

Comments on the new Procurement Document and Contracts to be voted on 2/23/16

To: Chancellor Farina, DOE officials and members of the Panel for Educational Policy members

From: Patrick Sullivan, Leonie Haimson and Dr. Jackie Cody on behalf of the Citizens Contract Oversight Committee of Class Size Matters

Date: February 23, 2016

Comments on the new DOE Procurement Document

We see no obvious problems with the change in proposed procurement procedures, though it is unclear how allowing city employees outside of the Department of Education to be in charge of contracting will provide more transparency and/or accountability to the process, both of which are badly needed, as revealed by the egregious \$1.1 billion contract that was due to be awarded to Custom Computer Specialists last year. This was a vendor who had already been found by the Special Commissioner of Investigation to have engaged in a corrupt kickback scheme that had defrauded the DOE of millions of dollars just a few years before.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? Will there be fewer contracts awarded retroactively or with little information provided as currently occurs? Will there be more transparency and less waste and fraud as a result? These questions should be addressed.

There are two passages in the document that trigger special concerns. On p. 24, it says “For procurements greater than \$100,000 to no greater than \$1,000,000, the DOE shall conduct a review which *may* include the following....(A) information regarded the Special Commissioner for Investigation’s [sic] completed investigations of which the DOE has official knowledge.”² [*emphasis added*]

The review of an SCI report should not be left to the discretion of the DOE. DOE officials should be obligated not only to conduct a review that would include any relevant findings of the Special Commissioner’s office, but also to provide this information to the public in the RA’s, including a link to the completed SCI report, so that interested parties will be able to see it.

It is also our understanding that the DOE has access to all completed investigations of the SCI office. This is confirmed by the SCI office, which writes: “at the conclusion of any investigation that results in a written report or statement of findings” the Commissioner must provide a copy to the “Chancellor and the Board of Education” (now called the Panel for Educational Policy.)³

¹ For our posts on this issue, see <http://nycpublicschoolparents.blogspot.com/search?q=custom+computer&max-results=20&by-date=true> See also <http://www.nydailynews.com/new-york/education/education-department-reboot-computer-services-deal-article-1.2156179> and <http://www.nydailynews.com/new-york/education/gonzalez-nyc-backs-huge-school-contract-saves-163m-article-1.2474357>

² This is not mentioned again for procurements greater than \$1,000,000 but we assume it applies there as well, because the document says the DOE should “supplement its review” with other sources of information . See <http://schools.nyc.gov/NR/rdonlyres/A82D2501-929D-4298-8A14-1923E2F207FB/191518/DepartmentofEducationProcurementPolicyandProcedure.pdf> , p.24.

³ <http://www.nycsci.org/public/Executive%20Order.pdf>

If the Panel members and the Chancellor are already not receiving this information, they should be. Thus the more conditional meaning of the phrase “completed investigations of which the DOE has official knowledge” is unclear. The DOE should also be obligated to analyze and report to the PEP on any internal investigations of its Office of Special Investigations that pertains to the contractor involved.

The other passage of concern is on page 11, which says the following:

- (b) DOE employees and members of the Panel for Educational Policy shall:
- (1) place professional responsibilities above personal interests;
 - (2) deal with the public and with vendors with courtesy, consideration, and even-handedness;
 - (3) use information gained confidentially in the performance of DOE and DOE-related duties solely in the DOE’s interest;
 - (4) refrain from disclosing information gained in the performance of DOE and DOE-related duties where the DOE’s interests may be compromised; and
 - (5) 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.

Why should members of the Panel for Educational Policy (or DOE employees for that matter) be obligated to keep these matters confidential and act solely in the DOE’s interest, instead of the public interest; especially as the two have not in the past been congruent? It would be far preferable to substitute the words “public interest” in the document instead.

It is also important that the document incorporate the requirements noted by the Special Commissioner’s office – that PEP members and DOE employees be obligated to report all evidence of corruption to his office, rather than leave it ambiguous as above as to whom “the appropriate official” might be. Here is their obligation according to the SCI:⁴

- (e) Every officer and employee of the City School District of the City of New York, the Chancellor, the PEP and all other officers and employees of the City shall have the affirmative obligation to report, directly and without undue delay, to the Special Commissioner of Investigation, any and all information concerning conduct which they know or should reasonably know may involve corrupt or other criminal activity or conflict of interest (i) by an officer or employee of the City School District which concerns his or her office or employment, or (ii) by persons dealing with the City School District, which concerns their dealing with the school district, and shall proceed in accordance with the Special Commissioner’s directions. The knowing failure of any officer or employee to so report shall constitute cause for removal from office or other appropriate penalty.

⁴ <http://www.nycsci.org/public/Reporting%20Obligations.pdf>

Comments on the Contracts to be voted on Feb. 24, 2016.

- **Confusing format**

We would like to thank the DOE for making more information available on contracts in advance of the vote. However, the format is confusing and the information is confusingly offered, in four different documents. Instead, it would be good to have the summaries and descriptions for each month's proposed contracts in one single document, with a table of contents listing page numbers, to make it easier to refer to and locate specific contracts.

- **Too many retroactively awarded**

We are concerned about the fact that DOE is asking for the panel's approval of several contracts months after the services have already been paid for and presumably delivered. Professional development contracts for Renewal Schools are all single source and retroactive, suggesting they were done quickly and without much advance planning. It is unclear why the contracts for work beginning in August or September were not brought for approval until the end of February. The DOE is obligated to have these contracts proposed, publicized and voted upon before awarding them rather than wait six months after the services have started.

- **DOE is spending millions on consultants of uncertain quality when more Professional Development should be provided internally**

There are numerous experienced professionals within the DOE whose work should include leading and facilitating Professional Development workshops. There are many in the "trenches" with first-hand knowledge of what good teaching practices involve. Given the size of the NYC public school system, and the various district and borough offices, it would be better and allow for substantial cost-savings to provide professional development in-house, than to continuously contract out for many millions of dollars for services from consultants, especially when the quality of these services is often questioned by our teachers.

Are these PD vendors going to be evaluated as to their quality and effectiveness by DOE? What can DOE provide to show how these services, when provided previously, have been received by educators and what value have they added? The Renewal schools would be more likely to succeed by spending funds to hire more teaching staff, particularly when over 60% of these schools still have class sizes of thirty or more, instead of piling on consulting contracts for professional development.

Finally, many of the Professional Development contracts are to train teachers in the Common Core State Standards, even as the Commissioner of Education has already stated that there will be substantial changes to these standards in the year ahead.

- **Pearson should not be hired**

There are three contracts listed with Pearson, including in new areas, despite the fact that NY State discontinued their services due to poor quality. Moreover, only two of the many recent scandals and problems with Pearson's performance are noted in the DOE's summary. A more complete list of Pearson's problems in recent years should include the Pineapple passage on the 2012 NY state exam which was so confusing and ridiculous that it had to be taken off the test, and has become a national symbol of the incompetence of standardized test makers, errors in the 2012 NY

Pearson math exams, the insertion of commercial logos and products in their exams, their refusal to sign the student privacy pledge, and many others.⁵

- **Too many contracts are listed without vendors and amounts specified in advance, and too little information provided**

Today, Feb. 23, at the last minute, contracts #16-18 for preK vendors were withdrawn, that previously had no vendor names or amounts associated with them. At the same time, at the last minute, information is now provided that contract #15 will be awarded to Yeshiva of Kings Bay to provide half day preK. We have real reservations about providing city funds to religious providers of preK services. Moreover, though the general scoring method used to select preK providers is described in the document, nowhere is the score reported that that this particular vendor received.

A quick search finds that this provider was sued in 2009 under the Fair Labor Act, though we cannot determine what the resolution of the case or judgement may have been.⁶ Another listing says that "a second lawsuit" against Yeshiva of Kings Bay in Brooklyn was filed in the same year, "for failing to pay a teacher any wages for eleven months."⁷ Neither lawsuit is mentioned in the DOE documents. At the very least, all pertinent information, including vendor names, amounts to be paid, the scores they received from DOE in the various categories, and any legal judgements against them should be reported at least a month in advance of the vote, so that there can be sufficient public comment and discovery of their merits in advance.

Comments on Specific Items:

Item 2, Literary Professional Development Services

Pearson is being introduced here as a new vendor despite the fact that many districts and NYS have moved to do less business with them. The case for them here appears to be their ties to the Common Core: "Pearson offers literacy programs that have been developed in collaboration with authors of the Common Core State Standards (CCSS) and offers participants an opportunity to learn about the instructional shifts that are outlined in CCSS". This rationale makes no sense for two reasons: 1) NY State stopped using Pearson as a vendor for state tests, including CCSS tests, due to the poor quality of its work. 2) NY State has announced it will develop new standards to be released in 2017. Pearson will have no relevant expertise with these standards.

Item 3, Professional Development for Instructional Technology Services

This item proposes to spend \$9 million for a vaguely described set of services to integrate technology with instruction. There is little evidence that out-sourcing instruction to software helps kids learn; the DOE should provide Panel members and the public with a more comprehensive explanation of what is being purchased along with a review of the efficacy of current spending on these services. Vendors need to provide evidence of their competency. For example, what is the record of success of Teaching Matters which is due to get \$7.7M for this purpose?

⁵ <http://www.nydailynews.com/new-york/talking-pineapple-question-state-exam-stumps-article-1.1064657>

http://www.huffingtonpost.com/alan-singer/pearson-education-can-run_b_6327566.html

http://www.huffingtonpost.com/alan-singer/pearson-education-new-york-testing-_b_1850169.html

<http://www.wnyc.org/story/302903-state-officials-throw-out-another-pearson-test-question/>

<https://www.washingtonpost.com/news/answer-sheet/wp/2014/10/08/pearsons-wrong-answer-and-why-it-matters-in-the-high-stakes-testing-era/>

<https://www.washingtonpost.com/news/answer-sheet/wp/2014/10/08/pearsons-wrong-answer-and-why-it-matters-in-the-high-stakes-testing-era/>

<https://www.dnainfo.com/new-york/20150416/park-slope/parents-complain-about-brand-placement-state-english-tests>

<https://www.dnainfo.com/new-york/20150416/park-slope/parents-complain-about-brand-placement-state-english-tests>

⁶ <https://dockets.justia.com/docket/new-york/nyedce/1:2009cv02378/292751>

⁷ <http://www.fslawfirm.com/blog/2009/10/kings-bay-yeshiva-lawsuit-2/>

Items 8 - 12, Professional Development for Renewal Schools:

8 EngageNY ELA professional development to all Renewal High Schools and Receivership Schools.

9 Math Solutions services will be administered to the Renewal Schools.

10 On-site staff development at 18 Renewal Schools implementing the Readers and Writers Project.

11 Professional development to staff at the Renewal Schools - Principal Conferences.

12 Professional Development to staff at the Renewal Schools - Teacher Courses

All five of the items for the Renewal Schools are retroactive and negotiated with a single vendor rather than bid competitively. This poor procurement practice suggests limited or no advance planning for the Renewal Schools improvement programs.

DOE needs to explain why services began in August or September, when the contract won't be approved until the end of February. DOE is ignoring their own procurement policy, and for a signature initiative.

The largest contract, over \$1 million with Scholastic for its "Math Solutions" program is also the vaguest. It's unclear what's actually being delivered for the money. It's mostly "administrative support" with the actual amount of development for teachers limited: "Teams of two to three teachers per school will attend these PD sessions as well as receive job-embedded coaching." Doesn't the DOE have a dedicated administration team for the Renewal Schools? Are the resources contacted here redundant? The statement of work and full contract details should be released to the public.