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TESTIMONY BEFORE THE EDUCATION COMMITTEE
REGARDING NON-COMPETITIVE CONTRACTS
AT THE
NYC DEPT. OF EDUCATION

NEW YORK CITY COUNCIL
CITY HALL
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Good morning, Committee Chair Jackson and honorable members of the Education Committee. I appear before you today to express my deep concern with the procurement process at the New York City Department of Education.

Only six years ago, the use of non-competitive bids was relatively rare. Between 2000 and 2004, which includes the period in which the Board of Ed was transformed into the Department of Education, the value of those contracts skyrocketed from \$700,000 to \$47 million dollars.

In the wake of my office's investigation into the Snapple contract, that figure declined to \$27 million for the past two years, but if you use the \$700,000 benchmark, that's still far too much. How did we get here?

The DOE currently has no formal rules to follow when procuring goods and services. This lack of rules stands in stark contrast to the requirements of other New York State and New York City agencies.

Moreover, in spite of continued criticism, the DOE refuses to adopt a set of formal procurement rules similar to those followed by every other City agency – in a process that is open and transparent, subject to public comment and accountability.

Contracts at all other City agencies are subject to the Procurement Policy Board (PPB) Rules. The PPB, comprised of three representatives of the Mayor and two representatives of my office, takes a deliberative approach to developing policies under which the City procures contracts.

There is discussion, debate, and an open forum through which the public can comment. There is in the end a public vote. This is a process that, while not perfect, is at least transparent.

By contrast, contracts let by the Department of Education have been determined by the Law Department and the Schools Chancellor to fall outside of that process. The DOE claims it is not required to adopt formal procedures for awarding contracts.

Since the Board of Education became the Department of Education, it has exploited a grey area in the law that allows it to treat itself as a State agency whenever it is convenient to do so, and then as a City agency when it is likewise convenient. That is neither good government nor good public policy.

As Comptroller, I am responsible for enforcing many of the regulations designed to encourage fair, open competition. It's more than just my job; I believe in competition. It's good for New York, and it's the right way to go.

When we give responsible contractors the opportunity to compete for City contracts, everybody benefits. Competition ensures that the City gets the best price for the highest quality work.

In addition, competition helps protect the integrity of the contracting process. It also strengthens the local economy by ensuring that a wide range of companies have the chance to win the lucrative contracts that can make or break a business.

As you know, a few years ago, I reviewed the Department of Education's awarding of an exclusive contract to the Snapple Beverage Group for vending machines in New York City schools.

My contract investigators initially suspected – and our auditors later conclusively found – that during the “procurement” process there were minimal solicitation efforts, an inadequate request for proposals package, and a defective bid evaluation and selection process.

All of these findings reflected violations of the Department of Education's written policies for awarding a professional service contract.

Nevertheless, at that time, the Department asserted that it did not need to follow its own written guidelines. It also made the bizarre claim that its procedures could be informally changed, retroactively, if they so chose.

In the wake of our Snapple review and its resulting publicity, my staff and I met with the DOE to propose changes to their procurement process. To be fair to the Department, a few of our recommendations were followed. For example, the DOE now discloses on its web site, and in the City Record, contracts which are being proposed as exceptions to competitive bidding.

At our suggestion, the Department also now includes a statement that it is willing to consider other proposers to perform the work and includes names of individuals to contact and dates by which the contact should be made.

In one recent case where we learned of the Department's intention to award a no-bid contract to the firm KPMG, we asked the department to

reconsider that decision, which they have done. I understand that the Department is now conducting a more competitive process.

While my office's oversight function is critical, we should not have to rely on watchdogs and whistleblowers to get the Department of Education to do the right thing. The department must have clear rules it is required to follow. To date, it has refused to promulgate such rules.

In another recent case, as you know, the Department of Education entered into a no-bid contract with the firm of Alvarez and Marsal, ostensibly to find places to cut costs in the DOE budget.

In what can only be described as a sad irony for the people of New York City, A&M is charging the City a whopping sixteen million dollars for those services, including almost five hundred dollars an hour for one employee. This individual will cost the City of New York \$1.9 million dollars for seventeen months of work.

The Department will argue that the savings discovered by this consultant will make up for his exorbitant salary, but there is a disturbing symbolism in a consultant hired to eliminate waste being paid almost six times the statutory salary of the Mayor.

When we first brought the issue of no-bid contracts to light in 2004, as I mentioned at the top of my testimony, the value of these contracts stood at \$47 million.

In May 2004, I recommended State legislation to make the Department subject to the same procurement rules as every other City agency. Rather than pass a new law, elected officials in Albany encouraged the DOE to work in good faith with my office to resolve the problem voluntarily.

Despite the best efforts of my office, in the past two years the DOE has processed approximately \$27 million each year through the exceptions to competitive bidding process. The sheer number of those exceptions shows that it's time to reconsider State legislation.

If we do not address this problem soon, we will find ourselves back here again discussing the same problem that brought us together today. It is time now for the Department of Education to come up with a set of formal rules to ensure that contracts are fairly and transparently bid.

New Yorkers have a right to expect that billions of their dollars are being spent without favoritism and with an identifiable and documented process. As Comptroller, I will continue to work with the Council in any way to bring about necessary reforms to ensure accountability at the DOE and other City agencies.

All New Yorkers can expect no less of us. Thank you very much.