

Statement by Deputy Comptroller Greg Brooks
before voting on behalf of William C. Thompson, Jr.
at Franchise and Concessions Review Committee
on Proposed Snapple Agreement

Comptroller Thompson is voting against the resolution authorizing NYC Marketing and the Department of Citywide Administrative Services to enter into agreements with the Snapple company for the right to serve as the exclusive citywide vendor for water, iced tea, and chocolate drinks.

The Comptroller has serious concerns about the process that led to the selection of Snapple for this 126 million dollar agreement. Our office is also very concerned about the lack of available information, and the City administration's refusal to provide relevant documentation.

The Franchise and Concessions Review Committee (FCRC) should vote against this concession for the following reasons:

First, the selection of Snapple for this citywide agreement appears to have been based on the Department of Education's (DoE's) selection of Snapple to supply vending machines in City schools. That selection process, however, may not have followed the DoE's own regulations for conducting a Request for Proposal process.

At hearings held by the City Council on December 4th and by this Committee on December 8th, several vendors presented testimony raising serious concerns about the fairness of the selection process.

Therefore, the foundation upon which the citywide deal is based may have been fundamentally flawed.

Second, the process by which the Department of Education selected Octagon, the marketing firm that conducted the process that led to the Snapple awards, may also have violated DoE processes. Octagon, as the Comptroller's Office has revealed, did not bid or submit a proposal in response to the DoE Request for Proposal Number 1B703. Therefore, the Interim Authorization to Represent the DoE, dated June 23, 2003, appears to be invalid.

Third, the involvement of Octagon raises serious conflict-of-interest issues, which should have prevented the firm from negotiating with Snapple. Octagon represents Snapple's parent firm, Cadbury-Schweppes, which stands to benefit considerably through this agreement.

The DoE agreement includes student vending machines, which will carry water and juice produced by Snapple, but the teacher lounges will carry a wider range of beverages, including many Cadbury-Schweppes products that are not produced by Snapple.

This is all the more troubling in light of the fact that other vendors were told the teacher lounges would not be included in any award made by the DoE.

In addition, Octagon's affiliate, Deutsch Inc., will likely benefit, as it will probably perform most, if not all, of the \$60 million in advertising promised by Snapple on the citywide agreement.

Fourth, the Administration has not satisfied the FCRC's own requirements for awarding this agreement. NYC Marketing has not set forth a credible justification for this non-competitive award.

In testimony before the FCRC on December 8th, Chief Marketing Officer Joseph Perello stated that Snapple would not have given the City a good deal unless it was awarded the citywide contract directly following the DoE agreement.

This points out a fundamental unfairness regarding this process because if other vendors had been given the opportunity to propose on the citywide agreement, they, too, would have been able to make more competitive offers.

Likewise, NYC Marketing has not conducted or provided a cost benefit analysis to show that awarding the contract to Snapple without competition has resulted in more revenue to the City than if a competitive process had been conducted.

FCRC rules require that the awarding agency notify affected community boards that it is seeking Committee approval of a different procedure, and that it provide Committee members with a listing of each community board and the date of the notification. The Comptroller's Office has not received this information and asks other Committee members whether they have received this required information.

In addition, Snapple has yet to submit completed Vendex questionnaires as required by the Rules, as questionnaires received by the Comptroller's Office do not have required notarizations.

It not clear that NYC Marketing has the legal authority to negotiate on behalf of the City. As Mr. Perello and Corporation Counsel have both indicated, there is no legal, registered contract between NYC Marketing and the City.

Without the benefit of reviewing the NYC Marketing agreement, we simply have no way of knowing what NYC Marketing's obligations are with respect to its financial arrangement with the City.

Finally, at the December 8th hearing, the Comptroller's Office requested a meeting with Snapple to discuss its concerns. Snapple, however, has not responded, and appears to be refusing this request.

For these and other reasons before this Committee, the Comptroller and other members of the FCRC would be breaching their fiduciary duty to the City by voting in favor of this concession.

Since these agreements were announced in September, our office has sought information from the City administration about how the selection process was conducted, and how the DoE agreement led to the selection of Snapple for the citywide agreement.

To date we have received conflicting and unsatisfactory answers. Instead, our inquiries have resulted in more unanswered questions. Therefore, the Comptroller has invoked the audit powers of his office to shed light on the details of these agreements.

Our office is currently auditing the process that led to the DoE's agreement with Snapple. To date, the DoE has failed to respond to our request for an entrance conference. That fact should again give pause to the members of the FCRC.

With the cooperation of the DoE and the audit powers afforded the Comptroller by the New York City Charter, however, our office will be able to obtain the necessary information about this agreement, which seems to have been negotiated behind closed doors.

We believe that the audit would allow the members of the FCRC and New Yorkers to know whether or not the selection process was fair and open.

In a December 3rd letter to Mayor Bloomberg, Comptroller Thompson urged the Mayor to refrain from presenting the citywide agreement to this Committee until the audit is completed.

Unfortunately, despite the lack of available information and the persistent concerns about the selection process, the City administration chose to submit the proposal to the FCRC, in the apparent hope of securing approval before all the facts are in.

This is highly regrettable. The laws that govern the City's business agreements with private companies clearly call for a selection process that is open and fair, and a level playing field for competitors.

In this case, however, the available evidence suggests that instead of pursuing an open and fair process, the City made a deal behind closed doors, violating the spirit, and possibly the letter, of those laws.

To ask the FCRC to approve the outcome of this process, with so little information, adds insult to injury.

Comptroller Thompson votes no on this matter.

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