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OFFICE OF THE STATE COMPTROLLER

March 4, 2008

Mr. James E. Cavanaugh
President and Chief Executive Officer
Hugh L. Carey, Battery Park City Authority
One World Financial Center
New York, NY 10281-1097

Re: Report 2007-F-23

Dear Mr. Cavanaugh:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5, of the State Constitution; and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials of the Battery Park City Authority (BPCA) to implement the recommendations contained in our audit report, *Internal Controls over Contracting* (Report 2005-S-8).

Background, Scope and Objective

New York State adopted the Battery Park City Authority Act in 1968, creating the Battery Park City Authority (BPCA) under the Public Authorities Law, as a public benefit corporation that would supervise the development of a 92-acre site on the lower west side of Manhattan. This site, which was created from landfill, is owned by BPCA and is known as Battery Park City. The site includes 8 million square feet of office space, a 500,000 square-foot commodities trading facility, retail space, a marina, two hotels, a multiplex cinema, museums, public schools, and approximately 9,000 residential units, in addition to park land and open space. Construction at the site is almost complete, except for the development of approximately 1.8 million square feet of additional commercial space and 2,200 residential units. BPCA is governed by a Board consisting of seven members appointed by the Governor, with the advice and consent of the New York State Senate.

Our initial audit report, which was issued on April 6, 2006, examined whether BPCA established and implemented adequate internal controls to ensure contracts are solicited competitively and awarded properly. We found that, for the most part, BPCA has established adequate internal controls over the soliciting and awarding of contracts, but needs to improve the implementation of these controls. While BPCA has comprehensive guidelines for soliciting and awarding contracts on a competitive basis, it has not always complied with these guidelines. We found contracts were sometimes amended significantly to include work that either should have been anticipated and included in the initial competitive process or awarded separately. We also found insufficient documentation that BPCA ensured that the prices paid for the additional services were

fair and reasonable. While we found BPCA complied with many of the requirements contained in its procurement guidelines, we identified the need for improvement in other areas, including records retention, monitoring and reporting on MWBE participation, accuracy of bid evaluations, and including selection criteria in the request for bid documents.

The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of December 31, 2007, of the seven recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that BPCA officials have made substantial progress in correcting the problems we identified. However, additional improvements are needed. Of the seven prior audit recommendations, five recommendations have been implemented, one recommendation has been partially implemented, and one recommendation has not been implemented.

Follow-up Observations

Recommendation 1

Use competitive bidding for all contract changes that constitute a scope change or a substantial increase in the contract price, unless the contractor is uniquely qualified and BPCA can document that continued work would be at a reasonable price.

Status - Not Implemented

Agency Action - BPCA officials continue to assert that implementing this recommendation could be unworkable - bringing disruption and delays to critical path projects. They state that because of this, they will continue to use the selected contractor, but will ensure and document clearly that the work is performed at a reasonable price.

Auditor's Comments - As stated in the initial report, the practices we identified resulted in the approval of amendments that were multi-year in nature and provided a significantly-greater project scope than that in the contract originally awarded. For example, consultant contracts for initial project planning were amended to include subsequent project phases, such as actual project design, contract administrative services, or work on a different site. Such practices do not promote a competitive process or provide the opportunity for other vendors to compete for BPCA work.

Recommendation 2

Ensure that there is sufficient documentation of the methods used to determine the reasonableness of amendment costs.

Status - Partially Implemented

Agency Action - Although BPCA officials agreed with this recommendation in their response to our

audit report, we conclude that the level of documentation still needs to be improved. We judgmentally selected eight amendments to test whether there was sufficient documentation to support the reasonableness of amendment costs. In one instance, an outside consultant advised BPCA that he had assessed the cost of the amendment to be reasonable. In another, the file contained a letter stating that BPCA's Construction and Planning & Design departments had reviewed the reasonableness of the costs. For five construction-related amendments, BPCA officials assert that the approval by their Construction Manager - whose duties include negotiating the price for change order work - of the amendment, evidences his belief that the cost is reasonable. BPCA did not provide specific documentation supporting the reasonableness of the cost of the eighth amendment, which was for architectural services.

Recommendation 3

Clarify the record retention policy and ensure consistent compliance.

Status - Implemented

Agency Action - BPCA's record retention policy has been clarified and, effective June 19, 2007, requires that unsuccessful bids be retained for six years. Our review of 7 judgmentally-selected contracts found unsuccessful bid records were retained.

Recommendation 4

Ensure that RFPs and bid specifications inform potential bidders of the criteria to be used to evaluate the proposals.

Status - Implemented

Agency Action - Our review of six judgmentally-selected contracts confirmed that the RFPs and bid specifications inform bidders of BPCA's evaluation criteria.

Recommendation 5

Ensure the justification for selecting a particular firm accurately reflects what is in the submitted proposals.

Status - Implemented

Agency Action - We judgmentally selected a sample of seven contracts to ensure that they contained justification for awarding the winning proposal. BPCA officials provided appropriate documentation for justification for all seven contracts.

Recommendation 6

Ensure that MWBE participation in BPCA contracts is reported to DED in terms of actual dollars paid, not in terms of dollars awarded.

Status - Implemented

Agency Action - We confirmed that the MWBE amounts reported to DED for fiscal year 2006-07 were in terms of actual dollars paid, rather than dollars awarded.

Recommendation 7

Improve monitoring of contractor compliance with MWBE participation and workforce utilization goals.

Status - Implemented

Agency Action - To determine whether contractors are submitting the required monthly reports, we selected a judgmental sample of 11 contracts. We confirmed the MWBE participation and workforce utilization reports on file for seven contracts; for the remaining four contracts we confirmed that MWBE and workforce utilization requirements were waived. We conclude that BPCA has improved its monitoring of contractor compliance with MWBE participation and workforce utilization goals, as evidenced through the appropriate supporting documentation.

Major contributors to this report were Myron Goldmeer, Alina Mattie, Katrina Lau, and Margarita Ledezma.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Battery Park City Authority for the courtesies and cooperation extended to our auditor during this process.

Very truly yours,

Cindi Frieder
Audit Manager

cc: Ms. Lisa Miller, Vice President, Internal Audit and Compliance
Ms. Lisa Ng, Division of the Budget