mayor, that
procedures are being followed.

MS. LOWE: I think probably -- I know for
ourselves, I think it would have been in error to
get down to the level of management detail of
deciding whether or not there should be such a
body. Probably it would be for you, also. I
mean, I think one can express the values, the
pluses and minuses. Having said that, the general
thrust of these Charter proposals is to, assuming
that competence is developed, push the
decision-making down lower.

MR. THOMAS SCHWARZ: What do you mean,
whether there should be such a body?

MR. F.A.O. SCHWARZ, JR.: I am talking
about the Contract Review.

MS. GIBBS: Which is now a function

conducted by the office of --

MR. THOMAS SCHWARZ: You're saying that the
Procurement Board --

MR. F.A.O. SCHWARZ, JR.: No. The
Public Hearing

Procurement Board, absolutely there should be such a body. I was responding to the question of what impact do your recommendations have on the Office of Contract Review, and I was first starting with the sort of rule of self-restraint which is, we shouldn't write a Charter that gets too deeply into the details of how the Mayor carries out his or her responsibilities.

MS. GIBBS: I think another assurance.

(Continued on next page.)
MS. GIBBS: I think all the assurance that you need in order to allow the agencies to make those decisions is allowing that there is a capability for auditing those decisions later. And in an internal control perspective, the Charter requires that agencies document their decisions along the way so that there is essentially a paper trial following them for all of their exercise of discretion, and the policy board has rules standardizing agency contract files in management of contract records.

MR. F.A.O. SCHWARZ: The Chairman quoted, you weren't sure of which people it was, there's a relevant Hamilton quote in the 85 Federalist which I take comfort in in defending our work. He says, in response to critics who are focusing on one aspect or another, he said something like I never expect to see a document from the hand of man which is perfect, but we surely can't say what we've proposed is perfect. I think it passes the test of is it better.

THE CHAIRMAN: I think that's how Benjamin Franklin ended up the Constitution.

MR. F.A.O. SCHWARZ: Fred Friendly, at our

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hearings on August 2nd, quoted Benjamin Franklin.

THE CHAIRMAN: On that high note, I thank you for your participation, you have been helpful to us.

I would like to say for the record that this particular hearing is part of a larger effort that our Commission has expended in examining issues having to do with contracting and procurement in New York State.

We anticipate including all of that work, concluding in the next month or two, and the issuing of a number of recommendations that not only bear on New York City, but bear on subjects beyond New York City, and this is part of a larger context.

You have been very helpful. Thank you.

MR. F.A.O. SCHWARZ: Thank you.

COMMISSIONER VANCE: Thank you very much.

THE CHAIRMAN: This hearing is concluded.

(Time noted: 4:15 o'clock p.m.)
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