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Reports

PROCUREMENT IN NEW YORK CITY: A STRATEGY FOR LOCAL ECONOMIC DEVELOPMENT

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EXECUTIVE SUMMARY

Procurement: An Important Consideration for Local Economic Development

Public procurement -- the acquisition of goods and services for use by government agencies -- has become a topic of interest among New York City (NYC) public officials, as well as non-governmental business and consumer interest groups.[1] Although calls for procurement reform have primarily focused on ways to streamline the City's bureaucratic procurement operations, the intersection between improved efficiency and expanded opportunities for local contracting may emerge as the next topic of debate.

The Economic Development Potential of New York City Procurement

New York City spent approximately \$10 billion dollars on the acquisition of goods and services in FY2000.[2] This accounts for nearly 25 percent of the City's current budget.[3] At the same time, the City faces severe budget shortfalls due to falling tax revenues and rising unemployment.[4] Our analysis explores how New York City could use its significant purchasing power to award more contracts to local business enterprises, thereby increasing local business profits, tax generation, and job creation.

Strategies for Using Procurement as a Local Economic Development Tool

Two overarching strategies can be used to increase the participation of local bidders in government contracting: preferences or outreach and education. Preference programs set specific goals for the number/value of contracts to be awarded locally, establish enforcement mechanisms (such as bid preferences) to ensure that targets are met, and incorporate outreach to increase local business participation in the bidding process.

Education and outreach strategies focus exclusively on improving vendors' access to bidding opportunities, rather than interfering with the vendor selection process.

Analytic Methodology

Our analysis of NYC procurement incorporates three forms of investigation. First, we analyzed all outstanding contracts by

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number, value, and vendor address[5] for a single agency – the Department of Education (DOE) – in order to extrapolate the extent to which NYC procurement dollars are already spent locally. Second, we assessed the effectiveness of past and present New York City local vendor outreach programs. Finally, we evaluated procurement practices in three major cities -- Chicago, Washington D.C., and Los Angeles -- to glean insights on how NYC can do more to target contracts locally.

Significant Findings in Local and National Procurement Systems

There is room for more local contracting by the DOE.

Pure competitive bidding is rarely used for the procurement of goods by the DOE.

NYC initiatives are not demonstrably effective in increasing local contract awards.

Successful local procurement initiatives require specific data collection and outcome tracking, strict enforcement, and adequate funding.

There is room for more local contracting by the DOE

62 percent of the DOE's active contracts and 80 percent of the value (\$1.7 billion) are awarded to vendors within NYC.

73 percent of the DOE's contracts were spent on services and 27 percent on goods. Thus, the bulk of local spending is for the acquisition of services, which by their nature are performed locally.

The top four categories of DOE goods spending in 2002 were food and forage supplies (\$141 million), instructional supplies (\$127 million), and library and textbooks (\$109 million), and general supplies (\$36 million). [6]

Nearly 80 percent of food and forage contracts are awarded to NYC vendors. In contrast, contracts for instructional supplies and textbooks are generally awarded to vendors in California, Illinois, Minnesota, and Pennsylvania, with NYC vendors receiving less than 30 percent of the value of these goods contracts.

With local vendors making up less than 16 percent of the general supplies contracting, there may be opportunities for the DOE to award more contracts to local general supplies vendors.

Pure competitive bidding is rarely used for the procurement of goods by the DOE

While services are commonly procured through preferred, competitive methods, pure competitive bidding is rarely used for the procurement of goods.

Renewal contracts and a pre-qualified bidding (PQL) comprise a much greater percentage of all goods contracts than does competitive sealed bidding.

84 percent of Department of Education awards were made when only one response was received, representing 73 percent of DOE procurement spending.[7]

DOE and the City should be doing more to ensure that procurement is truly competitive.

NYC Initiatives are Not Demonstrably Effective in Increasing Local Contract Awards

NYC's Department of Small Business Services (DBS) is tasked with administering four education and outreach programs.

DBS cannot demonstrate whether or to what extent its programs are successfully increasing the presence of local vendors in City contracting because it does not measure how many contracts are ultimately awarded to these vendors.

DBS is making only a small dent in reaching out to its prospective market. Among an estimated 40,000 minority or women-owned businesses (M/WBEs) in New York City, they have reached only 2 percent (800) of the certified M/WBEs. [8]

Successful Procurement Initiatives Require Outcome Tracking, Enforcement, and Funding

Three key components to the success of local contracting initiatives: tracking, compliance, and funding.

DBS' limited demonstration of effectiveness stems from a lack of these fundamental components.

City contract data is neither well-centralized nor well-classified, which restricts DBS from tracking contract award data.

DBS programs are optional and their success is contingent on the willingness of government agencies to make small contract opportunities known to DBS clientele, but agency procurement officers are often unwilling to solicit vendors with whom they have no historical relationship.

DBS efforts to conduct outreach to vendors and build relationships with City procurement officers are hampered by a lack of appropriate funding.

Recommendations

Since systemic reform is necessary for the success of local contracting initiatives, the Public Advocate recommends the following efforts:

Expand DBS education and outreach;

Streamline the City's bureaucratic procurement process;

Ensure competition in contracting; and

Remedy the issue of retroactive contracts.

I. WHY PROCUREMENT MATTERS

New York City spent approximately \$10 billion dollars on the acquisition of goods and services in FY2000.[9] This accounts for nearly 25 percent of the City's current budget.[10] Hence, it is not surprising that public procurement -- the acquisition of goods and services for use by government agencies -- has reached the forefront of public discourse. [11]

Although public discussions around procurement are currently focused on improving administrative and economic efficiencies, the intersection between improved efficiency and expanded local opportunity is likely to emerge as the next topic of debate, prompting consideration of the impact that procurement could have on local economic development.

While the fundamental purpose of government procurement is to meet agency needs, many state and local jurisdictions around the country (including New York City) have experimented with strategies to utilize procurement as a trigger for local economic development. These state and local initiatives aim to capitalize on the anticipated economic multiplier effects [12] of an increase in locally-awarded contracts.

As a result of an ongoing recession and September 11th, some New York City businesses are closing or relocating, tax revenues are down by \$1.6 billion, and agency allocations have been reduced by \$1.9 billion in an effort to close the City's \$5 billion budget gap. According to the U.S. General Accounting Office, NYC lost roughly 124,000 jobs in 2001 and current unemployment levels are at 8.4 percent, well above the national average of 5.4 percent.[13]

Given New York City's troubled economy, there is no better time to assess whether the City could benefit from locally-focused procurement. NYC's dismal economic environment makes business retention, job creation, and local economic development top priorities, and procurement could be a tool for improving these indicators.

II: NEW YORK CITY'S PROCUREMENT STRUCTURE

Procurement Governance

All mayoral agencies in New York City, as well as the offices of independently elected NYC officials, are required to follow procurement protocols established by the Procurement Policy Board (PPB) and the City Council. The PPB is an independent agency tasked with developing comprehensive procurement policies and rules. The City Council and the PPB are granted authority by the NYC Charter to set the dollar thresholds, or minimums, required for formal competitive procedures to take place.

Non-mayoral agencies, such as the Health and Hospitals Corporation, are not governed by the City's procurement regulations. Generally speaking, procurement policies for non-mayoral agencies are set by their respective boards of directors, and these agencies administer and regulate their own acquisitions. However, the Department of Education (DOE) is an exception.

Procurement Administration

The Department of Citywide Administrative Services (DCAS) is responsible for procuring the majority of the City's goods – via the administration of all volume contracts greater than \$25,000. This includes agency-specific goods contracts above \$25,000. Agency Chief Contracting Officers (ACCOs), tied to each mayoral agency, have the authority to make decisions concerning the award and administration of all agency services contracts, as well as small purchases of goods (less than \$25,000). The Department of Design and Construction (DDC) is

responsible for procuring all construction-related goods and services for the City.

Procurement Oversight

Two principal agencies are responsible for procurement oversight. While the Mayor is granted responsibility for all City procurement decisions, much of this authority is delegated to the City Chief Procurement Officer (CCPO), who serves as Director of the Mayor's Office of Contracts (MOC). MOC is responsible for oversight of citywide contracting. That is, MOC is tasked with reviewing contracts to ensure that appropriate protocols have been followed in their awarding. The CCPO responds to vendor protests and appeals, as well.

The Office of the Comptroller is also assigned the task of investigating agency compliance with procurement procedures. No contract is paid without being registered by the Office of the Comptroller.

Numerous other agencies are granted degrees of authority to perform oversight functions as well. These include the Corporation Counsel (which approves the legal sufficiency of all contracts), the Department of Investigation, and the various offices of the Borough Presidents, who may request hearings on contract concerns. The Office of Administrative Trials and Hearings (OATH) is tasked with holding contract-related dispute hearings, should oversight agencies deem such hearings necessary.

Lastly, the Department of Small Business Services (DBS) is authorized by the New York City Charter to establish, administer, and enforce citywide programs for the identification, recruitment, certification, and participation of minority and women-owned business enterprises in the procurement process.

III. THE DEPARTMENT OF EDUCATION'S PROCUREMENT STRUCTURE

In order for us to better understand the procurement process of a single city agency, we chose the Department of Education as a case study.

Procurement Governance

Procurement within the Department of Education (DOE) is unique from other agencies in New York City. At the moment, DOE procurement functions neither like a mayoral agency nor like a non-mayoral agency. Until quite recently, the DOE was a non-mayoral agency, the Board of Education (BOE), but the BOE did not establish its own procurement policies. Rather, it was governed under New York State procurement law. Now that the DOE is a mayoral agency, it may be required to follow NYC procurement protocol in addition to New York State law. At this point in time, however, DOE procurement continues to function exclusively under New York State law.

Procurement Administration

The Office of Purchasing Management (OPM) coordinates and administers the procurement of all goods and professional services over \$25,000 for the 1,200 schools and administrative offices of the DOE. The School Governance Legislation of 1996 authorizes individual schools to contract for non-construction

goods or services under \$25,000, provided that schools can find a vendor offering a lower price than that offered under a DOE or NYS requirements contract. The Division of School Facilities (DSF) establishes contracts for all construction and construction related services associated with operations and maintenance.

Procurement Oversight

Although the DOE is not required to submit its contracts to the Office of the Comptroller or the Mayor's Office of Contracts (MOC) for review, over the past few years it has voluntarily submitted them for tracking. OPM's Office of Contract Management is responsible for reviewing and registering all contracts with the NYC Corporation Counsel, the Office of the Comptroller, and MOC.

Competitive Procedures

Just like the City as a whole, competitive sealed bidding (goods) and competitive sealed proposals (services) are the DOE's preferred methods for awarding contracts for all large purchases. These methods offer the most inclusive bidding pool, which is expected to ensure a competitive process. These methods require a public advertisement of the contract opportunity, sealed submission of bids/proposals, and a public bid/proposal opening. A variation on competitive sealed bidding is the use of a pre-qualified vendors list, which restricts the list of eligible bidders somewhat. [14]

Contracts for goods are awarded primarily on the basis of "lowest price," with a requisite but less fundamental evaluation of the responsiveness and responsibility of the vendor. Responsive means that the bid was submitted on time and meets the requirements stated. Responsible is defined by the vendor's ability to fulfill the terms of the contract with integrity and quality control. Service contracts are awarded on the basis of "best value," which weighs price equally against the quality and efficiency of the vendor.

Contract Types

Requirements contracts are the most common type of purchasing agreements, for both the City and the DOE. These contracts designate a particular vendor to provide specific goods or services at an established price, with a non-binding estimate of the quantity to be purchased. For example, the OPM could award a requirements contract to a computer accessories vendor, who would then supply printer toner to individual schools upon request. The City uses an online computer purchasing system called Vendor Source to process orders from requirements contracts, while the DOE uses an online system called Fastrack.

Large or small contracts may also be awarded for the acquisition of specific quantities of goods or services, at specific prices, for a single point in time. As an example, OPM could award a contract to an office furniture vendor, on behalf of a specific school, to supply a stated quantity of desks and chairs by a particular date. Or, an individual school might contract with a paper supplier to deliver 25 reams of paper directly to the school.

Movement Towards Consolidation

While schools are still technically authorized to contract for non-construction goods or services less than \$25,000, provided that

they can find a vendor offering a lower price, the Department of Education has been imposing increasingly stricter limitations on school purchasing discretion over the past few years. At this point, the DOE essentially requires schools to purchase items from DOE or New York State requirements contracts, regardless of whether they can find a lower price.

The reigning in of school purchasing autonomy is a reflection of the DOE's movement toward purchasing consolidation, in an attempt to improve its administrative and cost efficiency. Like many public procurement agencies around the country, the DOE has been experimenting with strategic sourcing. In January 2002, it began the Vendor Commodity Analysis (VCA) project. VCA is geared at helping the DOE utilize the strength of its purchasing power to negotiate less costly contracts with larger suppliers. As an example, the DOE established a major requirements contract with Staples, Inc. to provide office supplies for all schools and administrative offices. As a result, schools no longer have the option to purchase office supplies directly from vendors, but must purchase them through Staples.

Consolidation is a cost-saving measure for the DOE. At the same time, it necessarily reduces the number of purchasing opportunities available to small, local vendors. This may be cause for concern, particularly as consolidation is only likely to increase as educational policy changes intersect with purchasing.

IV. DOE SPENDING ON LOCAL PUBLIC PROCUREMENT

Procurement in New York City accounts for roughly 25 percent of all government spending.[15] According to the most recently released Comptroller's Report on City Contracts, the city spent approximately \$10 billion dollars in FY2000. Figure 1 shows that the DOE ranked third among city agencies in its spending on goods and services, accounting for \$1.2 billion dollars.

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