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Transcript of the Meeting of the
CHARTER REVISION COMMISSION
held on Monday, August 4, 2003
St. Francis College, 180 Remsen Street
Borough of Brooklyn

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1 Meeting convened at 6:30 p.m.
2 P R E S E N T
3 FRANK MACCHIAROLA, Chairman
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4 COMMISSIONERS:
5 PATRICIA GATLING
6 KATHERYN PATTERSON
7 WILLIAM LYNCH
8 VERONICA TSANG
9 MOHAMMED KHALID

10
11 Also Present:

12 DR. ALAN GARTNER, Director
13 ANTHONY CROWELL, General Counsel

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1 CHAIRMAN MACCHIAROLA: Before we get started
2 with the meeting of the Commission, I would just like to
3 comment on something that appeared in the press and
4 perhaps could give a wrong impression as to where the
5 Commission has been. You remember at the last meeting
6 that we had last week, the issue before us was getting a
7 consensus on certain of the issues, which consensus
8 would form the basis for later discussion, not for final

9 judgment. So issues like when it would go on the
10 ballot, what the shape of the ballot questions would be
11 like, matters in which we got a sense of the group, but
12 did not get a finding of the group or anything that
13 resembled that at all. So I want to make clear that the
14 Commission's work in this area is still to be done.
15 Does anybody have any questions on that? Okay.

16 COMM LYNCH: Mr. Chairman, I wish you could
17 talk a little more about how the process is going to
18 move forward from here. Because the piece in the Times
19 was very confusing to a lot of people I was talking to,
20 and I said, "If you had been at the meeting, you would
21 have seen what had happened." It seemed like that
22 reporter was at the meeting, but it was a different
23 meeting than we were in.

24 CHAIRMAN MACCHIAROLA: I think what happens
25 is that they'd like to make sure they have a story, and

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1 so as, I said to him, we didn't take a binding vote.
2 We're just trying to get a sense of how to move forward.
3 But sometimes, as you know, we were told we were going
4 to do things we hadn't even discussed. So I think it
5 was enthusiasm on his part rather than a certainty.

6 Let me deal with a question and give you a
7 sense of what I hope we could do. I had originally
8 thought Monday, today and tomorrow would be days, but a
9 number of you realized that when passed around the
10 issues last week that we were not to meet tomorrow. So
11 we will meet again next Monday.

12 The plan is today get a sense, similar to
13 what we did on the other, of procurement plans, to

14 direct to staff to induce them to bring us the kind of
15 report that will allow us to make decisions and not to
16 leave things hanging, putting in as many clarifications
17 as we can, so when we finally do reach the issue of
18 ballot questions, we could have a chance to say this is
19 what we want to put on the ballot.

20 So procurement will be today. There are a
21 number of other issues that were raised in the hearings
22 that we had; questions presented to us by the Mayor,
23 things like agencies, things like whether we do anything
24 in the area of finance, questions like that; agency
25 reorganization. Those questions will be dealt with at

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1 the meeting that we have on the 11th. And then on the
2 13th we will decide the questions. We will get for us
3 questions in a form that will allow us to express "yay,"
4 "nay" on those questions, and put those questions
5 forward in a kind of ballot form we would like.

6 And then we will, after that, we have some
7 additional hearings and why don't you give us the dates
8 of those.

9 DR. GARTNER: After the 13th, when the
10 Commission will address language in the memorandum of
11 the Commission on three topics; non-partisan elections,
12 procurement and agency reorganization, we would have
13 perfected the options for the Commission, and we set on
14 the 19th and the 21th, in my baseball metaphor, two
15 double headers. If there is Commission business that
16 will require a meeting, there will be a meeting. If
17 there is not Commission business, we can use that, those
18 days for hearings based upon whether to adopt on the

19 13th. That will be the third round, if you will, of
20 hearings. Then on the 25th, a meeting of the
21 Commission, at which time a final decision will be made
22 as to what will be on the ballot.

23 CHAIRMAN MACCHIAROLA: Please tell me again,
24 what will happen on the 13th?

25 DR. GARTNER: We will come back, taking a

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1 simple one, a non-partisan election where there seemed
2 to be a consensus that if non-partisan elections were to
3 be presented to the public, it would be characterized as
4 covering all three sets of municipal offices. So we
5 will draft language that expresses that concept. We'll
6 go through each of the items, each of the components, if
7 you will, of non-partisan elections and draft Charter
8 revision language that you as Commissioners can say,
9 this is what we meant and this is what we agreed to.

10 COMM LYNCH: And then we'll vote that
11 language up and down on the 13th?

12 DR. GARTNER: That's correct.

13 CHAIRMAN MACCHIAROLA: Well that, we will
14 not vote at that time on final language.

15 COMM LYNCH: I mean, vote it to send it for
16 final review by the public?

17 DR. GARTNER: That's right.

18 CHAIRMAN MACCHIAROLA: Yes, and not, in
19 other words, if we hear in those hearings or if we
20 decide before that that something should be changed, we
21 will do that by the August 25th meeting. So the next
22 meeting represents our best efforts that the meeting on
23 the 13th represents our best effort to come up with

24 language, then the 19th, 21st, both hearings and
25 meetings to have the public respond to what we have

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1 said, and then on the 25th, taking into consideration
2 what they've said, what we've heard, where we ultimately
3 put the questions on the ballot. Now, some of this is
4 going to, I think carry forward to that -- if I can jump
5 ahead just slightly, because in part, certain of these
6 issues, let's say on procurement, have begun to be
7 developed. The Comptroller and the people from the
8 Mayor's office have begun to have discussions have what
9 makes more sense to them, and I certainly believe that
10 if we could get a resolution of some sticky issues in
11 terms that the Comptroller, the Mayor and everyone else
12 involved, perhaps the council feels should be there,
13 then we've got a different language on the 25th than we
14 may have before we put it forward, so, the language of
15 the 19th will make our best effort, will be our, on the
16 13th, rather, will be our best effort, but we have until
17 the 25th to get some feedback, both from the political
18 people involved, as well as from the public, and may
19 change some of that. We're free to do that. Every
20 Commissioner should feel free to do that.

21 COMM LYNCH: Mr. Chairman, if the
22 Commissioners are not satisfied with the report that's
23 brought forward or that they -- that a majority of the
24 Commissioners agree on, is there a possibility to issue
25 a minority report?

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1 CHAIRMAN MACCHIAROLA: In the language of
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2 our final report?

3 COMM LYNCH: Yes.

4 CHAIRMAN MACCHIAROLA: I think so. Has that
5 happened before?

6 MR. CROWELL: I don't know if there's
7 precedent for it, but I suppose a minority report could
8 be prepared.

9 CHAIRMAN MACCHIAROLA: You're a member of
10 the Commission, and if the member of the Commission
11 feels they want to put something in the record, why not.

12 MR. CROWELL: We'll review the issue as for
13 appropriateness.

14 CHAIRMAN MACCHIAROLA: Find out. I don't
15 think there's any reason why First Amendment rights
16 should be suspended.

17 Now, at tonight's meeting we'll try to get
18 some consensus on these procurement issues. I'm also
19 cognizant of the fact that Commissioner Newman is
20 somewhere in Iceland, Commissioner Siegal is somewhere
21 in Long Island, Commissioner Garcia and Commissioner
22 Norat are somewhere--

23 DR. GARTNER: In New York City.

24 CHAIRMAN MACCHIAROLA: Unavailable for
25 tonight and Father O'Hare is in the Philippines?

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1 MR. CROWELL: Thailand.

2 CHAIRMAN MACCHIAROLA: I know they really
3 all wanted to cancel their trip to be here with us
4 tonight. I prevailed on them not to, so I would like
5 them to have some say, so we'll deal with this as our
6 judgment at this point, not lock them in, at the same

7 time not impeding the work of the Commission. I should
8 say that Commissioner Gatling has just come back from
9 South Africa and Botswana, so this is a very well
10 traveled Commission.

11 I'll be in Budapest at the end of the month.
12 All right, procurement. Alan? Let's get
13 started.

14 COMM LYNCH: Mr. Chairman? At the last
15 meeting, let me apologize to the Commissioners about my
16 mistake about the Asian community and that I had stated
17 that the majority of the Asian community voted
18 Republican rather than Democrat. I have been so
19 corrected by my colleagues in the back, and I said I
20 would say that publicly, that I apologize for not
21 listening to them, trying to cut their strength, or
22 whatever it's called.

23 CHAIRMAN MACCHIAROLA: Let me just say,
24 before we get on to procurement, we've had the last
25 meeting of the Commission you recommended that we move

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1 to ballot, move to seek a Home Rule message picking up
2 on the initiative that Speaker Miller gave to us at his
3 presentation.

4 I haven't had a chance to speak to him, but
5 I have spoken to someone in his office to communicate
6 that that's what we are interested in doing. We've
7 missed each other on the phone. Also, Alan's
8 communicated with the people in the Mayor's office and
9 gotten a very favorable response to the concept and the
10 idea. I think what we will have to do is to work on
11 that language, that will also be another task for us.

12 That will really be I think a tripartite resolution. I
13 think and this is probably the City Council will be the
14 leading piece on that, since the Home Rule messages do
15 come from the City Council, so we'll support the effort
16 there and try to get the Mayor on it as well.

17 Okay, Alan, do you want to start out with
18 tonight's items?

19 DR. GARTNER: I think I've said to some of
20 you, I know I've said to some of my colleagues that
21 there are days as I work on these activities where I
22 think I ought to be paying tuition instead of collecting
23 a salary. I thought I knew a lot about procurement
24 before I began this. I have learned I think a fair
25 amount. What I've done here is to go through the issues

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1 that were identified in the staff report of June 26th,
2 as well as issues that Commissioners have raised, and
3 items that were raised in public testimony; identify the
4 major issues and for each of them try to describe
5 succinctly the issue itself and the staff
6 recommendation. I'll not either bore you or insult you
7 by reading what it is I've written, but to try to
8 summarize item by item. Let's start with the first.
9 The order is simply the order that was in the report to
10 you on the 26th, there's no order of priority.

11 CHAIRMAN MACCHIAROLA: Alan, do you want to
12 just review the piece before that?

13 DR. GARTNER: The priority issues?

14 CHAIRMAN MACCHIAROLA: What it is that the
15 principles are, what these agreements that we have or
16 these suggestions that we have flow from a set of

17 assumptions about procurement, I think you laid out
18 nicely in your memo.

19 DR. GARTNER: Procurement is a major issue.
20 The easiest way to say it is to use a number. It
21 involves some \$8 billion with a B of the city's funds
22 each year. It ranges from the mundane paper and pencils
23 and desks and so forth to the quite exotic, robots and
24 helicopters.

25 We as a city, comparing New York to other

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1 large cities, a significantly larger percentage of our
2 human services are delivered by contract as opposed to
3 being delivered by municipal employees, so it is not
4 simply that produces the things that are necessary for
5 the day-to-day operation of the Government, it is an
6 important aspect of the actual service that the
7 Government provides, in this instance to do with
8 funding, to the public.

9 For each of the issues, it was recommended
10 to us, and I thought a useful recommendation, that we
11 identify the principles under which we think about it.
12 And this is a combination of dealing with the law, the
13 State law gives us some guidance and some limitations
14 about what to do, and there are some issues that the
15 Commission itself might incorporate it. And those are
16 the four bullets in the first page in the report I've
17 given you. One, prevention of fraud, favoritism and
18 corruption, second promotion of efficiency and
19 effectiveness, this is really parsing the language of
20 the State law in the purchase of goods and services.
21 Third, building upon the previous Commission, which

22 addressed this in extraordinary detail, encouragement of
23 accountability understood in the context of the 1989
24 Charter provisions, as to the primacy of Mayoral
25 responsibility of the procurement function, it is an

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1 executive function, if you will, and finally, but not
2 last, the promotion of fairness for both vendors and
3 enhanced access for them to the City's procurement
4 system

5 That last item was one that, at least for
6 me, was something I came into this discussion with the
7 concern for and it was affirmed by much of the
8 conversation we had at hearings and forums in which
9 vendors, particularly small vendors, but even some large
10 ones who described the City's procurement system as one
11 that locked them out, blocked them, didn't provide them
12 access and so the issue of access is a critical one in
13 the full range of the meaning of that word, and finally,
14 the question of what ought to be, the Charter, I have
15 sometimes, Anthony usually is kind enough to correct me,
16 sometimes he doesn't and lets me go forward. The
17 Charter is not quite the Constitution, but it does have
18 many constitution-like aspects to it. It is, I think by
19 general consent far too detailed, far too long, far too
20 specific and to considerable extent as we've thought
21 about these issues, we've tried to push issues closer to
22 the ground, closer to where the procurement decisions
23 are made, at the agencies in the 1989 Charter, the
24 establishment of the Procurement Policy Board, which is
25 an entity that is closer and has more flexibility than

1 the Charter.

2 We ought not be putting things in the
3 Charter that have a life that is relatively short and
4 then have to come back to another referendum to the
5 public to change them. So we've generally tried to
6 limit Charter changes and push towards Procurement
7 Policy Board actions. In a number of instances, you'll
8 see, this is some of the good help that Commissioner
9 Newman gave us, staff, to think about guidance for the
10 Procurement Policy Board, but not specifics for the way
11 in which they should carry out that guidance. So if
12 that --

13 CHAIRMAN MACCHIAROLA: That's fine. And I
14 guess what I also want to make sure, is there any other
15 Commissioner that thinks there's any element in those
16 general guidelines that should be included that hasn't
17 been included at this point? Okay, so -- and that came
18 up, these came up again and again and again, but I just
19 wanted to make sure that we're okay on it.

20 DR. GARTNER: Thank you.

21 CHAIRMAN MACCHIAROLA: So let's start with
22 your several bullets on this.

23 DR. GARTNER: Alternative procurement
24 methods. The State law is quite prescriptive as to what
25 it is that a municipality, it's not just vis-a-vis New

1 York, may do, and the Charter as currently written
2 tracks quite closely those strictures of the State law.
3 What we've proposed here is to take the ability that the
4 State law, the flexibility that the State law gives, as

5 limited as that is, in terms of alternative methods, and
6 to encourage, again, the limits that the State law
7 allows, and I'm going to repeat that phrase because
8 that's a critical question, we're not free to do
9 whatever we think best, however smart we may be to think
10 best, to allow procurement methods that are appropriate
11 to the particular circumstance, the circumstance of the
12 agency, the circumstance of the item that's being
13 purchased or service being procured, the circumstance of
14 what the market looks like. Obviously, the market for
15 the sale of oil is one thing. The market of people who
16 are capable of running homeless services is a quite
17 different thing and one needs to adjust the rules, to
18 the extent you can, to reflect that market, and in
19 essence, what -- well, in the concrete, what we're
20 recommending is repealing of those sections of the
21 Charter which are limiting and giving to the Procurement
22 Policy Board the power to promulgate rules for
23 alternative procurement methods.

24 I can expand on that if there are questions,
25 or Anthony, if there are --

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1 MR. CROWELL: No, that's fine.

2 CHAIRMAN MACCHIAROLA: This is a general
3 change in the -- no, it's a change in the way the
4 Charter has delineated certain things and it's a grant
5 to PPB the authority to, within State law, the State law
6 does in fact give you a total, to develop these
7 alternative procurement procedures. I don't think we've
8 had anybody oppose this in the discussions that we've
9 had. I think that the City's people --

10 DR. GARTNER: The closest we've had, a
11 couple of people have raised the question, does
12 increased flexibility mean loosening the strictures
13 against fraud, corruption and favoritism. That's always
14 an issue of striking a balance. I'm confident that
15 we've not opened the game up so that there is an
16 increased likelihood of fraud, favoritism and
17 corruption, but that's the closest that there's been any
18 question about that.

19 CHAIRMAN MACCHIAROLA: Anyone else have
20 anything they want to add or question about?

21 COMMISSIONER KHALID: In other words,
22 Mr. Chairman, the section which we are repealing, would
23 that be affected by the State law, it would not be
24 affected by State law?

25 DR. GARTNER: We've had careful

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1 conversations, this is an issue in which Anthony has a
2 goodly amount of expertise and we've had conversations
3 with the Corporation Counsel, lawyers who deal with
4 contract issues and they are comfortable with where
5 we've gone with this that we've not exceeded the bounds
6 of what a municipality is entitled, is able to do.

7 COMMISSIONER KHALID: Thank you.

8 CHAIRMAN MACCHIAROLA: Well, if there's no
9 dissent at this point, then why don't we move to prepare
10 something for consideration.

11 Vendex. You sure you want to do this
12 second?

13 DR. GARTNER: There are some who say that
14 Vendex is something that should be kept as it is because

15 it performs a useful function as a doorstep. It's large
16 and heavy and voluminous. That's meant as a joke. I
17 trust people will understand that.

18 We've heard extensive testimony on this,
19 almost, I think to a person, no one defending the Vendex
20 as currently designed and implemented. Concerns about
21 the relevance of its questions, concerns about how it's
22 filed, concerns about the extent to which it covers
23 issues and we heard some testimony about how to change
24 it.

25 Currently, according to the Charter, it is a

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1 matter that's designed by the Mayor and the Comptroller.
2 They are the parties that are jointly responsible for
3 the policy decisions regarding Vendex, and we're not
4 changing, the recommendation is not to change that
5 responsibility of the Mayor and the Comptroller.
6 Basically, what we are proposing is that the Mayor and
7 the Comptroller develop jointly rules to make Vendex a
8 more useful instrument. We give some guidance as to the
9 nature of the rules. For example, that agencies not be
10 required to file a new Vendex more frequently than every
11 three years; that the vendor is responsible for updating
12 the Vendex if there are material changes, and presumably
13 part of the rules will be a definition of
14 what "material" would be. That responds to one of the
15 issues that we've heard frequently. The second
16 stricture that we make in giving advice to the Mayor and
17 the Comptroller is that people be able to file the
18 Vendex electronically as opposed to doing it on paper.
19 We heard that from many of the people who testified

20 before us. I note here, and can provide you if you
21 wish, that we received in the last day or two a letter
22 from Commissioner Gilhearn of the Department of
23 Investigation supporting this recommendation.

24 The pertinence of that letter, it's not that
25 she's just one of several score of Commissioners, but

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1 she's the Commissioner with the most direct
2 responsibility about fraud, corruption and favoritism
3 and her endorsement is an important building block in
4 treating this issue. So it adds at least to the staff's
5 comfort in understanding that we got it right in terms
6 of striking this balance. As I note in the parentheses
7 in the end, because this is a complicated matter, we
8 propose delaying the implementation of this for nine
9 months after the adoption of the Charter, should the
10 voters so do it.

11 CHAIRMAN MACCHIAROLA: So we will put
12 forward a series of prescriptions or exhortations, what
13 will they be?

14 DR. GARTNER: Since you're going to write
15 them, what do you want, Council? Exhortations or
16 prescriptions?

17 MR. CROWELL: I think our preliminary report
18 actually has some of them in them.

19 CHAIRMAN MACCHIAROLA: Has the --

20 MR. CROWELL: Has amendments to the Vendex
21 system. There's legislative text in this report, so I
22 will refer you to that, and they are prescriptions.

23 CHAIRMAN MACCHIAROLA: Okay. So we will be
24 more than just recommending, we will be putting forward

25 some hard suggestions on improvements, but at the same

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1 time what we'll be doing is allowing the Comptroller and
2 the Mayor to work out the mechanics of the system that
3 we request, subject to the fail-safe mechanisms for
4 fraud, corruption and dishonesty that the Commission has
5 put forward.

6 MR. CROWELL: They'll have broad authority
7 to negotiate the system but we'll have specific
8 language, we'll be creating that authority.

9 CHAIRMAN MACCHIAROLA: As you move through
10 this process, you're in consultation with the
11 Comptroller's office and the Mayor's people?

12 DR. GARTNER: Yes, we are.

13 CHAIRMAN MACCHIAROLA: And we are moving
14 swimmingly in this discussion or at least --

15 DR. GARTNER: Well, yesterday at Battery
16 Park City where I live, there was an event in which
17 people wanted to show that the Hudson was clean enough
18 to swim in. So 150 people swam in the Hudson. Some did
19 not get very far. So I'm not sure what "swimmingly"
20 means. In fact, two or three went about ten yards and
21 then were hauled out by an emergency boat.

22 CHAIRMAN MACCHIAROLA: Well, I think this
23 is, my sense is if you can work out the language that
24 conforms to the ideals that are here and we put it
25 forward, this is the perfect situation in which people

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1 will be able to give us their comments in the period of
2 time when those comments are available. So in a sense,

3 we will do the best we can to represent the best kind of
4 vision that we can write. Hopefully it will be seen
5 that way by the parties involved and if they don't,
6 they'll tell us why they don't. If they do, then we're
7 fine and if they tell us otherwise, we'll have a more
8 animated discussion. Does that make sense to everybody?

9 COMM TSANG: Yes.

10 COMM LYNCH: I just want to echo that
11 sentiment. Because at the meeting in Washington
12 Heights, I thought that's what I heard and that's what I
13 thought we had an agreement on, from all three parties,
14 at least there was someone there from the Comptroller's
15 office and Councilman Jackson who chairs the procurement
16 committee of the Council, that they were going to meet,
17 try to build a consensus, and what I took out of that,
18 if they couldn't come to a consensus, then we would do
19 something, and I've, even before I came here, I made a
20 couple of calls and to my knowledge they didn't even get
21 off the pier. They're just standing there waiting to
22 see if they should jump in or not.

23 CHAIRMAN MACCHIAROLA: That's why the reason
24 that I asked the question, the way I asked the question
25 is the ideal I think would be to get them to reach some

22

1 kind of consensus that would be well within our judgment
2 that it is the right way to go. I mean, these are the
3 experts. If this is what they think, that makes it more
4 compelling.

5 Sometimes it will take an actual draft to
6 get people to jump into the water. I'm not sure how
7 swimmingly it is, but I think the Commission is going as

8 far as they can to encourage people to join in the swim,
9 and this language that you have will represent something
10 that should do that, if it hasn't already, and if it
11 hasn't already, then hopefully by the time we meet on
12 the 25th, we'll have language that will be modified to
13 reflect that. That's where I hope we go. I mean, I
14 don't know where we'll end up on it. Hopefully we won't
15 have to do anything.

16 COMM LYNCH: I guess my question, Anthony,
17 has there been any meeting of the three groups to try to
18 move some stuff forward?

19 MR. CROWELL: You should know the proposal
20 is one in which the Vendex system is going to be managed
21 jointly by the Comptroller and the Mayor.

22 DR. GARTNER: As it is now.

23 MR. CROWELL: As it is now, but they will
24 write rules jointly that flesh out how the system will
25 operate and what requirements will be put in place.

23

1 COMM LYNCH: Will the City Council play any
2 kind of role in that?

3 MR. CROWELL: Of course the City Council has
4 a perennial oversight role in all activities of City
5 Government so of course they'll play that role.

6 DR. GARTNER: But in this particular route,
7 it is the Comptroller and the Mayor who take
8 responsibility for this -- Vendex, as I say in the
9 beginning of the report, is a fraud protection system,
10 and these have been responsibilities of the Mayor and
11 the Comptroller, and that's what we propose to continue.
12 In other areas we propose other sectors of the three

13 involvement, but there have been, to my knowledge, and I
14 want to emphasize that that is not extensive, no
15 discussions in particular. I know that there are
16 ongoing discussions simply because my cubicle at City
17 Hall abuts that of the legislative staff people and I
18 hear about those discussions, but I've not been party to
19 any such discussions.

20 COMM PATTERSON: It isn't really the
21 effect of the proposals to change the current method in
22 which the Vendex system is administered but rather to --
23 and it's quite clear, I was just looking at the
24 language, that it's still required to be a major vendor
25 integrity system. That's how it's described.

24

1 DR. GARTNER: That's what it is.

2 MR. CROWELL: That's the heart of its
3 purpose.

4 COMM PATTERSON: So the concept of
5 protection against fraud and favoritism is built into
6 the Charter quite specifically.

7 MR. CROWELL: It actually creates a
8 mechanism, a flexible mechanism to go further if it's
9 required or to -- to set the appropriate level of
10 integrity giving changing circumstances and
11 technological advances so it actually creates a really
12 good system in that respect.

13 COMM PATTERSON: So the real substantive
14 change is instead of having, what you just gave me,
15 Administrative Code 6116.2, which has about 80
16 paragraphs that specifically describe every detail that
17 every vendor in New York, whether it is Tishman Spire or

18 whether it's a small minority-owned business wanting a
19 tiny contract has to provide, you've got flexibility
20 within PPB to, as administered by the Mayor and the
21 Comptroller to come up with regulations that could be
22 responsive to a big business with a big infrastructure
23 and a big contract or a small business with a small
24 contract and negligible infrastructure.

25 MR. CROWELL: It meets the diverse needs of

25

1 a diverse vendor population.

2 DR. GARTNER: Let me pick up on one small
3 point that you made. This is not to be done through the
4 PPB but rather directly through the Mayor's Office and
5 Comptroller.

6 COMM PATTERSON: The PPB will come out
7 with regulations --

8 MR. CROWELL: That's right.

9 COMM PATTERSON: That have specific
10 requirements for vendors, different kinds of vendors,
11 different sizes of contracts and so on and the Mayor.

12 MR. CROWELL: Well, it's not Vendex versus
13 the PPB, but they will operate similarly in the joint
14 decision making.

15 DR. GARTNER: Your point about flexibility
16 is exactly what the issue is about.

17 COMM PATTERSON: It maintains vendor
18 integrity as an absolute base condition to the award of
19 any contract, but its purpose is to open up the process
20 to more potential vendors, I think, by allowing for some
21 flexibility rather than requiring every vendor to comply
22 with 80 clauses of the Administrative Code.

23 MR. CROWELL: Right. It makes it less
24 onerous but at the same time it keeps in place the
25 standards that are needed to maintain the integrity.

26

1 CHAIRMAN MACCHIAROLA: I think what we want
2 to do, and Kitty says it, we want to streamline this.
3 At the same time, we want to encourage people to come
4 in. At the same time we don't want to interfere with
5 the basic responsibilities of Mayor and Comptroller and
6 exercising that. So hopefully they'll come to some
7 agreements on just what makes sense to require vendors
8 to --

9 COMM PATTERSON: Yes, and also to keep the
10 basic principles that I think is in the Administrative
11 Code and that the City Council cares a great deal about,
12 which is integrity. That's still the goal is to
13 maintain, as you say, to have your goals be to avoid
14 fraud and favoritism in the contract of work process.
15 So it should be consistent with what all these various
16 interested parties want.

17 CHAIRMAN MACCHIAROLA: I think we want to
18 make sure again that discussions could proceed with the
19 Mayor, the Comptroller. I also think it might be
20 advantageous to just touch base with the people on the
21 Council to let them know where we are and to get their
22 input on anything they feel they want to provide.

23 MR. CROWELL: I think you should also be
24 aware that Council staff is here as well.

25 CHAIRMAN MACCHIAROLA: Okay.

27

1 DR. GARTNER: Registration. I'm sorry,
2 employment reports. Sorry. The current rules require
3 that as part of an application a contractor or
4 subcontractor with a contract above a certain level
5 needs to describe various things about their employment
6 pattern, who they employ and what levels and so forth.
7 A useful goal, overly prescriptive in terms of working
8 it through, and it is the Department of Small Business
9 Services that monitors this, and the recommendation of
10 staff, supported by the Department, is for there to be
11 rules promulgated that would give greater flexibility in
12 providing this information, but nonetheless get that
13 information from contractors and subcontractors.

14 CHAIRMAN MACCHIAROLA: We will instruct them
15 to come up with rules, the Charter instructs the
16 Commissioner of small business to produce the rules?

17 DR. GARTNER: We will revise Charter Section
18 1305 to that effect.

19 CHAIRMAN MACCHIAROLA: We will authorize
20 them to proceed with rule changes?

21 MR. CROWELL: The Department of Small
22 business services will do that.

23 CHAIRMAN MACCHIAROLA: Is there any
24 safeguard on their integrity? Anybody have any -- are
25 there rules -- are there limitations of what rules they

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1 could set aside? What's the language going to be?

2 MR. CROWELL: They'll obviously have to work
3 in consultation with the Mayor's Office of Contracts
4 plus whatever applicable State or local laws.

5 CHAIRMAN MACCHIAROLA: So it's limited by --

6 MR. CROWELL: Absolutely.

7 CHAIRMAN MACCHIAROLA: Just want to check.
8 Commissioner Walsh is a friend, but I don't want to give
9 him too much leeway.

10 COMM TSANG: I have a question. Under
11 employment reports there are rules right now. You say
12 the report has proven to be overly rigid? What do you
13 mean by that? How rigid it is. How is it going to be
14 different from what we have already?

15 MR. CROWELL: It will probably ask less
16 information, but concentration on that information which
17 is most important, so it's not, a massive amount of
18 information, only two-thirds of it or a third of it is
19 really what's necessary to manage the system, and so
20 that's what we're getting at. Again, streamlining while
21 maintaining the effectiveness.

22 CHAIRMAN MACCHIAROLA: Okay. Anyone have
23 anything to add to this? Any further instructions to
24 be--

25 MR. CROWELL: I should add, in maintaining

29

1 the effectiveness, you are actually improving the focus
2 of it, improving the mission of the report.

3 CHAIRMAN MACCHIAROLA: Well, registration.
4 This is a favorite topic here.

5 DR. GARTNER: I spent a little bit of time
6 in describing the issue, saying something about the
7 background, because I think it is a way of saying that
8 this is an issue, A, important and in a certain sense
9 almost unresolvable. It's a balance of responsibilities
10 between agencies; between the Mayor and the Comptroller,

11 and there have been several efforts to strike that
12 balance.

13 CHAIRMAN MACCHIAROLA: Alan, when this
14 system of registration works, the climate of peace and
15 harmony, how does it work?

16 DR. GARTNER: Let me not buy into your
17 description of --

18 CHAIRMAN MACCHIAROLA: No, I want to-- the
19 reason that I -- I'm not making any -- I want to know,
20 this is how the system is supposed to operate. I think
21 it requires integrity on the part of both Mayor and
22 Comptroller in the process. And it really does work
23 smoothly when you think about how it's supposed to work.
24 How is it supposed to work? How does the Charter say it
25 should work?

30

1 DR. GARTNER: The Charter gives to the
2 Comptroller certain responsibility. Are there funds in
3 the till to pay for this; is there appropriate
4 authorization to carry this activity out, and are issues
5 of fraud, corruption and favoritism not present, I'll
6 put that in the negative sense. That being the case,
7 the Comptroller is authorized to, quote, "register" the
8 contract which would allow, then, among other things,
9 for the funds to flow for the vendor to be paid.

10 CHAIRMAN MACCHIAROLA: So if there's peace
11 and harmony, and in fact there probably is for a
12 percentage of the time.

13 DR. GARTNER: Surely in the majority of
14 instances, it works.

15 CHAIRMAN MACCHIAROLA: Now, if the

16 Comptroller doesn't like what's going on at City Hall --

17 DR. GARTNER: The line, you'll notice in the
18 items that I ticked off --

19 CHAIRMAN MACCHIAROLA: The possibilities.

20 DR. GARTNER: The items I ticked off did not
21 include judgment as to the desirability of contracting
22 out for this service or whether you should buy a Chair
23 with three legs or four legs. It is not about the
24 nature of the procurement. It is about are the funds
25 there, is the authority there, are there issues of

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1 fraud, corruption and favoritism. That issue that you
2 raise about judgment, if you will, about other matters,
3 has been the point at which there's continuing tension.
4 It arose in every administration and the example that
5 I'm going to give you is not to pick on a particular
6 administration, but only to note the most recent area
7 where it's happened. There was a contract during the
8 previous Mayoral administration in the work to welfare
9 program, with a vendor called Maximus. The Comptroller
10 believed that -- I think I'm accurately characterizing,
11 that it was not a good judgment in terms of what it is
12 that the Mayor decided to do in that contract, and
13 challenged the registration or withheld the registration
14 of that contract.

15 CHAIRMAN MACCHIAROLA: Did he also believe
16 that there was a possibility of corruption in that,
17 favoritism?

18 DR. GARTNER: Is it fair to say that?

19 CHAIRMAN MACCHIAROLA: Was the Comptroller's
20 sense of this, did the Comptroller's sense of it extend

21 over into what is --

22 MR. CROWELL: I really can't speak for what
23 the Comptroller was thinking at that time.

24 CHAIRMAN MACCHIAROLA: What did the
25 Comptroller say? I'm not -- my reason here, my reasons

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1 for this discussion is not to cast blame, it's to
2 basically show how one's more expansive view of
3 responsibility can collide with one's sense that that
4 responsibility is -- and in a sense to conclude, my own
5 conclusion is no language can hold you safe from any of
6 this. And we've had Mayors and Comptrollers who have
7 both gone beyond what is reasonable in this process;
8 Mayors who have withheld information, and Comptrollers
9 who have sometimes in response acted according to the
10 way they would like it.

11 My own reason for saying this is I think
12 we're not going to have a perfect answer here, but I
13 think what we have to do as best we can is to articulate
14 the scope of each person's responsibility.

15 DR. GARTNER: Let me skip a step down the
16 line and see if that -- the issue about what to do in
17 the Maximus case ultimately went to court, as so many of
18 these matters do, and perhaps, Anthony, you might
19 describe what the court resolution was of that.

20 MR. CROWELL: Well, actually, why don't we
21 let the attorney from the Law Department describe it,
22 since I was not involved in the litigation.

23 DR. GARTNER: Okay, Howard Friedman,
24 attorney from the Law Department, can we ask you to
25 answer that one question?

1 MR, FRIEDMAN: Yes, as long as that's the
2 only one.

3 The Comptroller's office raised issues,
4 among other things, about the process that, the
5 procurement process that led to the awarding of the
6 contracts. The Charter allowed, -- and said it was
7 corruption grounds. The Charter as it's currently
8 written allows the Mayor to override that objection, to
9 take in the information and override it and say, "Now
10 please register the contract." The Mayor did in that
11 circumstance and the Comptroller's office refused, so
12 the Mayor's office sued; lost in the trial court, and
13 then won in the Appellate Division. In the Appellate
14 Division, the Court dismissed the allegations from the
15 Comptroller's office as a matter of fact, on a factual
16 basis, and as a matter of law where the case came out,
17 was affirming the Mayor's view of the reading of the
18 Charter, the words themselves on the surface, that in
19 fact, after the Comptroller raises the corruption
20 objection, the Mayor can say, "Thank you, and I've
21 looked into it, but I want to register the contract
22 anyway," and the other legal principle that came out of
23 the case was the fact that, the lawsuit brought in that
24 situation was an equitable remedy and even the Appellate
25 Division said with equitable remedies you have to have

1 clean hands, and so if the Mayor came in and said,
2 "Thank you very much, now please register the contract,"
3 but the Court believed there was fraud or something in

4 the letting of the contract, then the Court would not
5 have to give the Mayor the relief he wanted in that
6 situation.

7 CHAIRMAN MACCHIAROLA: So the interpretation
8 that the Court gave provided, in a sense, a solution to
9 wrongdoing by both sides, a solution in the event that
10 wrongdoing occurred, each side not involved in
11 wrongdoing had a remedy?

12 MR, FRIEDMAN: Well, the Comptroller --
13 there is a reason that it was the Mayor that brought the
14 lawsuit.

15 CHAIRMAN MACCHIAROLA: What I'm saying is,
16 then what, from what the Appellate Division said, even
17 though the Mayor won the lawsuit, had the Mayor not
18 approached it to clean hands, the Mayor would not have
19 won the lawsuit.

20 MR, FRIEDMAN: Yes, sir.

21 CHAIRMAN MACCHIAROLA: So therefore, in a
22 sense, remedy available under the current operation of
23 the Charter for both sides. Charter provisions as
24 they're currently written should work. Is that the
25 general response that the Court had?

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1 MR, FRIEDMAN: Well, so I think I'll go as
2 far as the legal description of the case.

3 CHAIRMAN MACCHIAROLA: Okay.

4 MR. CROWELL: I think we should step back
5 and look at the history. The reason I wanted Howard to
6 explain it because he was involved with the case and
7 obviously it's better to have the Law Department explain
8 exactly what happened without -- outside of the Charter

9 revision, but you should know the historical roots of
10 the provision go back decades and that contract
11 registration was originally intended to be a ministerial
12 function of the Comptroller. Over time it's evolved and
13 delays in contract registration have been often
14 attributable, as the Chair was saying, on policy
15 grounds. If the Comptroller had been philosophically
16 opposed to certain policy objectives with regard to the
17 letting of a contract, there had been delays, there had
18 been obviously allegations that maybe there was
19 something, some wrongdoing in it, whether or not there
20 was, and so it's really evolved into a very political
21 dynamic rather than an administrative process, just to
22 insure that the funds were there, as Alan was saying, as
23 well as just to make sure the integrity process had been
24 complied with. So we have this intensely political
25 dynamic where there are instances where the Mayor has to

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1 actually sue the Comptroller in order to get a contract
2 registered.

3 What we're trying to do by looking at this
4 registration process is actually create the level
5 playing field that I think was probably the original
6 intent of the provision to begin with. One, to insure
7 that you have funds in integrity, on the other hand to
8 insure that the objectives of the Executive can be
9 followed through on and services delivered, and so it's
10 really, the level playing field that we're aiming for
11 and I think that a lot of the debate is getting into
12 other areas, but just I'd like the Commission as they go
13 forward just to think about the legal history of this in

14 terms of ministerial function evolving into policy
15 making.

16 CHAIRMAN MACCHIAROLA: We've heard from the
17 Comptroller's office and we've heard from the colleague
18 Commissioner that there is reason to, that the process
19 would be expedited in determining these questions if
20 more information would be made available at the time the
21 registration was sought.

22 DR. GARTNER: Correct.

23 CHAIRMAN MACCHIAROLA: That was testimony
24 that we've heard. And I understand we're acting on
25 trying to flesh out exactly what that would be.

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1 DR. GARTNER: Let me respond. You see on
2 page 3 there's a recommendation that's quite detailed
3 proposals in which we thought and maybe I still believe
4 that we could figure out a way to deal with this, at
5 least 30 year old point of tension in which we've
6 suggested that there could be a specification of
7 documents that were expected to be provided; that there
8 also could be at the same time a limit on what you could
9 then further ask for, and the time period in which you
10 can, would need to respond, and then it would be to the
11 ability of the Mayor to have the matter move forward.

12 I don't want to suggest that it's only
13 because the Commission has put, or the staff has put
14 forth ideas, but in any case, there are conversations
15 now going on between the Mayor and the Comptroller, both
16 the individuals and the offices, about dealing with this
17 issue. And whether it's dealt with in the very specific
18 suggestions that we've put forward, or it ought to be

19 dealt with in instructions to the PPB to figure it out,
20 or we ought to let it alone and let the parties wrestle
21 with it between themselves. Those are all options and
22 it seems to me that at the moment, given the fact that
23 these conversations are going forward, including as
24 recently as this morning, that we ought to not meddle
25 into something that perhaps could be figured out without

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1 our brilliance.

2 CHAIRMAN MACCHIAROLA: So, we have an option
3 here, and perhaps that option is to provide something in
4 language or not?

5 DR. GARTNER: I would urge that we simply
6 let it go, and let the parties play itself out. If come
7 the 13th it has not been played out and both parties
8 obviously know the schedule of the Commission, they're
9 not obliged to follow it, but they're aware of it, I
10 think then will be a time for the Commission to weigh in
11 if it needs to.

12 COMM LYNCH: I'd second that suggestion.

13 CHAIRMAN MACCHIAROLA: You second doing it
14 that way?

15 COMM LYNCH: That suggestion.

16 DR. GARTNER: I think we should let the
17 process work itself through.

18 MR. CROWELL: There's already language in
19 here that could be easily adapted to fit --

20 DR. GARTNER: Alan, don't tell them how easy
21 it's going to be to use the language.

22 MR. CROWELL: I'm suggesting that we're in
23 the mode, where you could work towards that if you need

24 to.

25 CHAIRMAN MACCHIAROLA: You'd like us not to

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1 bring this up?

2 DR. GARTNER: I'd like you to let the
3 process work itself out.

4 MR. CROWELL: Reserve discussion.

5 COMM LYNCH: And if they hit a stalemate
6 we'll bring it back to the table on the 13th.

7 COMMISSIONER KHALID: I think we'll reserve
8 discussion.

9 CHAIRMAN MACCHIAROLA: Fine. As long as
10 it's not forgotten, that's all.

11 Okay.

12 DR. GARTNER: Purchase of specific goods.
13 The issue, as you will recall, that the overall scheme
14 for procurement is the Department of Citywide
15 Administrative Services is in effect the procurement
16 agency for the City. There are instances where there
17 are items to be purchased, the nature of which are so
18 particular, so peculiar, so different, that the
19 Department on the one hand doesn't have the expertise or
20 it will be difficult to gain the expertise, and there
21 may well be a particular expertise in a given
22 Department. The example that came to you at your forum
23 in Washington Heights was the Police Department purchase
24 of robots or helicopters or whatever.

25 CHAIRMAN MACCHIAROLA: Or the Department of

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1 Corrections purchase of Tip Top Bread.

2 DR. GARTNER: I want to leave out the
3 question of homelessness, which was the Department of
4 Homelessness of food. Because that -- I'll get to that
5 in a second.

6 The issue, and I guess this is the word of
7 the night, the balance issue, is to enable the
8 Department of Citywide Administrative Services to allow
9 for an individual Department to deal with those
10 particular unique circumstances, without giving up the
11 benefits to the City of the overall purchase. Now, if
12 one sat, one doesn't have to, I think, be judgmental
13 about individual Commissions or Commissioners of
14 Departments to think that my needs are individual and
15 unique and separate and without being silly about it,
16 the pencils that I have to buy are different than the
17 pencils the Department down the block has to buy.

18 I think that all of you who were there will
19 recall the response from Commissioner Newman when the
20 witness, the ACCO from the Department of Homeless
21 services used the example of food in human service
22 centers. I think that stretched the notion of
23 uniqueness beyond the bounds that, at least I felt
24 comfortable with, and at least I thought the Commission
25 felt comfortable with, and so what it is that we're

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1 suggesting is that we amend the Charter to give at the
2 discretion of the Department of Citywide Administrative
3 Services, that they give up, if you will, their
4 entitlement, their authority to do all the purchasing
5 for the City in those instances where the procurement is
6 of a specific good used by an individual agency. And

7 that that, the flip side of it says such delegation
8 shall not be made for goods that would be generally used
9 for multiple City agencies. We try to block the example
10 of purchase of food, and we offered now a third idea,
11 this was not recommended by anybody, but I thought it
12 was a useful idea, so I take either responsibility or
13 blame for the last sentence of the recommendation that
14 DCAS make a report annually of when it has exercised
15 that relief to departments and explain their reasons, so
16 that at least on a retrospective basis, one can track
17 what that would be.

18 I think that strikes the balance that makes
19 sense.

20 COMM PATTERSON: Question: Would the
21 Charter amendment require that DCAS make a determination
22 of uniqueness or however you want to characterize it, or
23 it simply -- delegate to DCAS generally the authority to
24 further delegate.

25 MR. CROWELL: The agency would have to

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1 approach DCAS.

2 DR. GARTNER: And make a case.

3 COMM PATTERSON: But DCAS would not be,
4 there wouldn't be standards set forth in the Charter for
5 how DCAS makes that decision, will there?

6 MR. CROWELL: I guess the standards are
7 broad that it has to be unique to the agency, not of
8 common use and so that would provide the basis that if
9 it were specific to an agency or one or two agencies
10 that are very specialized, DCAS could delegate and in
11 the delegation would be the finding.

12 COMM PATTERSON: But the standard that
13 DCAS would have to apply works that be written into the
14 Charter or is that just something that DCAS would be
15 told it could do?

16 DR. GARTNER: We will in the language
17 discussion at the meeting on the 13th give you some
18 prescriptions, if you will, guidelines, and the second
19 part of the last sentence, the instance of such
20 delegation and the bases for it. So we expect DCAS to
21 say this was warranted because such and such so that one
22 would have a track record.

23 COMM PATTERSON: So you have some measure
24 of accountability and also so you'd be sending a message
25 to each agency that that agency can't come in and just

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1 say my pencils are more special than someone else's
2 pencils.

3 MR. CROWELL: Maybe DCAS promulgates rules
4 based on their experience with these specialized matters
5 on how it goes forth. I couldn't speak to the standards
6 about bomb diffusing robots, but maybe there are certain
7 things you want to think about.

8 COMM TSANG: Do we have a limit on the
9 specific use? When you say purchase of specific use, do
10 we have a dollar limit?

11 DR. GARTNER: No. In fact, almost always
12 these will be big ticket items.

13 COMM PATTERSON: Helicopters are very
14 expensive.

15 DR. GARTNER: And robots I guess even more,
16 but I don't know.

17 COMM PATTERSON: I guess helicopters are
18 expensive.

19 CHAIRMAN MACCHIAROLA: Security?

20 DR. GARTNER: Not unrelated to this other
21 item. There are, unfortunately in the post 9/11 world,
22 instances where the mere acknowledgement that the City
23 is considering buying a particular service or buying a
24 particular good is something that would endanger the
25 population of the City and the well-being of the City.

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1 The basic rules require public hearings, and what this
2 section does is that it authorizes the Mayor or his
3 designee to waive in those instances public hearings.

4 CHAIRMAN MACCHIAROLA: We heard that from
5 the Police Department.

6 DR. GARTNER: We heard that from the Police
7 Department.

8 CHAIRMAN MACCHIAROLA: We can move that one.
9 Procurement report?

10 DR. GARTNER: Procurement report. This is a
11 several part concern. We've proposed at several points,
12 we started in the earlier discussion for increased
13 flexibility in the procurement policy and emphasis of
14 the Mayor's responsibility. This is the other side, if
15 you will, or the other shoe here that there needs to be
16 accountability and one of the formats of accountability
17 is a better reporting system.

18 The Mayor's management report currently
19 addresses some procurement issues, but the general
20 feeling that we've had expressed to us, including by
21 those people who do the Mayor's management report, is

22 that it's too narrow, it doesn't give a broad enough
23 attention, and we'll come back, actually, to you next
24 Monday when we talk about some agency reorganization
25 about the Mayor's management report.

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1 What we're proposing here is a new section
2 of the Charter that called for an annual procurement
3 report to be made public and submitted to the Council.

4 We've given examples of possible areas that
5 such a report might address. I probably was less
6 careful in the drafting of this language, because what
7 is listed here to include and then the listing there, is
8 more meant to be illustrative than obligatory and we'll
9 come back to you with language should you agree to this
10 idea at the 13th meeting that is clearer about the
11 illustrative nature of these reports as opposed to the
12 obligatory nature of the components of the report.

13 CHAIRMAN MACCHIAROLA: I think one of the
14 problems with management reports that are so specific is
15 that they don't become useful for management purposes.
16 It's a fine line.

17 DR. GARTNER: I think that's right and the
18 other concern that the people who deal with procurement
19 as a day-to-day job, they ask the question and it's a
20 fair one, is this yet another report that will be filed
21 and not attended to, or are we going to invest a lot of
22 time in preparing the report. So I think it's important
23 that the language we draft, as you consider it, that we
24 emphasize that it's supposed to be a tool that is
25 useful, not one that is simply required.

1 CHAIRMAN MACCHIAROLA: Okay. Any problem
2 with that, any issues on that that anyone -- okay. This
3 is a biggie, number 8.

4 DR. GARTNER: We heard very considerable
5 testimony, again, particularly from our not-for-profit
6 vendors, but not only from them, about the question of
7 the cost, and I mean in human time and dollar resources
8 of multiple audits. I'll use the example from the
9 not-for-profit sector, but ask you to remember that it
10 wasn't just them, but it is most egregious on them.

11 Many of the vendors in the not-for-profit
12 sector will have several contracts from one agency or
13 contracts from many agencies. It's not inappropriate,
14 and I don't mean to mischaracterize the intent of the
15 agencies that grant it, that each one of them want to be
16 sure that, quote, "their money," is spent well, so one
17 of the ways to be sure your money is spent well is to
18 say well, we'll do an audit.

19 The consequence of that is that the City
20 doesn't get a better picture of how the people spend the
21 money. The City spends a lot of time and resources in
22 doing those multiple audits, and the agency itself
23 spends a lot of time in accommodating those audits. I
24 don't think we get a better product with that additional
25 price.

1 We were guided in this, again, by
2 Commissioner Newman who informed at least me, others may
3 well have known about that, that the Federal Government
4 does a single audit, an A133 audit of contractors who

5 have very large contracts and very diverse nature and
6 what it is, is a proposal that the Charter be changed to
7 provide the PPB with the responsibility to develop and
8 then promulgate a rule for single financial audits, that
9 is the expected practice, but also as part of that rule,
10 to identify instances where there are exceptions. We
11 don't want to make a rule that is so prescriptive that
12 it's going to become silly, yet we don't want it to be
13 so optional that it becomes something the agency will
14 say, well, we don't have to do that, we'll stay with
15 business as usual. So again, we've tried to strike the
16 balance between making it expected but not mandatory,
17 giving the PPB the responsibility for developing those
18 rules, but for the Charter saying do it. So we've
19 struck two or three different balances.

20 CHAIRMAN MACCHIAROLA: Expected rather than
21 mandatory or mandatory with exceptions.

22 DR. GARTNER: Take your choice.

23 CHAIRMAN MACCHIAROLA: What's the balance.
24 If the balance is mandatory with exceptions.

25 DR. GARTNER: The balance is mandatory with

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1 exceptions spelled out.

2 CHAIRMAN MACCHIAROLA: And I think that
3 would move us in the direction -- if the Federal
4 Government can do it, I don't understand why we can't.

5 DR. GARTNER: That is a little compelling to
6 me, I must say in my earlier role at the graduate school
7 of the City University it was the Department of the Navy
8 which audited the graduate school. I could never figure
9 it out.

10 CHAIRMAN MACCHIAROLA: It had the biggest
11 contract at the time, it was with the Department of Navy
12 and they continue to do that, they continue to audit.
13 It makes sense. Didn't you also have at CUNY and
14 admiralty program or something like that? Now you own
15 an island. I hear CUNY's got an island. You have to
16 call him Admiral Gartner.

17 DR. GARTNER: Okay.

18 (Laughter.)

19 CHAIRMAN MACCHIAROLA: Is there agreement on
20 that, that we can work that language in? Mandatory,
21 it's a mandatory process, but there are obviously
22 exceptions to that.

23 DR. GARTNER: Or ask the PPB to write
24 exceptions.

25 CHAIRMAN MACCHIAROLA: Okay. Qualifications

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1 for procurement officials. This is an issue that came
2 up before us, if you remember, we had testimony on this.
3 I'm just relieving your voice.

4 DR. GARTNER: I'm okay.

5 CHAIRMAN MACCHIAROLA: Okay, continue.

6 DR. GARTNER: At that famous or infamous
7 meeting at Washington Heights, we had an expression of
8 the importance of procurement officials' qualifications,
9 and we've heard that many times, and it is, I think,
10 self evident that the quality of the personnel, the
11 training of the personnel is important to the effective
12 operating of the system. What we are proposing is that
13 the Commission as part of its final report, that's what
14 I mean by resolution, acknowledge the importance of

15 these activities and encourage the administrative
16 officials who have carried out training through the,
17 particularly through the Procurement Training Institute,
18 which we hear only good news about, that it look at the
19 issue of procurement officer qualifications. These are
20 Civil Service positions and they're Civil Service rules
21 about those positions and so we were hesitant in
22 infringing upon those rules and so that's where we've
23 used the word "qualifications and/or certification."
24 One might think certification would be desirable. I
25 just don't think we know enough at this point to push

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1 for that, but it's a way of, I think, putting it all
2 into the water about the importance of training, the
3 importance of qualification and ultimately the ability
4 of more qualified ACCOs and their colleagues to exercise
5 more discretion at the agency level. That's where we're
6 going without dropping that other shoe.

7 CHAIRMAN MACCHIAROLA: The alternative would
8 be for us to push for some kind of requirement for
9 accreditation or certification in larger agencies. That
10 would be an alternative if people were training
11 inclined. I think Alan's taking a half a loaf rather
12 than a whole loaf. I don't know if anybody wants to
13 take a whole loaf?

14 COMM TSANG: Half a loaf.

15 CHAIRMAN MACCHIAROLA: Half a loaf?

16 COMM PATTERSON: I think half a loaf.

17 CHAIRMAN MACCHIAROLA: Okay, continue to
18 work.

19 DR. GARTNER: I have tried, let me just

20 note, Dr. Macchiarola, I appreciate the Commission's
21 report for half a loaf.

22 CHAIRMAN MACCHIAROLA: I was ready for a
23 whole loaf.

24 DR. GARTNER: Well, you're president of an
25 institution of higher education, I understand that.

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1 MR. CROWELL: This is a submarine role.

2 COMM LYNCH: I'm really not clear between a
3 half a loaf or whole loaf.

4 DR. GARTNER: Well, what one could by action
5 of the Commission either as Charter revision language or
6 by prescription to the Procurement Policy Board,
7 instruct them to do certain things in regard to
8 training, rather than ask the administration who's
9 responsible for the carrying out of the procurement
10 function and to increase the attention that they give to
11 procurement. It is a step short of requiring them to do
12 various things, but it is, take Dr. Macchiarola's last
13 point, to do that in recognition of the fact that as we
14 say on the very end of it, the differing needs of
15 agencies per their size and their complexity so one
16 would expect the procurement officer, the ACCO for HRA
17 would be expected to have different qualifications and
18 training than the procurement officer or ACCO for a
19 small agency that doesn't procure very much in the way
20 of -- as you know, there are some human service agencies
21 that are in effect are contract shops. The Department
22 of Community Development is primarily an agency that
23 lets contracts for the provision of those services. You
24 want that ACCO to be very well qualified. You want all

25 the ACCOs to be well qualified but the complexity of

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1 that job is much greater than the complexity at a more
2 standard agency.

3 CHAIRMAN MACCHIAROLA: My reason for pushing
4 more on this is that I think when push comes to shove in
5 City fiscal crises, the last thing-- the first thing to
6 be cutting training and human development, and so you're
7 giving agencies a tremendous amount of authority to deal
8 with contracts and contractors and at the same time
9 you're not giving them any mandate that the people who
10 are in there be in fact trained.

11 Now, part of this is something I resist. I
12 resist the whole loaf approach for things like the
13 Commissioner of the Department of Buildings must be an
14 engineer or something, or an architect, I resist that,
15 but on the other hand, this is such a sensitive area,
16 and training for certification purposes, it seems to me
17 could be something that could be met within a period of
18 time even after someone's appointed; that it
19 incentivizes -- it's in the Charter it incentivizes the
20 City to produce the training that's necessary. That's
21 why I go beyond the exhortation language.

22 MR. CROWELL: Within of the things to
23 consider is DCAS has a management training institute.
24 It's an optional program for midlevel managers in City
25 Government. That's a model to look at, you know, if we

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1 give permissive language to create something like that.
2 Also there are agencies that run continuing legal

3 education programs as required by the State Bar for all
4 attorneys, things along that. It wouldn't necessarily
5 have to be something that, I think the continuing legal
6 education is a good model and then that may be something
7 to give to PPB to look at instituting.

8 COMM LYNCH: Can't we flip this, and if the
9 Commission puts rules for a whole loaf, but if it's such
10 a small agency that they have the option to opt out?
11 I'm worried about large agencies making it optional. If
12 you say all agencies must have this training, but if
13 there's an agency that only does X amount of
14 procurement, they have the right to opt out.

15 CHAIRMAN MACCHIAROLA: That's almost a whole
16 loaf. I was actually in favor of some certification or
17 training mandated for the larger agencies.

18 COMM LYNCH: For everybody.

19 CHAIRMAN MACCHIAROLA: I actually thought
20 for larger agencies and I think for smaller agencies,
21 one of the things that you -- I mean, one of the things
22 I learned from running the Top 40 program was the
23 tremendous ability that people have to move from one
24 place to another. Actually you want to encourage that
25 in City service. So if you have someone that's

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1 certified as a procurement officer that person doesn't
2 have to sit in that agency forever. So the process of
3 being part of a training program, being part of a group
4 that in fact goes for increased education makes that
5 person visible on the screen and creates a set of people
6 who know about what these provisions are all about. So
7 I'd make it mandatory for holding office in the larger

8 agencies. I'd make it, if I were designing it, and I
9 don't know if it fits into the Charter, I'd say for
10 agencies where these people are hired, within a certain
11 period of time they must go through a training program.
12 And so that training could be on the job training and
13 upon completion of that training, they might transfer to
14 other agencies. But at least you would build into it
15 some sense of professional development across agency
16 lines.

17 You see, we don't have that in terms of
18 overhead agencies. It just doesn't exist in that way.
19 We have it within departments, we have it within
20 agencies, but across functions it tends not to be there.
21 But, you know, that's a radical thing, I think.

22 COMM GATLING: For example, I have a very
23 small agency. I had a fiscal officer that was
24 certified, he left, went to a large agency. Now I have
25 no one certified to do procurement, so basically I'm

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1 learning as I go and having to rely on other people.

2 You know, I think if you're going to do it,
3 then you do the whole loaf and even small agencies we
4 need our people to be trained and to be certified
5 because the rules are so complicated. Who knows from
6 one day to the next what's going on?

7 COMM KHALID: It should be uniform.

8 COMM LYNCH: The reason I raise this, at
9 the Washington Heights hearing or forum, there was a
10 woman there who was a procurement officer, and she
11 talked about Mike Rogers providing Citywide training
12 that everybody loved. Now, I'm wondering if this

13 becomes a mandate of the Charter, will this be looked at
14 well, here's another unfunded mandate, we'll have to do
15 this, there will be no money for it, and we'll just
16 throw people in there to get this training, rather than
17 taking it. That's why I did not vote one way or the
18 other in trying to get clarity on it.

19 DR. GARTNER: Let me suggest, Mr. Chairman,
20 that one of the options you might want to consider, and
21 again remembering that we will present language to you
22 on the 13th that you can accept or reject, that we step
23 this up from its aspirational language here to something
24 that we ask the Procurement Policy Board to develop
25 rules, develop and promulgate rules with the kind of

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1 distinction that several of you have recommended.

2 CHAIRMAN MACCHIAROLA: The thing that I
3 would also do is go back to that woman that made that --
4 that woman is very impressive. I would go back to her
5 and say look, the Charter Commission wants to bet on
6 you. You give us some sense -- and don't turn her in to
7 whoever she reports, to whatever Deputy Mayor is in
8 charge of gumming up the progress of people. Deputy
9 Mayors do that, don't they, Bill, once in a while?

10 DR. GARTNER: I think if she's fired she can
11 be employed by a subsequent Charter Commission.

12 CHAIRMAN MACCHIAROLA: Get a sense from her
13 of how we would implement a program that people in that
14 field would feel good about. Get a sense.

15 DR. GARTNER: We'll do it.

16 CHAIRMAN MACCHIAROLA: Okay. Not for
17 profits.

18 DR. GARTNER: To state the obvious, what
19 I've stated before, is that these are agencies whose
20 concerns, needs and problems we've been at many times.

21 What we've suggested is a sense, a two level
22 approach. One, that the Commission in its final report
23 recognize the importance of these agencies and then
24 further, that the Commission adopt a Charter amendment
25 language that would provide for a variety of areas. Let

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1 me be specific, because those are really very concrete.
2 One, that by Charter amendment it asks for the
3 establishment, instruct the establishment of an advisory
4 committee concerning not-for-profit agencies, the
5 members to be appointed by the director of the Mayor's
6 Office of Contracts, and it then lists a series of
7 activities that the Charter would propose the advisory
8 committee to address. I would suggest, as I did a
9 moment ago, that these be styled more as illustrative
10 than mandatory. And that in addition to the role of the
11 advisory committee in the second paragraph of this
12 recommendation, we propose that the PPB develop rules
13 and again I would suggest that these rules, the three
14 items that are ticked off here, be thought about as
15 illustrative as opposed to mandatory.

16 We need to review, one of the issues is the
17 extent to which we were asking the PPB to develop rules
18 for a circumstance where it may not be appropriate for
19 the City to carry out the activity at all, letting
20 vendors begin work before a contract has been
21 registered, and so I would request that staff be given
22 some leeway in the crafting of this language and that

23 you review it, obviously, on the 13th, but that we
24 soften the mandatory nature of these examples.

25 CHAIRMAN MACCHIAROLA: How did the last

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1 Charter Commission -- I mean, I was on it so I forgot
2 how we did it, but we mandated, did we not mandate the
3 payment of interest?

4 MR. CROWELL: Well, it's there.

5 CHAIRMAN MACCHIAROLA: Pardon?

6 MR. CROWELL: Interest can be paid. There
7 are certain instances, for instance, with the human
8 service contract where if it's a prompt payment
9 scenario, where interest is not provided for for a human
10 service contract, but there's already a mechanism for
11 the payment of interest.

12 CHAIRMAN MACCHIAROLA: Well, why isn't it
13 being paid? It's being paid in non-non-profit, in
14 for-profit situations, right?

15 MR. CROWELL: Yes.

16 CHAIRMAN MACCHIAROLA: Why? Because the PPB
17 thought it was a good idea or because the Charter
18 mandated it?

19 DR. GARTNER: No, no, the Charter -- correct
20 me if I'm wrong -- the Charter mandated the payment of
21 interest.

22 CHAIRMAN MACCHIAROLA: Right.

23 DR. GARTNER: Administratively, the rules
24 permitted that to apply to for-profit vendors, and did
25 not extend it to apply to not-for-profit vendors.

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1 CHAIRMAN MACCHIAROLA: Whose judgment was
2 that? Who made the judgment that it shouldn't apply to
3 non-profits?

4 DR. GARTNER: I can't identify specifically,
5 but it was not a Charter decision, it was an
6 implementation decision.

7 MR. CROWELL: It probably came from Office
8 of Management and Budget about how to handle these
9 things.

10 CHAIRMAN MACCHIAROLA: How does Office of
11 Management and Budget deal with it? They don't take
12 care of it. That's how they do it.

13 DR. GARTNER: What we are proposing is that
14 this Charter Revision Commission be explicit about such
15 payment and ask the PPB develop rules to carry it out.

16 CHAIRMAN MACCHIAROLA: That's less explicit
17 than what we could do. We could mandate the payment of
18 interest from the Charter. And let the PPB figure out
19 how to implement it, rather than suggest to them that
20 they ought to do it. They'll never do it. They will
21 never do it. They don't have the intestinal --

22 DR. GARTNER: Fortitude.

23 CHAIRMAN MACCHIAROLA: They're not going to
24 stand up to the City for a bunch of charitable
25 not-for-profit organizations.

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1 COMM TSANG: They serve a lot of people in
2 New York. So let's mandate it then.

3 COMM GATLING: Not for profits with
4 \$250,000 CEO's.

5 CHAIRMAN MACCHIAROLA: Well, some of them,

6 but you know what, if the City enters into a contract
7 with them and the contracts aren't registered or the
8 contracts -- they don't ask what the CEO of Verizon
9 gets.

10 COMM GATLING: But they're not
11 not-for-profit.

12 CHAIRMAN MACCHIAROLA: But they're being
13 paid interest. Commissioner Lynch, what's your
14 perspective on this? Don't put me to the left, here.

15 COMM LYNCH: I was about to say I'm going
16 to pass on this.

17 CHAIRMAN MACCHIAROLA: You see, you were
18 Deputy Mayor, there's no two ways about it.

19 COMM LYNCH: Absolutely.

20 CHAIRMAN MACCHIAROLA: You can't get it out
21 of your system.

22 DR. GARTNER: Kitty, what's your sense?

23 COMM PATTERSON: You know my sense of it.
24 I think that interest should be required.

25 COMM TSANG: Of course.

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1 COMM PATTERSON: I defer to those who
2 knows the interstices of City Government better than I,
3 as to whether PPB will actually have the intestinal
4 fortitude to mandate it and if the Chair thinks that we
5 should require it in the Charter to make it crystal
6 clear then let's require it in the Charter. There is a
7 second issue, that is similar to the interest payment
8 issue, which I think you also raised.

9 DR. GARTNER: The no loan fund.

10 COMM PATTERSON: It's the no loan fund for
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11 contracts that have not been registered, which there was
12 testimony --

13 CHAIRMAN MACCHIAROLA: Which they expect you
14 to perform.

15 COMM PATTERSON: And if you don't perform,
16 there are fifty inner city kids who can't play
17 basketball even though they did the day before.

18 CHAIRMAN MACCHIAROLA: If you had to do
19 business with any service provider who behaved the way
20 the City did, you wouldn't do business with them.

21 COMM PATTERSON: That's the testimony
22 we've been getting and the point is the large
23 construction contractors of the world or the Verizons in
24 the world have other business and they can choose not to
25 do business with the city. The not for profits are

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1 locked in because they perform the social functions that
2 the City has delegated to them. So they're stuck.

3 COMM LYNCH: They're stuck?

4 COMM PATTERSON: They have no other
5 customer. The City is too big a customer for them to
6 say oh, gee, sorry, we're not going to provide the
7 basketball program for the inner city youths because
8 you're not paying us, so they continue to provide it
9 while they're waiting for somebody to register the
10 contract and pay them. We heard that testimony from a
11 variety of not for profits; that the, you know, whatever
12 they're providing, whether it's an inner city basketball
13 program or an AIDS mental health program, what they
14 provide on June 30 when their fiscal year ends is
15 exactly the same service they provide on July 1, and

16 with the same clients, and in one case they got paid
17 because their contract was registered and approved and
18 the other they can go for months without seeing any
19 money from the City, because it's somewhere lost in the
20 procurement system.

21 COMM LYNCH: Mr. Chairman, what was your
22 remedy on this, again?

23 CHAIRMAN MACCHIAROLA: My remedy?

24 COMM PATTERSON: This was his remedy.

25 CHAIRMAN MACCHIAROLA: My remedy is language

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1 that mandates that these cases, that the obligation to
2 pay interest is part of the cost the City has to assume,
3 the service that it contracts.

4 COMM PATTERSON: And there be some kind of
5 loan fund as well. That's one of the other things.

6 CHAIRMAN MACCHIAROLA: One of the things
7 that happen is the payment of interest to the vendors is
8 a reduction in the amount of interest that has to be
9 paid because all of a sudden there's an incentive to be
10 timely about it. If you're going to get a dollar's
11 worth of service and have to pay a dollar ten because
12 you've been sloppy getting it processed, the person
13 leading the agency seeing a dollar ten for a dollar's
14 worth of services says, "I only want to pay a dollar for
15 these services. Get these things processed, move it
16 through."

17 There's no incentive. What is the incentive
18 to pay somebody, if you don't have an effort of prompt
19 payment, what incentive is there for you to pay? None.
20 It's the ethic to prompt payment. We can't instill that

21 in the City. The only way you can instill it in the
22 City is a hammer over the head to say this has got to --
23 that's my belief. Anything else but exhortation is
24 going to fall short of that.

25 COMM GATLING: What about those agencies

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1 that do a lot of contracting, say for instance like an
2 ACS or something where they may have two or three
3 hundred of these kinds of contracts and they've been
4 required to downsize because all agencies have and they
5 have limited staffing, and it's one thing to say okay,
6 even with that limited staffing, you have to get these
7 contracts done so they can in fact be certified, because
8 from what I understand they've got to come out of these
9 agencies and then go through other City certifications.

10 That's what the holdup has been, just from
11 my little two year view here, is that they get stuck in
12 different places. For instance, you know, just even
13 trying to rent a place has taken me two years with DCAS
14 and is still not rented yet. It's not that everyone
15 isn't moving and doing what they're supposed to do, but
16 again, we can't do it alone, DCAS doesn't do it alone,
17 there are just so many independent people, who are kind
18 of interdependent on association I don't know if the
19 money is the issue so much. I think a lot of it may
20 even go back to agencies having really qualified people
21 that know how to do this contracting, and can really
22 sort of look at things and turn it out quickly. Then,
23 you know, and get it to people. So I mean that's why
24 I'm not so fixed on thinking that if we penalize them
25 that's going to make them -- I just don't think that's

1 going to happen.

2 COMM LYNCH: That's my concern, that we
3 don't put rules in that cannot be implemented. Not
4 because people don't want to do it --

5 COMM GATLING: Not that it's not the right
6 thing.

7 COMM LYNCH: The system is such that it
8 gets logjammed and then the agency doesn't get,
9 shouldn't get penalized for that logjam at the same
10 time. Until we can figure out how to unjam the logs, I
11 don't know if we've helped the situation any. I
12 remember when I used to be over there, there used to be
13 hundreds of contracts that would not move and people, my
14 phone would ring off the hook. What's happening to my
15 contract? But they could not move it through the
16 system. I don't think they didn't want to do, I
17 wouldn't believe that they didn't want to move it, they
18 just couldn't get it moved.

19 CHAIRMAN MACCHIAROLA: But there's no
20 punishment for not doing it. There's no sanction for
21 not doing it.

22 COM TSANG: There's no incentive.

23 COMM PATTERSON: But when you look at a
24 not-for-profit, what we were hearing in the testimony is
25 that you can have a contract that has been in essence

1 the same deal for a not-for-profit for five years and
2 every year that not-for-profit has to sit around and
3 wait. So it's something that is not a new one time

4 thing like trying to rent space, which I can understand
5 how it can get stuck, but something that should just
6 roll off an assembly line that doesn't come quickly.
7 They eventually come, the non-profits assume they're
8 going to come in on the same terms they had last year.

9 COMM LYNCH: I would like to believe that
10 it's that simple. I want to believe. I would like to
11 know why, as much as I tried to find out, there was a
12 logjam. Whether it was an administrative logjam or some
13 logjam. By penalizing the agency, I don't know if we
14 were -- my interest is getting the money through the
15 pipeline fast enough so they can provide the service,
16 and if it doesn't help that, then I don't know if
17 penalizing prevents that.

18 CHAIRMAN MACCHIAROLA: Could I suggest that
19 -- I think we've gotten a good sense of the issue and a
20 good discussion. I think the Commission here that are
21 here, are pretty much divided on the issue of whether we
22 move half a loaf, whole loaf kind of thing.

23 Can I suggest, we're having a meeting on the
24 third element, reorganization.

25 DR. GARTNER: The 11th.

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1 CHAIRMAN MACCHIAROLA: Could you get by that
2 time for us some more developed position that we might
3 take, talking to people in the Government, the
4 bureaucracy, about the very real concern that this
5 Commission has, and if they can't tell us what they
6 propose to do in a way that makes sense, then we're
7 going to be forced to do things that they may not like
8 us to do. We're more than willing to listen to what

9 they have to tell us, but there's no reason that people
10 should continue not to have their rights, their right to
11 prompt payment and the right for contracts to be done in
12 a timely fashion without some consequence. But what
13 that consequence is, and how they will guarantee better
14 performance is what this Commission is looking for.

15 So if you can get that back to us at that
16 time --

17 DR. GARTNER: I will do that at the 11th
18 meeting.

19 COMM PATTERSON: I'm also a little
20 confused as to why it seems to be feasible to for-
21 profits to receive interest if there's delayed payment,
22 because that's, it seems to be done as a matter of
23 course, but there's some issue with not for profits
24 receiving interest payments or delayed payments.

25 DR. GARTNER: The distinction, at least as I

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1 understand it, is the sector as opposed to the nature of
2 the vendor. So that, for example a for profit vendor of
3 homeless services is also not paid interest, it's a
4 distinction. The factual line is not non-profit, for
5 profit, but the nature of the service.

6 COMM PATTERSON: Is there a legal
7 distinction? Are we missing something?

8 DR. GARTNER: I will try to explore the
9 distinction.

10 CHAIRMAN MACCHIAROLA: The for profits have
11 more clout. Look, they brought this to the last Charter
12 Commission and what we understood was that the failure
13 to have vendors who were paid in a timely fashion

14 reduced the performance, the quality of the performance
15 that the City was getting. I mean, that was, from the
16 City's standpoint it meant people were not dealing with
17 the City, and it mattered.

18 In the non-profits, do you think people
19 matter --

20 COMM PATTERSON: As I said, they're stuck.
21 They don't have lots of other multi million dollar
22 clients.

23 CHAIRMAN MACCHIAROLA: If you work in
24 Government you get fifty cents. If you work in private,
25 you get fifty dollars. We should bring together these

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1 two parts of the world.

2 COMM GATLING: And that loan issue, I think
3 that could resolve some of the penalty issues, if the
4 City was in some way able to extend a loan to those
5 contractors that they've been doing business with for
6 five or six years who you know you're going to contract
7 with again, it's just sort of clogged up somewhere in
8 the loggerjam, then you have this loan that then you can
9 just sort of send over to them and when we finally get
10 you out, then pay us back our money.

11 COMM PATTERSON: I think the suggestion
12 you had outlined here was not that a not-for-profit can
13 come in and say we had this deal last year, we're going
14 to assume that we're entitled to the loan, that there
15 does have to be written record from the contracting
16 agency, saying we have put in a request, we're going to
17 renew your contract, or we've got it, yes, we want you
18 to continue providing services. So again, so it's just

19 dealing with the logjam

20 COMM GATLING: And this is where it's stuck
21 so that you'll be able to some way assess where
22 particular contracts are always getting stuck. For
23 instance, I know the contracts in my agency get stuck in
24 different places than the contracts from ACS, but they
25 all get stuck for whatever reason. So then you can

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1 really a year from now have some way of really assessing
2 where is it that we're not able to get it out versus
3 hitting people over the head and say do it, when it's
4 just the City, it's just not going to happen.

5 COMM TSANG: We need more clarification.

6 DR. GARTNER: I will get that for you.

7 CHAIRMAN MACCHIAROLA: There has to be a
8 psychic payoff to people on this Commission. They have
9 done something good.

10 COMM TSANG: I don't know about psychic.

11 CHAIRMAN MACCHIAROLA: And this would really
12 be something unambiguously good.

13 DR. GARTNER: I will not decide the psychic
14 needs of the Commission.

15 COMM TSANG: We need some varication and
16 understanding.

17 CHAIRMAN MACCHIAROLA: Number 11.

18 DR. GARTNER: Clearly, one of the issues
19 that the Commission has heard about and in a sense
20 assumed, that expanding the vendors universe was both
21 something that was a good in and of itself, but also had
22 the potential for the City, if one believes as some of
23 the conservatives would, that more vendors would

24 increase competition which would lead the City to get a
25 better price and/or better quality, and what we

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1 recommend is that the language of Charter Section 1304
2 which deals with this issue and embraces the extent of
3 the Mayor's Executive Order which involves a series of
4 outreach activities to vendors so that it levels the
5 playing field and increases the activity, and recognize
6 that this is not only a matter of equity and
7 competitiveness, but also a tool in economic development
8 for the City.

9 CHAIRMAN MACCHIAROLA: Okay. Is there
10 anybody that has any problem with this?

11 COMM TSANG: No.

12 CHAIRMAN MACCHIAROLA: This is a wonderful
13 thing.

14 COMM GATLING: That would be a wonderful
15 thing.

16 CHAIRMAN MACCHIAROLA: The Mayor's Executive
17 Order. We're home free on that one. Twelve.

18 DR. GARTNER: We had, in our earlier report,
19 as this indicates, crafted some language to the goals of
20 Chapter 13 which is the overall chapter regarding
21 procurement. It was three sentences long and I don't
22 think there was a word in favor of any one of the
23 sentences. Some said sentence one was unclear, some
24 said sentence two was unnecessary and some said sentence
25 three was inappropriate.

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1 COMM GATLING: I want to know what
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2 Mr. Garber said.

3 DR. GARTNER: Who?

4 COMM GATLING: Mr. Garber.

5 DR. GARTNER: I don't think he opined on
6 that, but he may be the only one who didn't. I've
7 written a fair number of things in my life, I don't
8 think I've had more criticism of three sentences.

9 CHAIRMAN MACCHIAROLA: What did Shakespeare
10 say? Kill all the professors.

11 DR. GARTNER: I thought he said lawyers,
12 Dr. Macchiarola.

13 So what we propose -- or those who pretend
14 to be lawyers. Maybe that's my just desert for
15 pretending to be a lawyer. And so it just seemed
16 evidently clear, the criticism from the City Council,
17 the criticism from other witnesses, the criticism from
18 the Law Department, no, take it out.

19 CHAIRMAN MACCHIAROLA: Okay. And the last,
20 the recognition of superior performance.

21 DR. GARTNER: Again, we owe this idea to
22 Commissioner Newman. It is in a sense the complement to
23 the question of qualifications of procurement officers.
24 It's not just the superior performance of individuals,
25 but of the agency. There are very difficult questions.

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1 Let me just share --

2 CHAIRMAN MACCHIAROLA: Is this the J. D.
3 Powers award?

4 DR. GARTNER: It may be, it may be a
5 distinguished service cross.

6 COMM PATTERSON: You're getting punchy.

7 DR. GARTNER: Apparently a City Agency,
8 which I'll not be explicit about, looked at -- which
9 does a large amount of contracting, looked at its
10 vendors and it was quite clear that there were some
11 vendors that were quite terrific and some vendors
12 weren't so good. It didn't feel, and we've heard that
13 in the Commission, it didn't feel it had any basis to be
14 responsive to the fact that vendor A was much better
15 than the rest of the crop, and while there are limits
16 about, per State law about what you can do, you can't
17 say well, it's only those that are terrific, you got to
18 have an open playing field, even ones that aren't so
19 terrific. So what we did was to ask the PPB to address
20 this question, how did you identify who is superior and
21 how can you identify those that are not so superior, it
22 may be an award, maybe ten pages less in the app.

23 COMM TSANG: So from the team the
24 performance is outstanding, commendable or needs
25 improvement.

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1 COMM PATTERSON: Without the bonus.

2 DR. GARTNER: You can't give a bonus and say
3 Charlie was at the Knicks game with me, we worked out a
4 deal, no less the Jets game.

5 CHAIRMAN MACCHIAROLA: This I think is
6 municipal mischief. Could I suggest since Commissioner
7 Newman is not here with us to angst could we craft some
8 language indicating that this was greeted with some
9 incredulity by the Commissioners, particularly since we
10 couldn't identify the fact how we could pay people who
11 did perform, much less give them a distinguished service

12 cross.

13 COMM PATTERSON: You have to put out the
14 contract to provide the distinguished service cross to
15 the lowest qualified bidder.

16 COMM GATLING: And it's going to get stuck.

17 COMM PATTERSON: It will take three years
18 to get interest.

19 CHAIRMAN MACCHIAROLA: The Charter
20 Commission mandated we give you an award, even though
21 they didn't want to say that we'll pay you. Talk to
22 Commissioner Newman.

23 DR. GARTNER: I will leave it as a surprise
24 for him when he returns. I will not disturb his
25 vacation.

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1 CHAIRMAN MACCHIAROLA: Is there any other
2 item that anyone wants to address on procurement that's
3 not on this list?

4 COMM LYNCH: On procurement, on the set of
5 policies and principles, I'm assuming in item number 4
6 on the first page, you really mean when you say
7 promotion of fairness, you are talking about social
8 Justice issues and diversity issues there?

9 DR. GARTNER: Yes, sir.

10 CHAIRMAN MACCHIAROLA: I also think, though,
11 promotion of fairness also has to do with allowing some
12 people to fill out Vendex forms that are more
13 appropriate to -- I mean it's just --

14 DR. GARTNER: I think in a variety --

15 CHAIRMAN MACCHIAROLA: It helps a certain
16 group of people, maybe.

17 DR. GARTNER: In a variety of ways, we don't
18 deny fairness with explicit statements denying fairness,
19 but we have practices too often that have the
20 consequences of denying fairness. For example a Vendex
21 form that takes hundreds of hours of very high priced
22 people to fill it out has the consequence of saying to a
23 small vendor, I just can't do it.

24 COMM LYNCH: Let me, Alan, my concern is,
25 that I would hope that this Commission would say

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1 something, one, on the question of social Justice, is
2 something that is a principle that this City ought to be
3 pursuing and as it relates to diversity, it ought to be
4 something that we ought to be about, and it ought to be
5 said a little more louder than this.

6 DR. GARTNER: Well, it's in these documents
7 in three different places or ways. One, in this
8 principle. Two, in the other items where it's there,
9 such as the question of Vendex. I mean, the way we are
10 proposing Vendex be reformed, they're the kind of
11 strictures that the Commission is offering per the
12 language here to the Comptroller and Mayor as they
13 develop rules is to make, have the consequence of making
14 it easier for small vendors and to expand diversity and
15 third, the very explicit recommendation that we made at
16 the very end that very quickly was affirmed by each of
17 you about expanding the range of vendors.

18 So I think we've done it in three different
19 ways.

20 CHAIRMAN MACCHIAROLA: That was also the
21 Charter language from the Executive Order.

22 DR. GARTNER: That's what I meant, the
23 Charter language from the executive board, so I think
24 we've done it as a broad principle, we've done it in
25 each of the items as it was appropriate and we've done

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1 it quite explicitly in the Charter language per the
2 Executive Order. I'd welcome any further thoughts that
3 you had about ways, other ways to do it, but I think
4 we've tried to, as it were, box the compass on that
5 issue in as many ways as seem reasonable.

6 CHAIRMAN MACCHIAROLA: Alan we're going to
7 produce a report in addition to these recommendations?

8 DR. GARTNER: Yes, absolutely.

9 CHAIRMAN MACCHIAROLA: That's also what
10 you're saying, right?

11 COMM LYNCH: Yes.

12 CHAIRMAN MACCHIAROLA: In the report that we
13 do, we would indicate what concerns that we've had.

14 DR. GARTNER: Yes.

15 CHAIRMAN MACCHIAROLA: Are you both
16 agreeing?

17 MR. CROWELL: Yes, I'm fine.

18 CHAIRMAN MACCHIAROLA: I didn't know what
19 you were talking about.

20 MR. CROWELL: We're in agreement.

21 DR. GARTNER: Anthony is late for a meeting.
22 The question is whether he was going to leave me on my
23 own.

24 CHAIRMAN MACCHIAROLA: I'll tell you what,
25 Anthony, I think if we don't have any more discussion,

1 we'll adjourn our meeting and let you get to your
2 meeting.

3 COMM LYNCH: We have a lot of stuff to deal
4 with on the 13th.

5 CHAIRMAN MACCHIAROLA: We're going to have
6 resolutions in front of us that we're going to go
7 through. The meeting before, this next meeting we're
8 going to go over, the meeting on the 11th we're going to
9 go over the organization, Government organization
10 pieces. That should not take a lot of time and then
11 we're going to go back to this provision that we just
12 left on request how do we take care of not for profits,
13 then we can pick up and go through the whole list of
14 items on the 13th.

15 Okay, if there's no dissenting voice, we
16 will adjourn the meeting. Thank you.

17 DR. GARTNER: Excuse me, Bill, I will assume
18 the meeting on the 13th will not end in two hours.

19 (Time noted: 8:20 p. m.)
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C E R T I F I C A T E

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5 I, LINDA FISHER, a Registered Professional
6 Reporter and Notary Public, do hereby certify that the
7 foregoing is a true and accurate transcription of my
8 stenographic notes.

9

10 I further certify that I am not employed by
11 nor related to any party to this action.

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LINDA FISHER, RPR

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