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STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 18, 2000

Mr. Claude M. Millman
Director
The City of New York
Office of the Mayor
Office of Contracts
253 Broadway - 9th Floor
New York, NY 10007-2306

Re: Report 99-F-49

Dear Mr. Millman:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article III of the General Municipal Law; we reviewed the actions taken by officials of the City of New York Mayor's Office of Contracts and the Procurement Policy Board as of March 17, 2000, to implement the recommendations contained in our audit report, *Contract Award Hearings* (Report A-12-92). Our report, which was issued on June 5, 1992, examined the procedures and practices relating to the conduct of contract award hearings.

Background

In November 1989, the voters of the City of New York (City) approved significant amendments to the City Charter (Charter) that, among other things, abolished the Board of Estimate and established a Procurement Policy Board (PPB) to set procedures for handling City contracts. In September 1990, PPB adopted a set of rules to guide the City's contracting process. Those rules include a requirement that public hearings on contract awards be scheduled at regular times and places to ensure that those who may disagree with agency decisions concerning the proposed award of any contract over \$100,000, unless exempted by the Charter or PPB (e.g., competitive sealed bids or emergency contracts), would have a fair opportunity to be heard. Contracts subject to a public hearing are referred to as "special case contracts." The Mayor's Office of Contracts (MOC) oversees the City's procurement process relating to these contracts. According to City officials, the City awarded \$8.6 billion in contracts for the fiscal year that ended on June 30, 1999.

Summary Conclusions

Our prior audit found that there was very little public participation at award hearings. In fact, “testimony” was offered during just 4 of the 47 hearings we reviewed. We attributed this lack of participation partly to weaknesses in administrative controls that resulted, among other things, in City agencies not having contract documents available for review prior to the hearing.

In our follow-up review, we found that MOC officials have taken some steps to strengthen administrative controls relating to contract award hearings. They have increased the advertisement of public notifications of the hearings; reemphasized the need for all agencies to make contract documents available for review; and provided televised coverage of some hearings. MOC has also reviewed the reason for a discrepancy in a contract amount we cited in our prior report. MOC officials also stated that they plan to take additional steps to increase public access to contract information.

Summary of Status of Prior Audit Recommendations

Of the six prior audit recommendations attributable to MOC, MOC officials have implemented four recommendations and two recommendations are no longer applicable. The one recommendation attributable to PPB, is no longer applicable.

Follow-up Observations

Recommendation 1

MOC should expand the advertising of award hearings by increasing the number of days the notice appears in the City Record or by advertising in trade publications.

Status - Implemented

Agency Action - MOC increased the number of editions in which the contract award hearing notice is published in the City Record from the one required by the PPB Rules to five. A standing weekly notice of contract award hearings is published in the City Record. In addition, contract award hearings are now advertised on Crosswalks, the City’s cable television station, which periodically televises the hearings. MOC is also exploring the feasibility of posting the public hearing calendar on its website.

Recommendation 2

MOC should ensure that all agencies have the contract documents available for public review at the locations and times reported by the City Record.

Status - Implemented

Agency Action - On April 13, 1992, MOC reemphasized the need for all agencies to make contract documents available for public review. It also reiterated to agencies that there would be a re-hearing if any agency does not fulfill this requirement. MOC does not conduct any follow-up testing to determine whether contract documents are, in fact, available for review but, instead, relies on the public to notify them when contract documents are not made available. MOC advised us that they were not aware of many such instances from the public.

Auditors' Comments - On February 23, 2000, we attempted to review documents related to two proposed draft contracts, which were scheduled for public hearing on March 2, 2000. Both proposed contracts were provided for our review. One of the proposed contracts (\$180 million), at the Department of Homeless Services, did not include certain items that were referenced there in. For example, the proposed draft contract did not include the original Contractor Proposal. A Department of Homeless Services official told us that none of the referenced items were available for public review. This official told us that another member of the public had also requested, and had been denied, the same documents.

After they were made aware of these circumstances, MOC advised us that, while the proposed draft contract had been made available on February 23, 2000, the agency decided to make the additional information available in response to a question from the public, and that a second hearing was scheduled to allow the public sufficient time to review it and comment. Accordingly, the agency revised the proposed draft contract to incorporate the additional information into the proposed draft contract. MOC indicated that the person, who had been initially unable to view the documents that were referenced to in the proposed draft contract, was immediately notified of the second scheduled hearing and the availability of the revised proposed contract, which now included pertinent sections of the documents that had been originally referenced.

MOC also stated that they plan additional actions to further ensure public access to contract information, including the canvass of agencies prior to hearings to either remind, or assure that agencies make proposed draft contracts available for public inspection. Also, MOC plans to explore the feasibility of posting proposed draft contracts on the Internet.

Recommendation 3

MOC should advertise hearing postponements as soon as possible.

Status - No Longer Applicable

Agency Action - MOC officials stated that hearings are not "postponed." If rescheduling becomes necessary, as was the case in the contract cited in Recommendation 2, they conduct the originally scheduled hearing as well as the "continued" hearing. They said that agency officials are present at both meetings, and all of the public's testimony is recorded in a transcript.

Recommendation 4

MOC should ensure that agencies adhere to the PPB requirements that they document what effect testimony given at the hearings had on the contract award and why.

Status - No Longer Applicable

Agency Action - The PPB no longer requires agencies to document this. Nevertheless, MOC requires this of agencies, and stated they monitor agency compliance with the requirement.

Recommendation 5

MOC should determine the reason for the discrepancy in the contract amount for a redesign of a park between its records and the hearing.

Status - Implemented

Agency Action - As part of their response to Report A-12-92, MOC officials indicated that they had reviewed and determined the reason for the discrepancy.

Recommendation 6

MOC should consider the possibility of holding hearings at times outside of normal working hours and at sites outside Manhattan.

Status - Implemented

Agency Action - MOC officials considered changing the times and locations of hearings, but felt that such changes would introduce an unacceptable level of uncertainty about when and where hearings will take place, and could, in their opinion, undermine the Charter purpose for holding hearings on contracts for which vendor selection is discretionary. While they have not changed either the time of day or the location of hearings, MOC now televises some hearings as a way of providing the public with increased access to the hearing process, and is exploring alternate approaches to maximize the flow of information.

Recommendation 7

PPB should revise its rules so that contract award hearings are conducted by the Mayor's Office of Contracts with agency representatives present. MOC personnel should introduce each proposed contract, solicit testimony, and, where necessary, question the individual testifying and/or the agency head on the testimony.

Status - No Longer Applicable

Agency Action - Section 326 of the City Charter provides that hearings are to be presented and conducted by the head or deputy head of the agency.

Major contributors to this report were William Chalice, Walter Mendelson, Cindi Frieder, Barry Mordowitz, and John Lang.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and staff of MOC and PPB for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

A handwritten signature in black ink that reads "William P. Chalice". The signature is written in a cursive, flowing style.

William P. Chalice
Audit Director

cc: Michael Stoller, Executive Director, Procurement Policy Board