



Public Comment Analysis

Date: February 24, 2016

Topic: Proposed Amendments to *Procurement Policy and Procedures*

Date of Panel Vote: February 24, 2016

Summary of Proposed Amendments to *Procurement Policy and Procedures*

The *Procurement Policy and Procedures* govern the procurement of goods and services utilized by the Department of Education (“Department”). Amendments are being proposed to the Policy and Procedures to allow the Department to:

1. Access the City’s resources for prequalifying vendors and accepting proposals electronically through the Health and Human Services (HHS) Accelerator;
2. Delegate to employees in other City agencies the authority to perform tasks that are currently assigned to Department of Education (DOE) employees in the Policy and Procedures, such as pre-qualifying vendors; and
3. Accept the submission of proposals for an extended time period and without a submission deadline in order to award contracts to new vendors in the marketplace after the initial release of the solicitation.

Summaries of Issues Raised in Written and Oral Comments and Significant Alternatives **Suggested**

The following comments were received:

1. Will the non-DOE city officials who will be delegated this responsibility be obligated to explain their decision-making to the public or the members of the Panel for Educational Policy before these contracts are awarded?
2. Will there be fewer contracts awarded retroactively or with little information provided, as currently occurs?

3. Will there be more transparency and less waste and fraud as a result?
4. The Procedures allow for discretion in determining the sources of information to be used in background checks on prospective contractors. Review of reports of the Special Commissioner of Investigation (SCI) should not be discretionary.
5. Section 1-05 of the Procedures includes a requirement that DOE employees and the PEP “use information gained confidentially in the performance of DOE and DOE-related duties solely in the DOE’s interest.” This should say “public interest” instead. Further, why should the PEP be obligated to keep these matters confidential and act solely in the DOE’s interest, especially as the two have not always been congruent in the past?
6. Section 1-05 of the Procedures includes a requirement that DOE employees and the PEP “report corruption and unethical practices, wherever and whenever discovered, to the appropriate official, and/or take such other action as is warranted by the situation.” Instead, the Procedures should require that PEP members and DOE employees be obligated to report all evidence of corruption to SCI, rather than leave it ambiguous as to whom the “appropriate official” might be.

Analysis of Issues Raised, Significant Alternatives Proposed, and Changes Made to the Proposal

1. The *Procurement Policy and Procedures* specify actions that must be taken by specific individuals at various stages in the procurement process as well as requirements for documenting such actions. Where an action is delegated to another individual, the associated process delineated in the Procedures, including requirements that such action be documented in writing, must still be followed. Information on the decisions made by a designee that impact the selection of a vendor will be included in the Request for Authorization.
2. The Department is committed to completing all procurement processes in a timely manner and to providing information on such processes publicly.
3. The Procedures establish accountability at every critical decision point in the procurement process by assigning such actions to a specific individual and requiring that such decisions be documented in writing. The Procedures further require that the most competitive process be used in order to assure the best value for goods and services procured.
4. For contracts greater than \$100,000, the DOE reviews all information available on SCI investigations as well as additional sources of information, such as the City’s VENDEX database, Westlaw, Lexis/Nexis and articles in publications and websites. This information is carefully analyzed to determine whether a vendor is responsible prior to the awarding of any contract.

5. Panel members and DOE employees must not use information gained confidentially in the scope of their duties to give a particular vendor an unfair advantage over other competing vendors or for personal gain.
6. The reporting of corruption and unethical practices is not limited to SCI because it may be appropriate to notify other officials, such as the police, if corrupt activities are resulting in imminent danger to life or property.

The *Procurement Policy and Procedures*, as posted on the DOE website on January 8, 2016, will be presented to the Panel for Educational Policy at the February 24th Panel meeting.

Information Regarding Where the Full Text of the Proposed Item May Be Obtained

The full text of the amendments to the *Procurement Policy and Procedures*, and the *Procurement Policy and Procedures* in its entirety, can be found at:

<http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/2015-2016/AmendmenttoProcurementPolicyFebruary242016PEPMeeting>