Timothy S. Carey
President / CEO

BATTERY PARK CITY AUTHORITY

February 29, 2000

Mr. William P. Challice
Office of the State Comptroller
Division of Management Audits
270 Broadway
New York, NY 10007 - 2306

Re: Response to OSC Report 97 – S – 58.

Dear Mr. Challice:

Pursuant to Section 170 of the Executive Law I present this report on the steps taken to implement the recommendations of the Office of the State Comptroller in OSC REPORT 97 - S – 58. In any case where we have not implemented a recommendation, our reasons are likewise set forth.

In OSC REPORT 97 – S - 58 The Office of the Sate Comptroller made the following recommendations for changes or additions to Battery Park City Authority's contract practices. The OSC recommendations will be listed in bold type and the Authority's response to them will follow.

1. **Strengthen control over proposals by:**
   - Stamping proposals envelopes with the date and time of receipt
   - Retaining the envelopes in which they were delivered
   - Maintain a log with the date and time the proposals are received
   - Securing their location immediately upon receipt; and
   - Storing unopened proposals in a locked cabinet.

   BPCA Response: Management of the Authority has considered this recommendation and has created new guidelines for the submission of proposals with these recommendations in mind. (Please see the attached guidelines).

2. **Document reasons for any changes to proposal amounts.**

BPCA response: Department Heads are being directed to document reasons for any changes in bid price. Such matters have already come before the Contract Selection Committee ("CSC") and CSC is requiring such requests and supporting documents to fully explain the changed circumstances leading to a changed proposal amount. The minutes of the meetings of the CSC record these explanations.

3. **Request cost proposals from all bidders.**

BPCA response: Department Heads are directed to see that this practice is followed. This recommendation is applied in CSC meetings when reviewing procurement contracts.

4. **Use non-competitive contract awards only in accordance with BPCA guidelines.** (Section IV.C.1.c of the BPCA policy manual does not, in the opinion of the State Comptroller's Office, provide adequate documentation for the use of non-competitive awards).

BPCA response: Minutes of CSC proceedings address this concern by documenting that proposals for non-competitive awards are thoroughly reviewed. Non-competitive contracts are approved only where the circumstances meet the advertising exceptions for procurement contracts.

5. **Consider requiring Contract Selection Committee approval for significant change orders.**

BPCA response: This process is currently being reviewed by the CSC, but has not yet been resolved. Please note that the CSC is a creation of the BPCA and is not required by law or regulation. Its functions do not presently include review of change orders. Oversight of change orders is executed in other, comparable, ways. The current practice of the BPCA requires members of senior staff to individually sign off on change orders in an approval routing process.

The CSC only meets once month and change orders can occur far more frequently. Requiring CSC review of change orders could create needless delays in the approval process. This is potentially costly given that many significant change orders occur in relation to the Construction Department. A failure to timely deal with "field emergencies" that require change orders can have a negative financial effect on BPCA in the form of liability for damages for construction impact. In the case of field emergencies, while the work is authorized in the field, it is nevertheless later subjected to a written review and approval as detailed in a new BPCA policy (BPCA Policy and Procedures, section IV.D.6). See also point 10, below.

The approval routing signatories for a Commitment Request, with the exception of BPCA's President and CEO, are all members of the Contract Selection Committee. Thus, in principle, the judgement and discretion applied at CSC meetings is applied in the Commitment Request Form routing system and in a more time sensitive manner. Moreover, the forms on which approval of change orders is given are being redesigned to require additional pertinent information to demonstrate that BPCA policies and procedures were in fact followed.

6. **Ensure that reports to the Members adequately disclose which contracts were increased or extended due to change orders.**

BPCA response: The Construction Department currently produces a monthly update with such information according to our internal guidelines and policies ("Monthly Change Order Status Report").

The CSC is recommending, however, that the Finance Department report, "Status of Open and Active Contracts," include new categories such as: 1. Inactive or In Dispute, 2. Active Projects, 3. Multi-year Contracts, 4. Consultants. The total number of amendments to each Contract will be clearly indicated as will the termination date of each contract. This report is provided quarterly, in addition to the Finance Department's Annual Procurement Report and the Construction Department's quarterly Monthly Change Order Status Reports.

7. **Where applicable either include ongoing maintenance as part of the original contract or award a separate contract for the maintenance portion.**

BPCA response: It is the practice of BPCA to include maintenance, where appropriate, in contracts. Department Heads are aware that they should follow this rule whenever possible.

Please note that the BPCA Vice President of Internal Audit has completed a review of the EIA contract, which, apparently, was the contract upon which this observation of the OSC was based. Based on this internal review BPCA respectfully takes issue with the representation by OSC that BPCA's contractual relationship with EIA did not include maintenance.

8. **Improve control over bid files.**

BPCA response: Bidding is currently done by individual BPCA departments, rather than by a central procurement department. Each department has unique file retention policies and bid files are not kept in a centralized location. BPCA has, however, appointed a new record management officer and has undertaken an initiative to inventory its records, apply an updated retention and destruction schedule, and develop a global record management policy. Bid files are one of the many series of records that will be addressed in this effort. When the file

management project is completed, we believe that greater oversight of bid files will be achieved.

9. Ensure that contracts include all foreseeable work.

BPCA response: While this issue is not expressly mentioned in BPCA procurement guidelines, we have always proceeded as if this were a self-evident component of seeking a contract. CSC review acts as an additional control in this area.

10. Ensure that work is not begun prior to approval.

BPCA response: We agree with this observation and there is a requirement in the current guidelines **(IV.D.6)** to that effect. Logic and custom dictate, however, that an exception be made in the case of construction "field conditions."

"Field Conditions" are unforeseen situations that arise *after* the construction process has begun. Addressing the challenges posed by field conditions requires quick decision-making aimed at solving the problem and minimizing the delay or impact on the other work that must wait until the field condition is resolved. This situation is not unique to BPCA but is common in the construction industry.

Delaying the start of this extra work can lead to large financial claims for "delay" and for crew time lost while decisions are reviewed and paperwork completed. In keeping with industry custom, when a field condition arises, the BPCA Construction Vice President, our project manager, and the construction manager immediately confer on the need for extra work. If the work is deemed necessary, the work is commissioned in the field to avoid delay. The change orders for this extra work are later reviewed through the Commitment Request Form routing. (See point 5, above). A new section **(IV.D.6)** on "field emergencies" and reporting procedures was added to the BPCA guidelines at the 2/14/2000 Board Meeting in recognition of these realities. BPCA Department Heads have been instructed individually and at Senior Staff meetings on these guidelines and the need to adhere to them.

Very truly yours,

Timothy S. Carey

Timothy Carey
President / CEO

BATTERY PARK CITY AUTHORITY

MEMORANDUM

TO: SENIOR STAFF

FROM: TIMOTHY S. CAREY

DATE: FEBRUARY 24, 2000

RE: GUIDELINES FOR RECEIPT AND OPENING PROPOSALS

DURING THE LAST AUDIT OF THE STATE COMPTROLLER'S OFFICE, IT WAS SUGGESTED THAT WE TIGHTEN UP OUR BIDDING PROCEDURES.

TO RESPOND TO THAT SUGGESTION, WE PROPOSE THE FOLLOWING GUIDELINES FOR SUBMISSION OF PROPOSALS, EFFECTIVE IMMEDIATELY, MONDAY, FEBRUARY 28, 2000.

THANK YOU.

One World Financial Center, New York, NY 10281-1097 (212) 416-5376 • Fax: (212) 416-5399

GUIDELINES FOR RECEIPT AND OPENING OF PROPOSALS

Set forth below are guidelines for receipt and opening of proposals for goods, services and real estate development projects of the authority. Please note these guidelines pertain only to receipt and opening of Proposals and not to the subsequent evaluation process.

1. Clearly state in the RFP date, time, and place, by which proposals will be accepted. (E.g. Proposals will be accepted no later than 5:00 PM, Feb. 29, 2000 at the BPCA offices One World Financial Center 24th flr.).

2. Designate one person as the Staff member in-charge of the acceptance of the proposals. This should be someone from the Mailroom, Internal Audit, or in the case of the Construction Department, the Contract Administrator. Also, have a back-up person, for breaks, who will be trained in the process of proposal submission package acceptance.

3. Stamp envelopes upon arrival with time and date received.

4. Secure sealed bids immediately when received. There is a locked closet near the entrance of the office. There are two keys to the cabinet, one for the receiver of proposals and one for the President.

5. The person who secures bids in the locked cabinet should also be the person to remove and distribute proposals.

6. Maintain a log of when bids are received, secured, and distributed. The log should have a stitched binding and pre-numbered pages. Also, comment in the logbook on the condition of the envelope and the operability of the lock.

7. Have a formal opening of proposals, where all bids will be opened.

<u>These final steps can be done on a separate form. To be kept with a copy of the Award materials. Attach a copy of the form after the proposal Award to the pertinent log page.</u>

8. Date and time stamp proposals as opened.

9. List the people present at the opening and their titles.

10. Staff member in charge of receiving proposals should be present at their opening.

11. Have witnesses sign the opening logbook.