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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 20, 2011

Ms. Cathleen P. Black
Chancellor
NYC Department of Education
52 Chambers Street
New York, NY 10007

Re: Report 2010-F-26

Dear Chancellor Black:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article III, Section 33 of the General Municipal Law, we have followed up on the actions taken by officials of the New York City Department of Education to implement the recommendations contained in our audit report, *New York City Education Department: Non-Competitively Awarded Contracts* (Report 2008-N-1).

Background, Scope and Objective

The New York City Department of Education (DoE) is responsible for the New York City public school system, which contains more than 1,600 schools serving nearly 1.1 million students. DoE's \$21-billion operating budget for the fiscal year ended June 30, 2010 was supported by Federal, State and City funds.

In the two fiscal years ended June 30, 2010, DoE reportedly awarded a total of 166 non-competitively bid contracts (now labeled "negotiated services" contracts) totaling \$139.3 million. According to DoE's procurement manual, a non-competitively bid procurement can be used when it is impractical or impossible to use other procurement methods, such as competitive bids and request for proposals, and when a non-competitive bid is in the best interest of the Department. A Committee on Contracts (CoC), convened by the Chancellor of the DoE, reviews and provides recommendations on proposed non-competitive bids. All such bids, in excess of \$100,000, are required to be submitted to the CoC after a procurement notice has been published in the City Record and responses have been evaluated.

Our initial audit report, issued on May 19, 2009, covered the period July 1, 2005 through June 30, 2008, and examined whether the DoE complied with applicable procurement requirements when awarding non-competitively bid contracts. The objective of our follow-up was to assess the extent of implementation as of September 19, 2010 of the six recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that DoE officials have made significant progress in correcting the problems we identified in the initial report. Of the six prior audit recommendations, five recommendations have been implemented and one recommendation has been partially implemented.

Follow-up Observations

Recommendation 1

Ensure that the Committee on Contracts obtains all required documentation specified in support of approval for non-competitive procurements. Instruct the Committee to return submissions to requestors when required documentation is missing.

Status - Implemented

Agency Action - Between September 14, 2009 and June 30, 2010, the CoC approved 77 non-competitively awarded contracts. We reviewed a judgmental sample of five contracts to determine whether the files submitted to the CoC had contained all required documents and to determine whether incomplete files had been returned to the requestor. The five contracts ranged in value from \$167,200 to \$11 million each. The files for four of the five contracts contained all required documentation, including detailed cost breakdowns and justifications for the selection of the successful vendor. We noted that the CoC had returned the file for the remaining contract to the requestor because certain required documentation was missing. The requestor provided additional information to the CoC and the contract was subsequently approved.

Recommendation 2

Investigate the inappropriate destruction of contract documentation by the archives contractor and determine what additional safeguards are needed to prevent future such incidents. (In response to the draft report, DoE officials determined that it was not the archives contractor, but a DoE employee who mistakenly destroyed records. They state training has occurred to prevent future problems.)

Status - Implemented

Agency Action - DoE officials provided documentary evidence to show that an investigation was conducted. The employee who had destroyed the records was counseled and subsequently terminated. DoE officials also provided us with training records which showed that training on how to appropriately archive documents was provided to staff in their contracts unit.

Recommendation 3

Prepare and maintain appropriately detailed minutes for all meetings of the Committee on Contracts.

Status - Partially Implemented

Agency Action - DoE officials disagreed with this recommendation. They advised that instead of implementing the recommendation, as written, they now prepare and maintain minutes of selected meetings. These minutes, in "question and answer" format, are maintained when the CoC requires clarification of issues before a request for a non-competitive procurement is approved. We reviewed contract files for a judgmental sample of seven contracts - including the five contracts in our original sample. We found that these limited minutes were maintained for three of the seven contracts we reviewed. No minutes were maintained for the remaining four contracts.

Recommendation 4

Revise DoE's Standard Operating Procedures Manual to provide additional guidance for the use of the "other special circumstances" including definitions of each sub-category and classification of the extent of analysis required to justify a no-bid contract award for each subcategory.

Status - Implemented

Agency Action - DoE officials issued a revised Standard Operating Procedures Manual for procurements on January 27, 2010. In this manual, the "other special circumstances" category has been re-labeled "Negotiated Services" and includes descriptions of the various sub-categories, as well as a list of the analysis and other information that a requestor must provide to justify the need for a non-competitive designation. We noted that one of the new sub-categories is labeled "other such circumstances determined to be in the best interest of the DoE."

Recommendation 5

Identify, on an ongoing basis, contracts that begin before they have been approved and follow up with the responsible individuals to determine why this has happened and whether corrective actions are needed.

Status - Implemented

Agency Action - The DoE approved 77 non-competitive contracts during the 11-month period of September 14, 2009 through June 30, 2010. Our review found that work on 24 of these contracts started before they were approved by the CoC. Our review also showed that the CoC had followed-up with the requestors to determine why the contracts had been started before they were approved. DoE officials advised us that they determined no corrective

actions were necessary because these contracts needed to be expedited to meet execution dates established by the fund grantors.

Recommendation 6

Ensure that notices of contracts are posted in the City Record prior to the start date of the contracts.

Status - Implemented

Agency Action - DoE officials provided documentation showing that, for the five contracts in our sample, the notices of contracts had been posted in the City Record prior to their start dates.

Major contributors to this report were Sheila Jones, Rita Verma, and Margarita Ledezma.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department of Education for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Kenrick A. Sifontes
Audit Manager

cc: Brian Fleischer, DoE-OAG
George Davis, Mayor's Office of Operations