

NEW YORK CITY PROCUREMENT: A BLUEPRINT FOR CHANGE

CITY OF NEW YORK
MICHAEL R. BLOOMBERG , MAYOR

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Cover Image: *N.Y. City*, 1945, oil on canvas by Leon Polk Smith
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The grid of New York City streets is represented in this vibrant painting by Leon Polk Smith. The artist was inspired by the hustle and bustle of city life. Smith (1906-1997), a native of Oklahoma, discovered art while attending Columbia University's Teacher's College, after moving to New York City in 1936.

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Executive Summary

Mayor Michael R. Bloomberg made a commitment to procurement reform from the start of his administration. To accomplish that goal we must make our \$9.1 billion procurement system faster and we must squeeze budget savings – thus far we have budgeted approximately \$60 million in savings – from a more efficient process, while not sacrificing vendor integrity. Our approach includes seven key areas of reform:

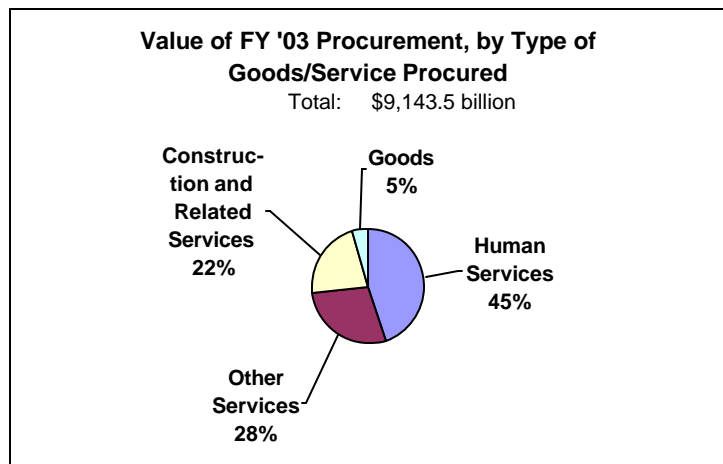
- **Charter Revision** – The reforms proposed by the Charter Revision Commission include measures to increase the flexibility of the procurement process, while ensuring its appropriate oversight. Specific measures would provide protection in sensitive procurements affecting public safety and security, and enhance procurement planning, timeliness and accountability. The Charter proposals would also expand access and reduce burdensome processes for vendors.
- **Management Reforms** – Much of what needs to be done requires no change in law whatsoever, simply smarter, hands-on management. Among the accomplishments to date are: consolidating duplicative procurement policy and technical oversight functions; eliminating unnecessary oversight approvals (thereby reducing processing time for 65% of our procurements); increasing the availability of streamlined methods for smaller scale purchases; expanding access for minority and women-owned business and other locally-based and small enterprises; and fostering inter-agency cooperation and communication.
- **Innovative Purchasing Opportunities** – We have identified procurement savings opportunities (so-called “strategic sourcing”) in a number of key areas, including contracts that allow multiple agencies to purchase together; services contracts that award city work to “pools” of vendors who then compete to provide the best price for each specific task; increased “piggy-back” use of state and federal contracts; and public-private partnership contracts. In addition, we expect to develop opportunities for on-line reverse auction procurements, as well as fast-track procurement options to obtain such diverse needs as homeless shelter providers and technology services.
- **Targeted Technology Investment** – The major goal in this area is the development of an integrated end-to-end automated workflow system to track all of our procurements and keep them moving on a timely basis. Additional technology initiatives underway include expanded use of the *City Record On-Line* to make contract solicitation documents available to vendors; better management of our automated bidders lists to ensure value for both vendors and agencies; evaluation of our recent charge card (“P-card”) pilot with a view toward expanding its use; and eventual replacement of the out-of-date procurement databases that no longer serve the needs of a \$9 billion enterprise, while, in the short term, managing those operations in a smarter, streamlined fashion.

- **Accountability for Performance** – We have developed detailed performance indicators, both for purchasing agencies and the oversight agencies, to ensure procurement efficiency and identify potential bottlenecks, and are using these indicators as one of the bases for determining the level of procurement autonomy that is appropriate for each agency. We are also revamping the construction change order process and the annual human services planning process, in both cases with a view toward speeding those procurements along. In each instance, we are conducting substantial outreach to vendors to ensure that our efforts address their concerns.
- **Ensuring Vendor Responsibility** – We have increased the technical assistance and training support resources available to agencies as they conduct their reviews of vendor responsibility, but we are also providing new opportunities for vendors to affirmatively address past problems in such areas as integrity, financial capability and contract performance, and we are streamlining the existing process for monitoring vendors’ employment practices.
- **Legislative Reforms** – In 2002, Mayor Bloomberg signed two procurement reform measures passed by the City Council, to streamline the public hearing process and increase the dollar thresholds for small purchases. Current legislative initiatives of the Administration include measures to facilitate greater use of state and federal contracts, raise the thresholds for Mayoral approval (allowing greater authority to agencies), improve the administration of procurements using prequalified vendor lists, and further streamline the public hearing process and increase the thresholds for small purchases. We also expect to continue recent dialogues with the City Council toward the reform of the database system applicable to vendor integrity issues (“VENDEX”).

We must, however, continue to do more. Even with the deeper reforms that are included in the Charter revision package now pending before the voters of New York City, much remains to be done to overhaul our procurement process and bring it into the 21st century. Thus, this report represents but a down payment toward the eventual achievement of our long-range goals.

The Procurement Challenge – Background

Procurement is the technical term to describe the way City agencies purchase supplies and services. During Fiscal Year 2003, from July 2002 through June 2003, out of the City's \$43.6 billion expense budget, we spent approximately \$6 billion to obtain goods and deliver services through contracts – a figure that rises to more than \$9 billion when capital budget contracts are included. Our procurement challenge mirrors the challenge to government as a whole: to serve the citizenry well, we must ensure that our tax dollars produce real value – fair prices, high quality and timely delivery of what we need. While the process occurs largely out of public sight, its results are vital to our ability to deliver essential services on a daily basis.



Shortly after the Bloomberg Administration began, several civic groups released reports critical of City procurement. A common theme was that our complex process and lengthy cycle time add costs to everything we buy, as vendors build a premium into their prices to account for our inevitable delays.

Critics varied in their arguments and often provided speculative and exaggerated savings estimates. Many of them, however, accurately articulated a consequence of our cumbersome process – namely that the difficulties city agencies experience in planning their work and meeting programmatic goals often results in late contracting, which imposes corresponding burdens on vendors, especially not-for-profit service providers. Although for-profit vendors are less likely to continue to supply the City in the absence of payment arrangements, they may inflate price estimates to account for the nature of the City's process and, when possible, may forego city business in favor of less onerous business options. Not-for-profit service providers often maintain services in communities for several weeks or months before the process catches up and finalizes a contract to that the City may legally pay for the services. Many human services contracts run on a fiscal year from July 1st to June 30th. It is not uncommon for contracts supporting ongoing work – programs that already have clients, staff and site costs committed – not to be registered for payment until September or October. That retroactivity forces providers to gamble each July: rather than lay off staff or deprive the clients of service, they continue services well into the new year. This places financial burdens on them both in immediate cash flow and for the interest charges they sometimes incur which the City does not reimburse.

Our procurement problems also add costs because of missed opportunities. We fail to attract many innovative companies that choose to do business elsewhere. We impose obstacles for small, locally based businesses that cannot manage to negotiate the process thicket. During economic downturns, as prices decline, we miss the chance to capitalize on the sudden availability of inexpensive goods and services. In areas that undergo rapid evolution – such as technology – we often miss the market entirely, so that by the time we secure goods or services they are already out-of-date. These problems occur not merely because our process takes too long, but because our process lacks flexibility: markets may be elastic, but City procurement options are not.

For all these reasons, procurement reform matters to every taxpayer. We can – and will – squeeze savings from our process, but our reforms must also yield higher quality products, more effective services, increased opportunity for vendors and enhanced innovation for the public's benefit.

Mayor Bloomberg's Procurement Reform Initiatives

In keeping with his strong emphasis on management and accountability, Mayor Michael R. Bloomberg made a commitment to procurement reform early in his administration. In his first January Financial Plan after taking office in 2002, the Mayor budgeted \$27.1 million in procurement savings.

In June 2002, the Mayor signed into law two key reform measures passed by the City Council. The first simplified the contract public hearing process by allowing the agency head to delegate the conduct of the hearing to responsible staff members and by allowing agencies to cancel hearings when (after ample public notice) no member of the public expresses an interest in testifying. The second raised the thresholds for our streamlined "small purchase" process – allowing agencies to spend up to \$50,000 for services and \$100,000 for construction in an expedited fashion. At that bill-signing, the Mayor announced his "procurement reform initiative," saying the Administration would work "to bring the City's procurement system into the 21st Century."

Since then, the Mayor's Office of Contracts has spearheaded the procurement reform initiative. We have worked collaboratively with the City Council, the Comptroller, mayoral agency chief contracting officers (ACCOs) and a wide range of vendor groups to develop and implement policy and managerial improvements to achieve the Mayor's goal of an effective, modernized procurement process.

To obtain real reform, we must address delay, duplication and frustration stemming from contract management processes that elude accountability, paper intensive systems that rely upon outdated technology (or none at all), and inflexible legal mandates that discourage agencies from innovation. Our procurement reform initiatives implement these interdependent principles:

- Quick-fix approaches will not yield real savings or quality improvements; there is no substitute from the continuous application of old-fashioned hands-on management.
- In the short term, we can streamline the overall process, eliminate oversight reviews that add little value and empower agencies to better manage their own purchasing efforts.
- Despite fiscal constraints, we can targeted investment in technology to allow vendors rapidly to access business opportunities, city agencies to procure quickly and inexpensively, and the public to obtain information on city-procured services in real time.

Most of our reform efforts in 2002 took the form of administrative changes – *e.g.*, increased delegation of authority to city agencies and the expansion of technological tools. Several ideas resulted in reforms to procurement regulations promulgated by the Procurement Policy Board (PPB), which consists of three Mayoral appointees and two appointees of the Comptroller. Others led to the introduction of a procurement reform legislative package. These measures are all described in the body of this report.

As these reforms were underway, in January 2003 Mayor Bloomberg took the reform process one step further, announcing in his State of the City address: "[d]espite recent improvements, the City's \$9 billion contracting and procurement system is still too constricted, expensive and antiquated," and committing to place the issue of how to "modernize and streamline City government" four-square on the agenda of a Charter Revision Commission he was then about to appoint.

In addition, in the Mayor's Fiscal Year 2004 Executive Budget, he included another \$33.8 million in procurement savings, for a total thus far of \$60.9 million. In the remainder of this report, we will identify some of the many ways in which we are obtaining those savings.

Charter Revision – “A Blueprint for Reform”

As Mayor Bloomberg had urged – and with the support of a broad-based outpouring from members of the vendor community who testified – procurement reform became a major focus of the 2003 Charter Revision Commission’s efforts. In its September 4, 2003 Final Report, the Commission enumerated its objectives for such reform: prevention of fraud, favoritism, and corruption; promotion of efficiency, effectiveness and accountability; and promotion of fairness and enhanced access for vendors.

To achieve its objectives, the Commission sought to repeal Charter language that hamstrings both the City and its potential contractors, preventing our procurement system from adapting as needs change over time. As the Commission recognized, such inflexibility actually impedes the achievement of such important goals as integrity, cost efficiency, fairness and access.

The Commission determined that the PPB, composed of Mayoral and Comptroller appointees, would be better suited to provide the needed flexibility, through its public rulemaking process, and ensure appropriate policy governance and oversight. The Commission’s Charter reform package on procurement – now slated to appear as City Proposition 2 for the voters’ consideration on the November 4th ballot – cover four key areas: flexibility, accountability, integrity and access.

- *Encouraging the exercise of flexibility*

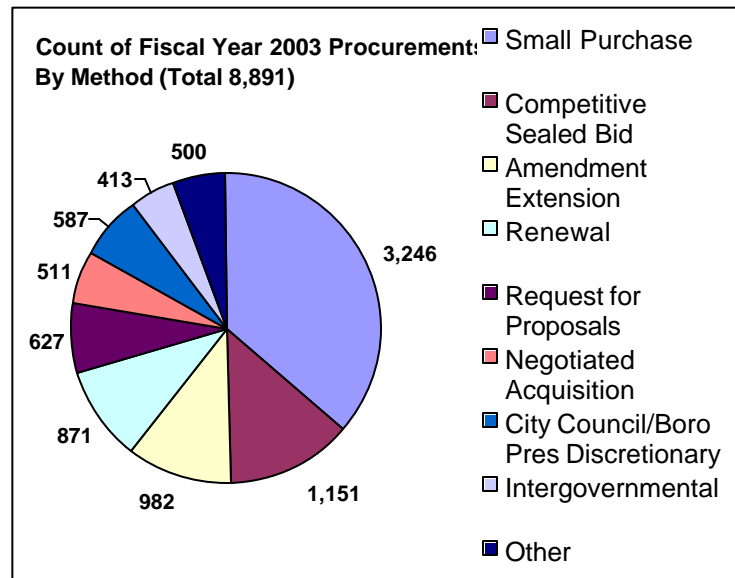
The central element of the Charter reform package for procurement is the empowerment of the PPB to set the terms and conditions for the various alternative methods of procurement which State law allows the City to use – repealing much of the inflexible details concerning such methods that now appears in the Charter. That current inflexibility impedes effective management by limiting the kinds of determinations that the Mayor can delegate to his Commissioners.

Three other proposed Charter reforms would enhance flexibility. The first would allow the Department of Citywide Administrative Services (“DCAS”), to delegate to the agencies that use certain kinds of unique goods – such as sewage treatment chemicals or bomb-detecting robots – the authority to purchase such items on their own. Currently, while the

user agency’s expertise is essential to solicit and complete the purchase, the procurement must also move through DCAS to be accomplished – creating significant duplication of effort.

The second proposed reform would permit the Mayor to determine when particular procurements raised sensitive security-related concerns, such that full disclosures would put the security of the City and its citizens at risk, allowing exemptions from the Charter’s notice and hearing provisions.

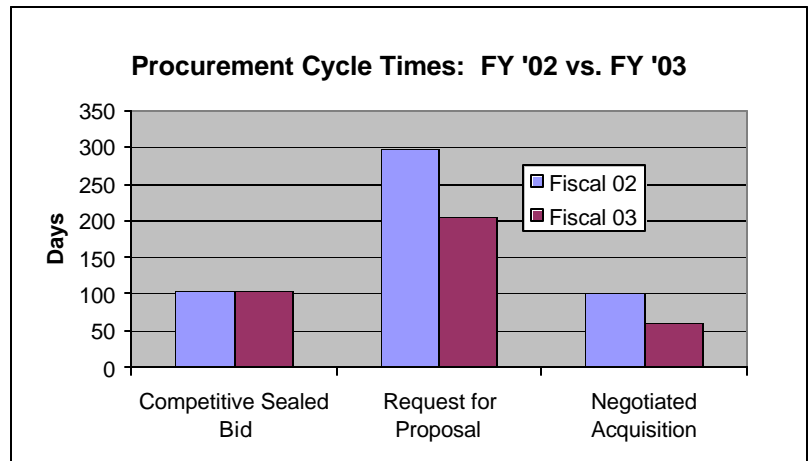
The third proposal would allow the Mayor to designate agencies – typically smaller ones which do only limited amounts of procurement – to have such purchases done or assisted by DCAS.



- **Ensuring accountability and timeliness**

Several of the provisions in the Charter reform package are designed to ensure accountability and to put an end to late contracting patterns. First, the proposed Charter revisions would mandate a comprehensive annual Mayoral procurement report that would include a specific focus on timeliness.

In addition, the PPB would be mandated to adopt timetables for completing procurement actions and reviews, and to establish monetary remedies for failure to meet such schedules. Where such a remedy would involve interest, *e.g.*, for late payments on invoices, the Charter reforms would require that the rate of interest paid be uniform across all areas of procurement.¹ In the human services arena, the PPB would also be required to provide methods for expediting the processing of renewals and contract extensions for vendors who provide ongoing services, to ensure that they continue to be compensated pending registration of new contracts.



The Charter proposals also would provide that the City’s human services agencies develop and publish annual contract plans for client services on a schedule linked to the budget adoption cycle, so that their vendors can plan their programs and services appropriately.

- **Protecting integrity effectively**

The Charter reform package includes new language sharpening the effectiveness of the City’s vendor responsibility process. The City currently uses a computerized vendor integrity data system, known as “VENDEX,” to help agencies make responsibility determinations concerning potential contractors and subcontractors. This system dates from the early 1990s, following several procurement-related scandals. It contains detailed requirements for what information must be submitted, the timing of the submission, the consequences for failure to submit information, and the limited circumstances under which exceptions may be available. Over time, this “one-size-fits-all” system has proven exceedingly burdensome to vendors without necessarily providing City agencies with the most relevant information in a readily accessible format. In Fiscal Year 2003 alone, for approximately 2,600 procurements of \$100,000 or more (only about 1,000 of which exceeded \$1 million in value), more than ten times that number of VENDEX forms of one kind or another were processed by the City – 26,492 in total.

Under the proposed Charter changes, the Mayor and the Comptroller jointly would – with the aid of conforming legislation brought before the City Council – determine what information to require from vendors. With current technology, we can design a much more sophisticated system that would permit different reporting requirements for different kinds of procurements, depending on such variables as the value of the contract, type of procurement, and the nature of the market or industry involved.

¹ Current PPB rules allow the Mayor and the Comptroller to prescribe the rate of interest paid by the City to its vendors whenever payments on invoices are unduly delayed. For a variety of reasons, however, in the past, the rate paid on late invoices in the human services area has been set at zero. While our proposed Charter reform package includes a legal mandate for a uniform rate of interest, we now plan, as a matter of administrative reform, to change the interest rate for human services to correspond to the rate paid for other goods and services (*i.e.*, currently 3.125%).

The proposed Charter revisions would also replace the current, highly paper-intensive process for monitoring vendor employment practices with a mandate for the Department of Small Business Services (DSBS) to promulgate rules for more effective oversight.

Two other key reforms contained in the Charter reform package are also designed to yield PPB rules changes that will protect the integrity of the procurement process more effectively. One is a mandate to establish suitable professional standards and certification requirements for ACCOs. The other is a requirement to promulgate standards to encourage city agencies to use a single financial audit for not-for-profit vendors doing business under multiple contracts (including contracts with multiple city agencies), similar to the audit procedures now used at the federal level.

- ***Expanding the universe of vendors***

Last, but not least, the Charter reform package is designed to promote equal opportunities for diverse vendors to do business with the City, by incorporating a specific legal mandate for the Mayor to require citywide agency coordination in the pursuit of expanded vendor opportunities. In particular, the proposal will help encourage businesses that are women and/or minority owned, locally based businesses and other small businesses, to participate as vendors to the City, increasing their economic viability and engagement with the City, and furthering competition in procurement.

Management Reform Accomplishments to Date

Since 1989, the City Charter has clearly defined procurement as an executive responsibility. Thus, many of the necessary steps to real procurement reform can be accomplished through policy changes and managerial initiatives, even apart from Charter, legislative or regulatory initiatives. These administrative reforms are, essentially, the down payment on Mayor Bloomberg's reform commitment. Since June of 2002, we have implemented extensive reforms, all aimed at expediting the process without sacrificing its fundamental competitiveness, integrity or price-consciousness. These include:

- ***Consolidating of procurement policy and oversight expertise***

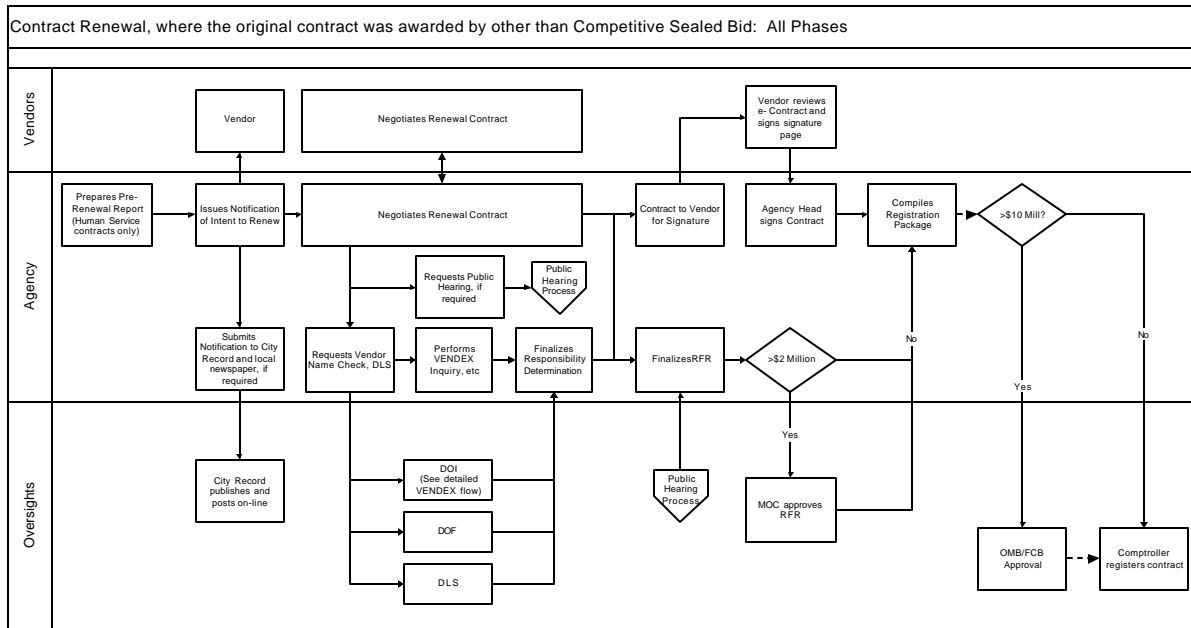
From the early 1990s, many critics have called for the restructuring of the Mayor's Office of Contracts (MOC) into a general procurement agency, merging it with other procurement-related entities. An important first step occurred in January 2003, with the consolidation of the staffs of MOC, PPB and the Office of Construction, each previously a separate component of the mayoralty. All three now report to the City Chief Procurement Officer (CCPO). This change yielded budget savings, but, more importantly, strengthened our ability to provide agencies with technical support so that they can exercise enhanced procurement authority effectively (*see below*).

Under its new mission, this Office provides technical assistance to help agencies find efficiencies so that they process contracts in a timely manner, so we can greatly reduce the occurrence of retroactive contracts. To reflect that new mission, we are adding the concept of *service* directly into our name – becoming the Mayor's Office of Contract Services (MOCS).

Today, MOCS' policy development staff, enhanced by the inclusion of the former PPB staff, works collaboratively with all of the relevant stakeholders – agencies, vendors, advocates, as well as the Comptroller, the City Council and other partners in government – to identify opportunities for innovation and savings, and to identify the regulatory reforms required to achieve such goals.

- *Delegating authority to ACCOs and simplifying reviews*

As shown by the flow chart below, we have a long way to go before we can claim that the City’s procurement process has been truly simplified. The approvals and steps reflected in this chart each represent legal and regulatory *mandates* under our current system; thus, we have real constraints on how our process can be shortened.



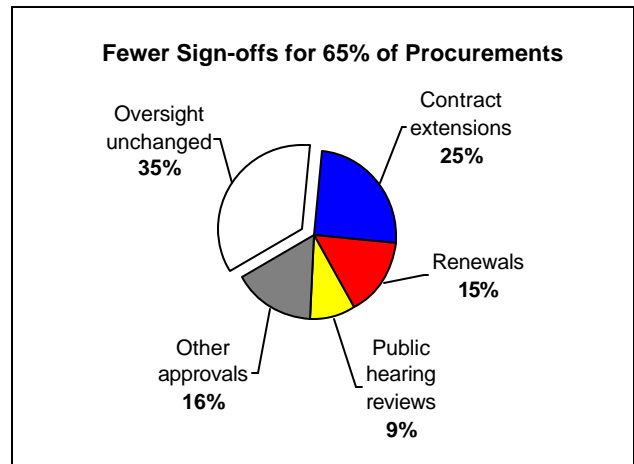
Nevertheless, in years past, the City had layered on significant additional approvals, beyond the legal requirements, in an effort to ensure that procurements met additional policy goals. Most of these additional policy goals were accomplished via the review undertaken at MOC, as the principal procurement oversight agency. However laudable the aims of this added scrutiny, we have now concluded that the City is better served at this time by an approach that “defaults” to the legal requirements in terms of the review process, rather than adding more discretionary approvals.

Thus, today, instead of relying solely (or even primarily) upon the review of specific procurements to identify or correct problems, MOCS works with the ACCOs to achieve systemic improvements in their practices and to implement overall policy changes. For this reason, MOCS no longer reviews a wide-range of decisions by the ACCOs that were previously subject to its oversight: pursuant to the Charter’s delegation provisions, the agencies themselves perform the mayoral approval function for such actions. These include: reissuance of RFPs using previously approved formats, initiation of sole source contracts, calendaring of public hearings and/or final award approvals for certain types of procurements, including discretionary fund items (Borough President/City Council), contract award and renewals below \$2 million, and contract extensions designed to allow current contractors to continue working. Even where we retained a requirement for MOCS’ approval, we eliminated steps within that process, such as the requirement for agencies to obtain an additional sign-off by the Deputy Mayor for Operations for pre-solicitation actions and contract amendment actions over \$1 million, contract award actions of \$2 million or less and all renewals. Cumulatively, these changes have reduced the processing time of *nearly two-thirds* of all agency procurement actions.

In March 2003, we also eliminated the requirement of a separate approval memorandum from agency heads. The Administration holds Commissioners accountable for agency procurement performance, but believes that effective management requires attention to the early stages of procurement and tight controls to meet deadlines, rather than merely a paper trail showing Commissioner approval at the end.

Instead, in consultation with the agencies, MOCS developed an objective set of indicators of agency performance to track each component of the procurement cycle more precisely and to assist the agencies in ensuring that procurements are accomplished in a timely fashion (*see below*).

MOCS has also revamped the forms used for agency procurement approval. Instead of lengthy narratives justifying each aspect of a procurement, MOCS' standardized forms in most cases require only that the ACCO check the applicable box(es). While the technology is not yet in place to permit agencies to submit such forms on-line, initiatives to facilitate such automation are also underway (*see below*).



As detailed above, we believe these streamlining efforts will lead to significant budget savings as the procurement pipeline becomes shorter and more predictable, particularly as other oversight agencies follow MOCS' lead and examine ways to delegate authority and shorten their processes. But the most significant cost savings that will flow from shortening of our procurement process are not in the city treasury at all – at least not directly. The simple fact is that our cumbersome process adds very substantial costs to *our vendors*, costs that translate into higher prices for the taxpayer. Equally significantly, this burdensomeness and costliness discourages many vendors, particularly smaller companies that might otherwise be able to offer the city substantial savings, from even attempting to do business with us. While the precise amount of savings that we can achieve by lowering vendors' costs and widening the circle of available bidders for city procurements is speculative, the reality of such savings is not in doubt and remains a key goal of our reform initiative.

- ***Increased small/micro purchasing flexibility***

Under the PPB rules, agencies may make micro-purchases without engaging in a competitive process. The costs in time and overhead for a more formal process cannot be supported by purchases of a very small nature. In February 2003, the City Council, working closely with the Mayor and the Comptroller, passed legislation raising the micro-purchase threshold to \$5,000. This policy change has shortened the processing of about 37 percent of small purchase procurement actions.

For small purchases, *i.e.*, those or below the thresholds of \$25,000 for goods, \$50,000 for services and \$100,000 for construction, construction-related services and information technology, agencies make use of a fast-track method requiring the solicitation of at least five (5) vendors from the applicable citywide bidders lists, using a fairly uncomplicated solicitation document.

In the past, prospective vendors have been permitted to respond via facsimile transmission, but even where vendors provided us their e-mail addresses as part of the citywide bidder list enrollment, the City did not use this information. In April 2003, we implemented a new protocol for electronic solicitation of small purchase vendors, using an electronic receipt process for small purchase bids and proposals. New York State law requires us to afford vendors an optional “paper” method as well, but we anticipate that our new electronic option will provide quick and convenient means for many vendors to do business with the City. MOCS has done, and will continue to do, significant outreach to update the citywide bidders lists for accuracy and, in particular, to add e-mail contact information.

On June 12, 2003, Mayor Bloomberg signed Executive Order No. 36, to enhance procurement opportunities for minority and women-owned business enterprises (“M/WBEs”). As the Mayor stated, New York City has a diverse business community with thousands of M/WBEs. The growth of such businesses, cumulatively generates substantial economic activity and employment, and promotes the

City's economic welfare. To ensure equal opportunity for M/WBEs to compete, the Mayor ordered an expansion, spearheaded by DSBS, of outreach and efforts to certify eligible M/WBEs and to increase their awareness of business opportunities with the City.

In the micro-purchase arena, where agencies have the flexibility to purchase informally, DSBS and MOCS are sponsoring breakfasts and other networking opportunities to ensure that agency procurement staffs have a chance to familiarize themselves with M/WBE vendors.

In the small purchase area, where the process involves a streamlined competition, we have implemented a technological solution to achieve the goal of increased opportunity: we have modified the database from which solicitation lists are generated, so that every small purchase opportunity is offered to five randomly selected vendors from the M/WBE, locally based businesses and small business pool, in addition to five other randomly selected businesses from the City's bidders list.

- ***Best practices web site***

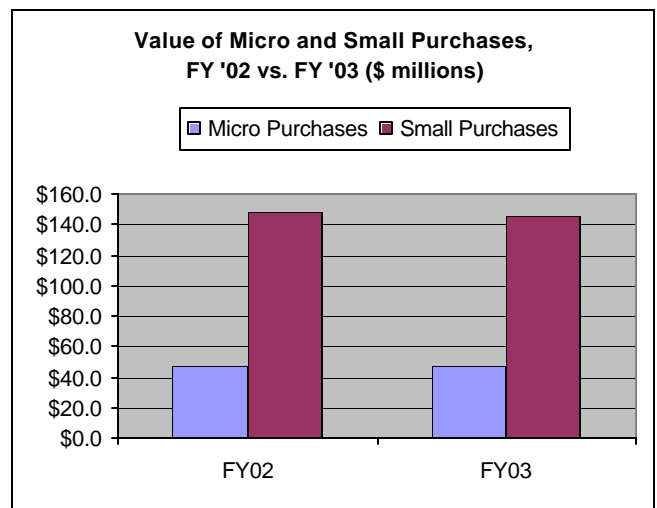
ACCOs and their staff are the City's procurement resources, but until recently no practical means existed for them to communicate with one another, even when they were simultaneously dealing with the same vendor. But in May 2003, using DoITT's intranet portal vehicle, we created an ACCO web site to permit discussion among ACCOs and between ACCOs and MOCS. It serves as a repository of our revised procurement policies and procedures, as well as such key documents as MOCS' annotated Model RFP format and other "best practices" resources supplied by the ACCOs. ACCOs can now benefit more easily from their counterparts' approaches to various procurement issues and/or to vendor responsibility reviews.

In addition to this virtual venue, we have initiated significant new opportunities for professional development and cross-agency information sharing. The ACCOs meet as a group with MOCS once a month to discuss policy changes and other matters of common concern and experience. Procurement-related initiatives have been pursued at inter-agency working groups: performance-based contracting is a topic for the human services agency working group, while barriers to vendor participation and prevailing wage law issues have been topics for the construction agency working group.

Strategic Opportunities for Saving Time and Money in Procurement

The improvements described above are achievable mainly through managerial changes, and each is independent of the others. Many other reforms underway under the rubric "strategic sourcing" involve more complex changes across agency lines and/or are more dependent on technology enhancements that require investment over time, although some are designed to extract modest budget savings up front. Our efforts to cut processing times and eliminate unduly burdensome steps save substantial time and money *for city vendors* – which, we firmly believe, will translate to future price savings as doing business with the City becomes a viable choice for more companies and more organizations.

Often lost in the hype on procurement reform, especially from those who portray technology as a panacea, is the reality that it is difficult to extract budget savings from technology, particularly in the early years while the initial investment is made. Most of the savings other cities and states have achieved through e-procurement occurred when they consolidated and centralized their purchasing



functions – but the City achieved this goal for commodities years ago by centralizing purchasing at DCAS. To achieve further savings, we need more than just a technologically advanced system. We must apply old-fashioned management analysis to meet our purchasing needs.

This approach, termed strategic sourcing, involves the continuous employment of structured analytical tools to identify procurement savings opportunities. At a very basic level, strategic sourcing is simply the application of common sense to purchasing to make sure that in making purchasing decisions and negotiating contracts we leave no money on the table. Many current methods of strategic sourcing originated in the private sector, where technological advancements resulted in better tracking of purchasing, better assessment of suppliers' capacity and capabilities, more aggressive negotiation of purchase prices and more effective contract management.² However, not all private sector strategic sourcing initiatives are appropriate or available in the public sector. Private sector initiatives need not necessarily balance such concerns as fairness or access, while in the public sector there is a heightened expectation that all responsible vendors will have at least some fair opportunities to compete for public business. Some strategic sourcing initiatives in development are described below.

- ***Multiple agency/multiple vendor/multiple award services contracts***

State law permits localities to purchase from a pool of vendors with state contracts (described below), a process that includes strategic sourcing features such as lessening the burden on the end users (by having the initial source selection done by a single agency to benefit all), multiple awards and a mini-bid process that renews competition for each set of tasks, with selection based primarily on price. One such initiative underway would create a local version of this process for City agencies, to achieve speed for end users, as well as renewed competition to keep prices down over the contract's life. We completed the first part of this initiative in April 2003 when a PPB rule took effect that explicitly authorized multiple agency contracts. This rule, which permits consolidation of services contracts, will produce savings both from economies of scale and by reducing duplicative administrative workload.

The second part of this initiative, which we are developing with the Comptroller's Office, is a PPB rule permitting multiple vendor and/or multiple award services contracts, termed "task order" contracts, which yield savings as competition is renewed during the contract's life. With this process, awards are made via competitive sealed proposals to establish a pool of vendors ready and qualified to meet the needs of an agency (or agencies) for specific services. Later, as needs arise, follow-up competitions among the vendors in that pool address each specific task or project. Rather than risking complacency when a vendor obtains a requirements contract, the City benefits from competition each time it procures the services over the term of the contract. This new rule is slated for final adoption by the end of 2003.

- ***Intergovernmental procurements***

The Charter provides an expedited procurement option, allowing city agencies to procure goods and services through federal or state agency contracts, so long as the ACCO finds that the price available to the City by that mechanism is below the prevailing market price.³

Since before this Administration, many agencies had taken advantage of the state law option to purchase off the New York State Office of General Services (OGS) contracts, a source of well-priced,

² A strategic sourcing initiative by the Department of Education resulted in measurable savings, some from consolidating purchasing, but the ability to assess demand and negotiate better terms with vendors has deepened savings.

³ As part of our legislative package, described below, we are seeking to bring the language of pricing into synch with the treatment of pricing issues under other procurement methods – *i.e.*, allowing the ACCO to choose such a vendor so long as the price was fair and reasonable.

readily available goods and services. This saves some time, as the initial source selection is already done by OGS. However, disputes arose between the agencies and the Comptroller concerning the procedures for entering into these “state back-drop” contracts. Together with the Law Department, we worked to implement a new protocol, with a short-form approval document, to facilitate agency efforts to procure services from these contracts. One significant benefit of this protocol, from the standpoint of strategic sourcing, was that it has provided City agencies with the flexibility of multiple vendor awards (via the state process) even before we were able, as described above, to implement a similar mechanism for City contracts.

Recently, the federal General Services Administration has also begun to move aggressively to offer its technology contracts to states and localities. This will afford significant savings compared to prices agencies otherwise obtain, buying separately for the City. We are working with the Law Department and Comptroller to provide this option by the end of 2003.

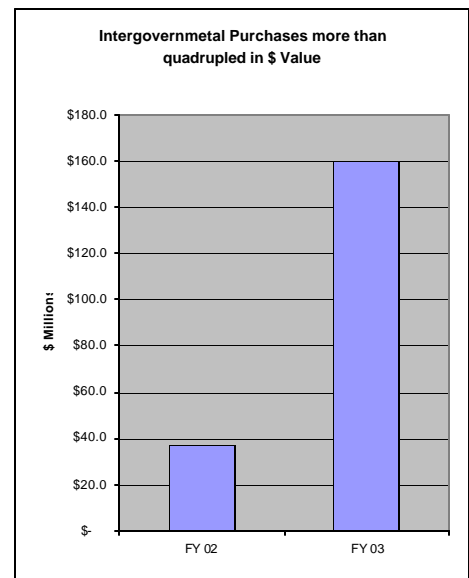
- ***Public-private partnership procurement***

Strategic sourcing opportunities also exist for the City to pursue some procurements in partnership with private sector entities. Recently, Mayor Bloomberg appointed a Chief Marketing Officer (CMO) to create a comprehensive marketing strategy. As these efforts get underway, we will work closely with the CMO and with ACCOs to ensure that such procurements can be accomplished consistent with our legal mandates, and also, in a manner that enables the City to take full advantage of the value of its assets to private sector companies.

- ***Reverse auction and other innovative procurement techniques***

Because of the strong potential for savings, strategic sourcing will remain an ongoing priority. Some strategic sourcing mechanisms developed in the private sector may run into obstacles based upon our current legal constraints. Electronic procurement techniques such as on-line reverse auctions present several thorny legal issues. One concern, with respect to many techniques available to private sector purchasers, is the strong preference enshrined in § 103 of the General Municipal Law (GML) for competitive sealed bidding as the method by which certain procurements are to be made when City funds are involved.⁴ In the case of on-line auctions, additional difficulties are presented by provisions of the current Charter, as well as state laws that make it difficult for the City to establish procurement opportunities exclusively available electronically.

However, we have identified an appropriate option for the City to use in conducting electronic reverse auction procurements. There is an existing OGS contract with a vendor that hosts such services. Thus, we plan to use that vendor to conduct a pilot program, in which each of the specific reverse auctions to be hosted would also be intergovernmental contracts under the OGS system. We can then use that pilot to determine both the long-term feasibility of this technique and its potential, if any, for cost savings.



⁴ GML § 103 provides the basic direction to municipalities to award all public work and purchase contracts over specified minimum amounts to the lowest responsible bidder following a competitive sealed bid after public advertisement. There are a number of exceptions to its bidding requirements, including judicially created exceptions for special skills or judgment and local laws enacted prior to September 1, 1953. The preference for competitive sealed bidding is rooted in the public sector’s notion of fairness, as well as protection of the public fisc. Unfortunately, although modern experience has shown that departure from traditional competitive bidding can sometimes save money without sacrificing fundamental fairness – e.g., auction techniques or prequalification procedures – many such innovations will be difficult for the City to pursue because they do not fall within recognized exceptions to the requirements of GML 103.

We have substantial additional leeway for innovation and creativity in the services arena, where we also have important strategic needs and goals. During the fall of 2003, indeed, we plan to propose two new PPB rules for strategic sourcing of services contracts. The first will address needs, particularly in human services, that are not technically emergencies – in the sense of being sudden, entirely unforeseen occurrences – but that are otherwise urgent. For example, when the Department of Homeless Services (DHS) works to meet court-ordered standards for sheltering a fluctuating population of homeless families and adults it must procure vendors more rapidly than is allowed by current regulations aimed at ensuring competition. But, as sometimes occurs in human services, DHS’ procurement does not enjoy a highly competitive marketplace. The City needs all the vendors it can find for the provision of shelter. DHS rarely is able to choose from a large pool of ready providers. Thus, our goal – which the Comptroller recently endorsed – is to develop a rule to meet DHS’ need for expeditious procurement and protect the public fisc, without depending upon a lengthy competitive process to do so.

A second draft rule will address a related concern. In many areas, including information technology services, city agencies find that their markets change – e.g., when the recent technology “bubble” burst – and prices decline. But our current procurement system often prevents agencies from seizing the price moment and capturing those savings. We plan to propose a rule with a mechanism for doing so.

Investments in Technology

Our current procurement process is not totally bereft of computer applications. Its chief weakness, however, is that it is the anything but seamless. Some parts – VENDEX and DCAS’ centralized purchasing system (CLIPS) – are supported by sophisticated computer systems, referred to as “legacy” systems that run on older mainframe technology. Other components – e.g., the payment system and vendor databases contained in the Financial Management System (FMS) of the City’s Financial Information Services Agency (FISA) – represent fairly current technology, having come on-line in 1999. The Comptroller’s separate system, OASIS, scans all registered contracts and maintains them in digitized form. All city agencies are linked in some manner to VENDEX and FMS, but only the Department of Education is linked operationally to OASIS. Several agencies have automated procurement tracking systems of varying degrees of comprehensiveness and sophistication.

None of these systems that track pieces of our procurement pipeline link to each other. So obvious is the need to automate the process and linking its various components, that the study commissioned by the City back in 1993 (Deloitte & Touche, consultants), made creation of an integrated citywide procurement management system central to its recommendations for fixing our procurement system. The last administration did not implement the plan in its entirety, but initiated several technology pilots:

- ***BuyWise and City Record On-Line***

During 2001, the City introduced *Buywise*, an intranet website that provides a variety of procurement information to all agencies, including non-Mayoral agencies. During 2000, DCAS implemented *City Record On-Line*, a website that includes contract solicitations and contract awards that appear in the printed *City Record*, to facilitate vendors’ obtaining of the information they need to participate effectively in the bidding and proposing processes. In the next phase of implementation of *City Record On-Line*, we anticipate also using this technology to facilitate the direct distribution of RFPs and other solicitation documents.

- ***Automated citywide bidder lists***

In December 2001, the City began using Citywide bidders lists. Through FMS, we created a unified system of commodity codes to categorize goods and services for the City. Vendors can register on-line through a new Vendor Enrollment Center (VEC), staffed by MOCS.

Some of the bidder lists have grown beyond manageable volumes, as a result of vendors’ enrolling in inappropriate categories. For this reason, MOCS is working closely with the ACCOs to improve list management. We are contacting vendors who appear to be enrolling for more commodity codes than make sense, monitoring the bid response process to identify non-responders and purging the lists to ensure their accuracy. At the same time, we are closely tracking agencies’ procurements to ensure that they are using the appropriate citywide bidders list for each identified need, thereby ensuring that vendors who enroll with us have a fair opportunity to compete as intended.

- ***P-Card Pilot Project***

Beginning in 2001 the City piloted the use of charge cards (or p-cards) for micro-purchases at the Departments of Parks and Recreation, Transportation and Juvenile Justice. While this initiative is not yet operational citywide, we plan to audit the data from this pilot and roll out more such options, subject to such integrity safeguards as the audit may suggest.

While applying technology to a process or updating existing technology inevitably speeds the process, an important benefit of this exercise is the opportunity to re-engineer parts of the process itself. As we move forward applying technology to procurement reform, we are focusing on three critical areas:

- ***Developing an end-to-end automated procurement workflow system***

Although many aspects of our procurement process are automated, few of them are connected in any manner, so data available for one purpose cannot readily be accessed for another. Over half of the agencies have software that tracks the status of contracts to varying degrees. Several agencies with high procurement volumes have sophisticated systems – e.g., the Department of Design and Construction “ACCO-Flow” system, and the Department of Youth and Community Development Comprehensive Contractor Management System. There is, however, no corresponding workflow and data management system to link line agencies and oversight agencies together.

Vendors Registered for NYC Bidders Lists	
Total:	30,738
Selected Industries:	
Building Maintenance	2,637
Construction	4,044
Goods	18,669
Human Services	3,246
IT Services	1,838

For this reason, even as we work to streamline the process, shorten processing time and eliminate redundancy, we are developing citywide integrated workflow software to connect the pieces of the process across agency lines, including the oversight entities. Preliminary estimates place the cost of the initial set of tools for this initiative at approximately \$1.5 million.

Full realization of integrated end-to-end procurement will take some time. In the meantime, however, we are leveraging existing technology to improve procurement management and accountability, e.g., through the use of tools such as the ACCO web site described above. We are encouraging agencies to adopt tracking systems modeled on the ones that have already proved versatile and successful.

- ***Replacing “legacy” procurement databases***

Focusing first on the sourcing function and then on the ordering function, DCAS is designing an electronic version of CLIPS, its legacy requirements contracting system. This database would be a crucial component to the success of the integrated end-to-end procurement system described above.

Across all procurement areas and all industries, vendors express deep frustration with our VENDEX system, as well. VENDEX, like CLIPS, is a cumbersome legacy system, so significant investment will be required to replace it, but this remains a key objective of a fully realized end-to-end integrated procurement system as resources become available.

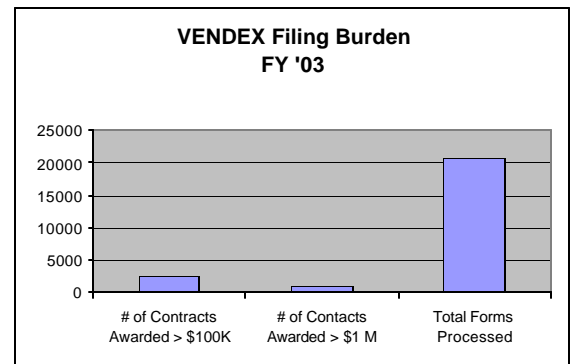
- **Streamlining the current operation of VENDEX**

In the shorter term, MOCS has begun the streamlining process by revamping our own procedures, reducing processing time and eliminating a substantial backlog. Since MOCS is the data entry portal for VENDEX, the previous backlog (which often ran as long as several months) had resulted in much duplicative work. Unable to trust the accuracy of the data shown on the system, agencies had taken to requiring the submission of full VENDEX questionnaires each time a vendor obtained a new award. For vendors with multiple contracts, especially those dealing with several agencies at once, this had become quite burdensome.

In addition, all of the stakeholders in this process agreed that the questionnaires ought to be simpler and the process of completing them more user-friendly. MOCS, the Comptroller’s Office, the Law Department and the Department of Investigations (DOI) have worked over the course of the past year to greatly simplify the VENDEX questionnaires, eliminating and simplifying lines of inquiry wherever possible, given the current statutory constraints. The redesigned questionnaires will eventually permit on-line submission by vendors, but can be implemented much sooner as a better version of the current paper-based process. We expect to complete the redesign of the VENDEX questionnaires and supplementary materials shortly, and to implement them in the winter of 2003-2004.

By that same point, we also anticipate implementing policy changes to make VENDEX a *time-based* filing obligation – with each submitted questionnaire effective for three years, subject to the vendor’s obligation to report changes – rather than a contract-based filing obligation. Under the new system, vendors will submit questionnaires to MOCS for processing once every three years, and will certify its continued accuracy with each new contract signed.

Vendors, particularly those anticipating regularly receiving new contracts, will be encouraged to submit changed information to MOCS as it arises. Agencies will thus be relieved from substantial data entry workloads and will, in the case of vendors who have done business with them or with other agencies within the past three years, be able simply to rely upon the data already on the system. In addition to time-saving consequences for agencies, this change will cut vendors’ submission burdens by at least a third.⁵



In preparation for this shift, MOCS has taken steps to begin purging stale data (*e.g.*, negative information or “cautions” relating to events more than ten years old) from the system. As described below, we also continue to pursue managerial and legislative reforms to rationalize the vendor responsibility process.

In sum, while technology offers promising opportunities to improve procurement and, potentially, to enhance efficiency and speed, the City must make major investments over a period of time to achieve these goals. In the shorter term, we plan to manage the systems we already have more effectively, thereby gaining significant improvements even within the context of current resources.

⁵ In Fiscal Year 2003, for example, MOCS processed some 7,227 VENDEX submissions (containing more than 26,000 separate forms). Of those submissions, 2,368 were comprised of affidavits reporting that there had been no change, forms which would no longer be required. Another 1,201 were duplicates and re-submissions of existing data, most of which should also become unnecessary with the change to a three-year submission rule. All of the other forms required for VENDEX submissions have been considerably shortened in this revamping effort. Thus, the 4,859 vendor entities and 9,771 individuals affiliated with vendors who all submitted questionnaires during Fiscal Year 2003, would find, at a minimum, that the paperwork burdens have now been greatly reduced.

Holding Ourselves Accountable

Partly because the City has no automated, objective means to track milestones within the procurement process, the result has been a system fraught with delays that frustrate the efforts of anyone – from agency Commissioners to oversight bodies to vendors themselves – to determine the causes of delays, shorten processing times or hold any specific individuals or entities accountable. Our procurement reform effort includes four specific initiatives designed to address these issues.

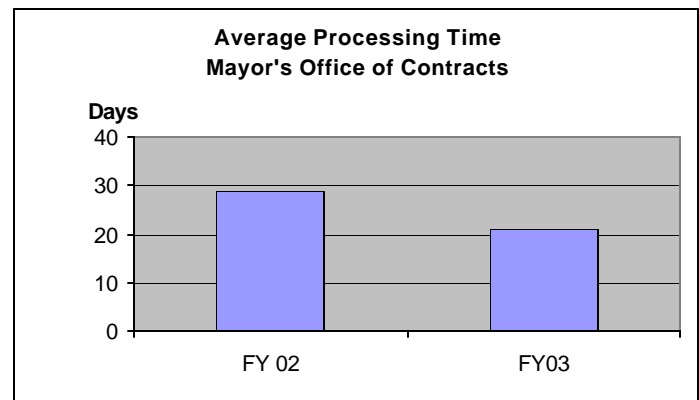
- ***Increased accountability for timeliness and performance***

We have tracked procurement data for a number of years in the Mayor's Management Report (MMR), and now appears in a separate Agency Procurement Indicators Report released with the MMR. Average cycle time for the most common procurement methods – competitive sealed bids, competitive sealed proposals (commonly known as RFPs) and negotiated acquisitions – improved from fiscal year 2002 to 2003 and the average for each method is within conventional expectations. Averages, however, do not provide comfort to those vendors who must contract with agencies whose times run above average.⁶

The average cycle time for RFPs in FY 2003 was 204 days, measured from the date a solicitation issues until the date a contract is registered. This time frame is within the range that we would consider adequate to prevent retroactivity, allowing for adequate evaluation time, contract negotiations, public hearings and currently mandated oversight approvals (*i.e.*, a total of 200-250 days).

In close consultation with the ACCOs, MOCS has developed an objective set of indicators of agency performance, designed to pinpoint existing “bottlenecks” in the process. Since procurement requires interaction between procurement and policy staffs, particularly for human services, our indicators “disaggregate” the process, so that we measure and track each component precisely. By paying closer attention to this interaction, we can try to begin each procurement early enough (well before the expiration of the corresponding current contract) to accommodate programmatic needs.

The indicators will also permit MOCS to measure its own contribution to the length of the process, as well as the performance of other oversight agencies. Indeed, during FY 2003, MOCS shortened its own processing time from 29 days to 21 days, despite reductions in staffing. Because of a higher overall volume of procurements in FY 2003, moreover, MOCS completed action on more than 2300 items, representing about 12 percent more than its FY 2002 approval volumes, although it delegated significant approval authority to the agencies over the course of this recent year.



⁶ The average cycle times for the three most common procurement methods have generally improved during the last five fiscal years. The average time for bids has hovered around 3½ months. The average cycle time for negotiated acquisition has been trending down dramatically since fiscal year 1998, when it nearly equaled that for RFPs. In fiscal year 2003, the average cycle time for negotiated acquisition, at 60 days, was more than a month shorter than the time for bids, 105 days. The average cycle time for RFPs had been trending down from fiscal year 1998 to fiscal year 2000, except for a dramatic increase in fiscal year 2001. As noted above, average cycle time for RFPs decreased to seven months in fiscal year 2003. One would expect the average cycle time for bids and negotiated acquisitions to be significantly shorter than the cycle time for RFPs. Unlike the bid process, in which vendors only offer price and agencies can only consider price, the RFP process requires vendors to offer programs or technical approaches and agencies to take into account a variety of factors, including price; this leads to longer evaluation times for selection. Similarly, the negotiated acquisition process is a special process designed to be swifter than an RFP; this process typically truncates the solicitation time.

Beginning in Fiscal Year 2004, we will release data derived from these new indicators, with a view toward eventual use of performance data to establish an agency ranking system. But at this juncture, agencies vary quite widely in the degree to which they can track the progress of individual procurements through automated systems. Rather than impose additional burdens on agencies that lack such technology, MOCS is phasing in the data collection for the new performance indicators, obtaining information from each agency to the degree that existing tracking mechanisms permit, and piloting a more detailed analysis only where such data is automated. Full implementation of procurement performance indicators for all agencies will occur as end-to-end workflow technology (discussed above) becomes available.

- ***Increased agency autonomy linked to better performance***

This Administration will continue to streamline the process by delegating additional procurement authority to ACCOs, where we can carefully link such increased autonomy to improved performance. By this means, we provide an incentive for improved agency management of procurement.

All agencies received an initial level of delegated authority at the outset of our procurement reform initiative. In June 2003, MOCS delegated further authority to a number of agencies, principally in the area of contract renewals, extensions and intergovernmental procurements, based on MOCS' analysis of performance during our reform initiative. As detailed data from the performance indicators becomes available, MOCS will establish agency rankings and will then consider delegation of additional authority to agencies that have demonstrated expertise and capabilities.

- ***Streamline construction change order process***

The process of amending a construction contract to increase funding for a project – e.g., to account for unanticipated conditions, design changes and the like – is termed a “change order.” In Fiscal Year 2003 alone, over \$200 million in construction change orders were processed. But there is significant retroactivity in this process. Construction agencies vary widely in their internal approval processes for change orders. In addition, OMB and, in some cases, the Mayor’s Office of Construction (now part of MOCS) also play oversight roles prior to the registration of change orders with the Comptroller.

While contractors cannot be compelled to begin change order work prior to registration, in practice, agencies count upon such work being started (and sometimes completed), at contractors’ risk, because it is in the critical path of projects and must be finished before other planned contract work proceeds.

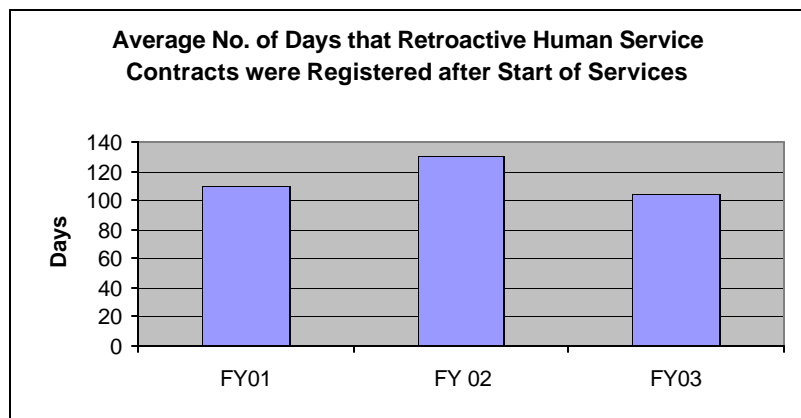
OMB’s value engineering team has conducted a comprehensive review, collaborating with representatives of all the construction agencies and oversights. This process has identified changes to reduce and, if possible, eliminate retroactivity. While most of the proposals address the change order workflow within the construction agencies, the team has recommended that MOCS also examine its process, identify opportunities for streamlining, and ensure that each oversight step adds value.

To that end, we have restructured the former Office of Construction, merging its functions into MOCS’ Procurement Review unit. Our goal is to benefit from some synergy, by combining the review of change orders with the review of initial contracts – i.e., MOCS will assist agencies in identifying possible changes to the initial construction contract process that may reduce the frequency or scope of change orders. In keeping with the emphasis on agency accountability, we also plan to identify appropriate delegations of change order approval authority to the agencies.

- ***Improved human services contract planning***

The average number of days that services were provided under retroactive human services contracts prior to registration increased more than 25 percent in FY 2002, mainly because of disruptions after September 11th. But in fiscal year 2003, we made progress once again, with the average number of retroactive days declining 20 percent. That average, still too high, is below the 2001 level (104 days vs. 109 days).

But not-for-profit organizations have few, if any alternative markets for their services. Typically, they cannot substitute another business partner for the City. Contract retroactivity thus places especially unfair burdens upon these vendors. It is for this reason that for FY 2004, we have modified the human services annual plan – long a PPB rules requirement – to adapt it as a tool for identifying and, where possible, preventing or remedying the occurrence of retroactive contracts.



Under current rules, agencies must submit an annual human services contract plan in the form proscribed by the CCPO by November 15th. We are moving to amend the PPB rules to synchronize this planning tool with the budget adoption process, so that the information contained in the plan will become available to the public, including the vendor community, much earlier in the fiscal year. But, even for 2003, with plans anticipated in November, we have modified the format to improve the plans’ usefulness in predicting retroactive contracts well in advance and, to the extent possible, initiating corrective actions to prevent or reduce retroactivity.

This year, each agency will be required to review each contract or class of contracts with reference to the expiration date of current services. For each contract an agency intends to continue (*i.e.*, for any services not anticipated to end), MOCS will identify the target time frames necessary for timely procurement actions – *i.e.*, renewal, extension or new RFP award. In each instance where an agency identifies a planned action but lacks sufficient time to complete that action before current services expire, the agency will be required to consider alternatives (such as extensions until new awards are ready) and/or to identify corrective actions so it can “catch up” and register its new procurement on time. The results of these reviews will be made public, and MOCS will work directly with vendors to reduce delays and address the impacts of any unavoidable retroactivity.⁷

- ***Commitment to ongoing vendor outreach***

Our experience in meeting with the stakeholders as part of our policy analysis and formation exercise has confirmed the value of continuing regular meetings with the various stakeholders. As discussed earlier, we have met with the City’s elected officials, the vendor community and the ACCOs. As we move forward with these reform initiatives on all fronts, we will continue to meet with vendor groups on at least a quarterly basis and with the ACCOs on at least a monthly basis.

⁷ In partnership with the not-for-profit Fund for the City of New York, MOCS currently oversees a revolving grant fund designed to assist human services vendors with cash flow shortages between the time a procurement is submitted to the Comptroller and its registration. This year, MOCS plans a pilot program to expand eligibility for such revolving grants to vendors providing ongoing services while awaiting a retroactive contract, focusing on vendors with modest resources and annual budgets, as they are least able to adjust for cash flow swings.

Strengthening Vendor Responsibility Reviews

The Bloomberg Administration is committed to assuring that agencies do business with responsible vendors and conduct their procurements with the highest level of integrity. Under the Charter, agencies are accountable for selecting responsible vendors to meet their respective needs, but the Mayor is empowered to centralize integrity assessment activities as he deems appropriate.

Full centralization of the assessment of business integrity conflicts with our approach to agency management and accountability. It also ignores the very real distinctions in different agencies' procurement needs, as well as the very different markets within which different agencies do business. These distinctions can result in vendor responsibility determinations that vary by agency, a variance that the Charter framework recognizes and permits.

But, at the same time, agencies should be able to benefit from each others' experiences with particular vendors, as well as from best practices in vendor rehabilitation strategies, while ultimately remaining accountable to make the procurement choices best suited to attain their individual programmatic goals. We have therefore determined that the best way to strengthen agencies' responsibility reviews is to enhance the centralized resources available to them in this area, including the availability of additional training and technical assistance.

- ***New mission for MOCS' Integrity Assessment Division***

We have transformed a pilot program initiated by the last administration – the Integrity Assessment Division (IAD), a unit within MOCS – into a repository of technical support and expertise to assist agencies in the performance of their integrity reviews. Vendor responsibility determinations will remain at the agency level, but the IAD unit, which has great depth of research and technical expertise, will provide support services to ACCOs.⁸

An IAD review includes an examination of the information that led to a VENDEX entry, supplementing information in VENDEX that appears outdated or unclear. In addition, IAD can review public and private databases not otherwise available to the agencies, providing additional data to agencies to support their vendor integrity assessments. ACCOs will be able to easily access data from IAD and request its assistance in addressing issues that arise. IAD will also be available to work with the appropriate entities to attempt to resolve the issues uncovered. ACCOs may also request additional training and support to strengthen and supplement their current review process.

When the history of a particular industry indicates a pattern of barriers to entry and a non-competitive market environment, however, a different approach to business integrity assessments may make sense. The Charter-defined roles of DOI and the Business Integrity Commission (BIC) make them well suited as the agencies to identify the industries where the competitive marketplace does not generally yield responsible and responsive vendors and thus require a different and/or heightened business integrity review process. The public articulation of industries subject to heightened reviews in our procurement system benefits both agencies and vendors by putting them on notice that the responsibility reviews for these industries will be subject to greater scrutiny than that for normally competitive industries.

We learned several valuable lessons from the IAD pilot that will guide this Administration as we strengthen agency performance in this area. First, it is essential that an agency initiate IAD assistance earlier in the contract process. Initiating an IAD review in the midst of the MOCS review at the end of

⁸ From 1994-1996, the Mayor and Comptroller participated in a Vendor Responsibility Task Force (through PPB), which recommended the creation of a centralized vendor responsibility unit. The last administration initiated the IAD pilot and began to move part of the responsibility determination from agencies to IAD, which would have performed the vendor integrity determination on behalf of agencies, with the agencies remaining responsible for evaluating vendors' technical and financial capacity, and for completing the responsibility determination.

the process can increase the time between award and registration. Another lesson is that there are additional databases that ACCOs with appropriate training could readily benefit from – at least in agencies with higher procurement volumes – as an added tool for responsibility review.

- ***Vendor responsibility rehabilitation***

One of the most frequent sources of frustration for vendors is the fact that, particularly following one agency’s non-responsibility finding (whether based upon performance issues or business integrity problems), that same agency *or other agencies* continue to cite the same facts as the basis for later non-responsibility findings, even where the vendors believe they have addressed the concerns previously raised. Even where vendors are found responsible, the existence of negative performance or integrity information on VENDEX continues to be raised with each successive contract, requiring them to explain again and again the same events or circumstances – *e.g.*, employment practices cases they have litigated or settled, safety violations they have remedied, etc.

To date, our vendor responsibility review process has looked only to past conduct in assessing present responsibility for new procurements. Vendors who have had problems only begin to build a new “rehabilitated” track record at the point when an agency decides that it strongly prefers to work with them and finds them responsible or choose to offer an option of a certification agreement with DOI, or some other added guarantee of responsibility status. But agencies are not necessarily well-equipped to conduct complex reviews of rehabilitation efforts. When, in lieu of such a step, the agency makes a non-responsibility finding and moves to the next lowest bidder, the disappointed vendor has had little recourse or opportunity to prove its rehabilitation.

Vendors sometimes appeal non-responsibility findings even when the award is not stayed, mainly because such a finding may well be cited later on as a relevant issue in considering (or rejecting) them for a new contract award. But agencies are upheld in most appeals, as the underlying determination that the vendor was (at the time) non-responsible is, typically, quite supportable.

Vendors remain very frustrated with this system, knowing that they have taken affirmative steps to improve their business practices but not being able to “prove” themselves to agencies. But of equal importance, agencies are frustrated that the competitive environment for city business suffers as we exclude from our procurements vendors whose improvement in responsibility goes unrecorded.

In September 2003, the PPB published a draft rule for comment. It would allow vendors to demonstrate affirmatively their rehabilitated status, documenting the steps they have already taken and/or the added certifications or guarantees they are willing to provide. Once a determination is made under this new rule, we will add the new finding of rehabilitation to the VENDEX database. We believe this will afford agencies a more viable set of choices, enabling them to find vendors responsible for new contracts in a wider range of situations.

- ***Streamline employment practices reporting***

The Division of Labor Services (DLS) at DSBS monitors contractors’ compliance with Equal Employment Opportunity (EEO) law, training requirements, and prevailing wage requirements by requiring contractors to submit Contract Employment Reports. These reports address employment practices, documented policies and procedures, and collective bargaining agreements.

Major reforms in the burdensomeness of the process require amendments to the Charter, as detailed above. Current Charter language requires vendors to submit to DLS voluminous documents, often amounting to thousands of pages. We believe that DLS can better serve the City and vendors’ interests by reducing this time and paper intensive review process, requiring specific information that is pertinent to determining compliance with EEO law. The streamlined approach would be supported by a comprehensive audit process when the initial report triggers the need for further information.

DLS thus plans to streamline requirements for contractors while enhancing the objective of achieving equal opportunity employment by enhancing technical assistance to vendors. By providing more guidance, training, and information about the City's requirements, what DLS examines and what constitutes a violation, DLS can help vendors avoid violations up front.

Lastly, DLS plans to promulgate a rules change to increase the thresholds for contract reviews – now set at \$1,000,000 for prime contractors and \$750,000 for subcontractors on construction contracts, and \$50,000 for supply and service contracts – to focus the review on the very large-scale procurements which these requirements were originally intended to reach.

Commitment to Continuous Improvement

As we have already shown, we can accomplish much of what is needed to reform procurement by smarter, more innovative management of the process, supported by regulatory reforms by the PPB.

Charter reform affords us with an opportunity to move that reform agenda to a higher level. Following the passage of the Charter revisions, we will present to PPB a series of proposed rules changes to increase agency procurement authority and introduce greater flexibility into the procurement process.

Beyond the areas addressed by the Charter Revision proposals, our reform initiative is also supported by a legislative agenda that we hope to move forward at the City Council. To date, we have a package of five proposals that have been introduced and we are making progress on two additional measures:

- Intro. No. 2003/420 would increase intergovernmental procurement flexibility by allowing ACCOs to choose such contracts whenever they yield a “fair and reasonable” price, rather than requiring a price lower than the prevailing market. Sound procurement policy requires the balancing of price with other factors such as quality and speed, so we believe this additional procurement flexibility will yield better value for the City.
- Intro. No. 2003/421 would modify the Charter's inflexible requirement for all agencies to maintain prequalified vendor lists, by making this option permissive, only. Given the strictures of state law and the diverse needs of various agencies, it makes little sense to require agencies to maintain and vendors to spend time and money applying for prequalification lists that are unlikely ever to be used.
- Intro. No. 2003/422 would raise the threshold for procurements requiring the Mayor's or Deputy Mayor's approval from the current \$2 million level to \$10 million, and would permit the Mayor to delegate additional procurement approval authority to agencies upon his specific findings that such agencies have demonstrated their capacity, including the authority to approve such large-scale procurements. While not every city agency has the depth of procurement expertise to warrant full delegation of such authority, this proposal recognizes that accountability can often best be achieved by a management strategy that holds agency heads fully responsible for procurement decisions.
- Intro. No. 2003/423 would permit the Mayor to delegate additional authority to agencies, to allow them to approve the use of competitive sealed bids via selective solicitation from prequalified lists for appropriate procurements or classes of procurements. This flexibility would recognize agency expertise, permitting those that do maintain prequalified lists to move procurements for highly specialized services or very large-scale projects more expeditiously, targeting their solicitations to those vendors on such a prequalified list who are capable of handling the work.

- Intro. No. 2003/424 would raise the threshold for allowing agencies to cancel contract public hearings upon a finding that no member of the public has expressed interest in testifying (after due notice) to \$2 million.
- In September 2003, following the July 16, 2003 unanimous vote of the PPB, we wrote to the Council to urge passage of a resolution raising the limits for agency use of the “small purchase” expedited procurement method to \$100,000 across-the-board, for all goods, services, construction, construction-related services and information technology. This change would streamline procurement for an estimated three million dollars in goods valued between \$25,000 and \$100,000, and more than forty million dollars of non-construction services valued at between \$50,000 and \$100,000.
- Finally, during the fall of 2003, we anticipate discussions with the City Council and the Comptroller’s Office on a changes to the laws and regulations governing the substance and process of the VENDEX system. These changes are in keeping with the Charter reform proposal, but can be moved forward independently from that proposal.

We must, however, continue to do more. Even with the deeper reforms that are included in the Charter revision package now pending before the voters of New York City, much remains to be done to overhaul our procurement process and bring it into the 21st century. Thus, this report represents but a down payment toward the eventual achievement of our long-range goals.