



New York City Comptroller  
John C. Liu

NEWS RELEASE

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**DOE WANTS BLANK CHECK FOR CONTRACTS;  
LIU URGES NO!**

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NEW YORK, NY - New York City Comptroller John C. Liu urged the Panel for Education Policy (PEP) to reject the Department of Education (DOE) resolution for a "Blanket Approval of Purchases through Contracts", which would allow the DOE to make contract purchases without PEP approval. The DOE resolution, on the meeting agenda posted for the upcoming July 19 PEP meeting, comes less than a year after PEP approval of contracts became required in the school governance reform (widely known as the extension and modification of mayoral control of New York City schools) passed by the state legislature last August.

During the heightened public debate leading up to the legislative passage, New York State Comptroller Thomas DiNapoli had issued an audit report which found significantly diminished assurance that the DOE's non-competitive contracts were justified.

Comptroller Liu stated: "It's rather amazing that the DOE is already plotting an end-run around the stronger DOE accountability required by school governance reform passed less than a year ago. The State legislation answered public demands for greater scrutiny and oversight of the DOE, yet the DOE just doesn't relent in its pursuit of less public scrutiny and less oversight. This little-known resolution, if passed, will not only circumvent State law, but will encourage more expensive and unnecessary contracts, many of which will undoubtedly be no-bid contracts that the public clearly disapproves of."

New York City Councilmember and Education Committee Chairperson ROBERT JACKSON stated: "Comptroller Liu's letter should be required reading in Albany. Each and every one of our State legislators needs to understand how their intent is being averted by DOE's attempt to bypass the explicit protocol they established to foster accountability and public scrutiny. This violates State law by removing PEP oversight, but the stealth bomber under the radar approach of presenting this speaks volumes about DOE lack of respect for public discourse and disclosure."

Assemblymember MICAH KELLNER stated: "This resolution is a clear attempt to circumvent the contracting oversight provisions included in the school governance reforms that were passed by the legislature last summer. By putting forward this resolution the Department of Education is showing that they want to pick and choose which parts of the law they want to comply with. That is not how the law works."

In his July 16 letter to the PEP urging rejection of the resolution, Comptroller Liu also noted that the resolution was not properly disseminated for review prior to the vote and is inconsistent with existing procurement policies and procedures. Although the vote on the resolution is listed on the PEP's meeting agenda for tomorrow, July 19 ([http://schools.nyc.gov/NR/rdonlyres/E771A08A-C2EC-463F-A186-473FE1AAFF63/85721/PEP\\_RevisedAgenda\\_Jul192010.pdf](http://schools.nyc.gov/NR/rdonlyres/E771A08A-C2EC-463F-A186-473FE1AAFF63/85721/PEP_RevisedAgenda_Jul192010.pdf)), the resolution itself is still nowhere to be found nor provided. The full text of Comptroller Liu's letter is below.

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July 16, 2010

Mr. David C. Chang  
Chairperson, Panel for Educational Policy

Mr. Tino Hernandez  
Chairperson, Contracts Committee  
Panel for Educational Policy  
Department of Education  
City of New York  
52 Chambers Street  
New York, NY 10007

RE: Agenda Item C, Panel for Educational Policy Meeting, July 19, 2010

Dear Mr. Chang and Mr. Hernandez:

On Monday, July 19, 2009, the Panel for Educational Policy ("PEP") will be asked to approve a resolution entitled "Blanket Approval of Purchases through Contracts of the City of New York and its Agencies" amending Section 2-08(d)(2) of the Department of Education's ("DOE") Procurement Policy and Procedures to permit DOE to make purchases through contracts of the City of New York and its agencies without PEP approval. Presently, contracts with the City of New York and its agencies require approval by the PEP in conformance with New York State Education Law Section 2590-g(5)(c). I write to inform you of the need for your continued oversight and to urge you to reject the resolution as it is imprudent, inconsistent with existing state law and would perpetuate DOE's history of poor transparency and accountability.

My office has repeatedly asked for copies of the resolution, and to date, a copy of the resolution has not been provided. But it is our understanding that the resolution seeks to amend Section 2-08(d)(2) of the DOE's Procurement Policy and Procedures as approved by PEP on January 27, 2010 to exempt any contracts from PEP approval by the City of New York and its agencies as undertaken by the DOE. Section 2-08(d)(2) currently exempts only contracts with the U.S. General Services Administration and other federal agencies or those with the NYS Office of General Services and other State agencies from PEP approval. However, DOE has no authority to amend its Procurement Policy and Procedures when such amendment would be inconsistent with the provisions of New York State Education Law as amended on August 11, 2009.

It has been less than a year since the New York State Legislature strengthened the PEP's authority over DOE's contracting process because it, in its wisdom, believed that it was prudent to require greater oversight and public transparency over what amounts to billions of dollars in taxpayer expenditures each year. My office takes the same position. Public transparency is our duty. Blanket

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approval of contracts with City agencies effectively removes these contracts from the PEP and public scrutiny. Had the State Legislature intended to exempt these contracts from the PEP approval, as it elected to do with New York State and federal contracts, it would have done so.

Presently, the City of New York conducts procurements, known as “requirements contracts,” that are structured to serve multiple agencies. Such contracts are generally let for goods and/or services concerning information technology and commodities purchases through contracts held by the Department of Information Technology & Telecommunications (DOITT) and the Department of Citywide Administrative Services (DCAS). Requirements contracts were established to achieve economies of scale and are limited to the above two agencies. Although my office has been informed that DOE intends to purchase from only DOITT and DCAS requirements contracts, it is my understanding that the proposed resolution provides for no limitations on the exemption.

Additionally, I must point out that it is unclear whether DOE has complied with applicable PEP by-laws concerning public review. Section 2.5.1(g) of the PEP by-laws states that the PEP shall undertake a public review process “prior to approving a procurement policy for the City District and any amendments made thereto;...The public review process shall include notice of the proposed item under PEP consideration at least 45 days in advance of the Panel vote on such item. Such public notice shall include a description of the subject and the purpose and substance of the proposed item under consideration, and shall otherwise conform to the requirements of Education Law 2590-g(8) (a).” Based upon a review by my office, such required public notice does not appear to have been properly posted on the PEP website, as required, nor has such notice been properly provided in conformance with the Education Law. My office discovered this item on July 2, 2010 under the “Public Meetings” and “Agenda” section of the website rather than under the “Public Notice” section. Additionally, the date of the Agenda page changes automatically, thus there is no way of knowing when, in fact, the item was posted and whether the 45 day requirement was met. Moreover, the website contains no information under the “Meeting Materials” section nor does the Agenda item itself describe with any detail what could remotely be interpreted as the “purpose and substance” of the proposed item.

In light of the fact that 30 percent of the City’s budget is spent on education, our City’s taxpayers need more accountability on school spending and the PEP should not allow DOE to maneuver an end run around governance reform that was passed less than a year ago and to do so in a manner that appears calculated to deceive the public.

I strongly urge you to reject the resolution.

Sincerely,

John C. Liu

JCM: dm  
cc: Philip A. Berry, Vice Chairman  
Linda Lausell Bryant  
Joe Chan  
Joan Correale  
Dmytro Fedkowskyj  
Tomas Morales  
Gbubemi Okotieuro

Gitte Peng

Anna Santos

Patrick Sullivan

James Whelan

Geneith Turnbull, Deputy Comptroller, Office of Contract Administration David N. Ross, Executive Director, DOE Division of Contracts and Purchasing

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