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TRANSCRIPT OF THE
PROCUREMENT POLICY BOARD

THURSDAY, OCTOBER 24, 2013

1 CENTRE STREET
OUTER CEREMONIAL HALL

10:12 A.M.

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2 A P P E A R A N C E S

3 Board members:

4 Jennifer Jones Austin, Chairperson

5 Michael Best

6 Ross Sandler

7 Valerie Budzik

8

9 Also Present:

10 Andrea Glick, Director of Mayor's Office of Contract Services

11 Steve Stein Cushman, Esq., New York City Law Department

12 Alison Gifford

13 Kristin Misner

14 Caitlin Georale Benson

15 Andrew Erlichman

16 Dan Symon

17 Louisa Chafee

18 Emily W. Newman

19 Lisette Camilo

20 Catherine Banat

21 Anthony Dell'Olio

22 Robina M. Gumbs

23 Howard Friedman

24 Barbara Beirne

25 (Continues on the next page)

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2 A P P E A R A N C E S (continued)

3 Also Present (continued):

4 Vincent Pernet

5 Geneith Turnbull

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1 Procurement Policy Board - 10/24/13

2 THE CHAIRPERSON: So we are
3 gathered for a Board Meeting of the PPB and
4 there are several items that we need to give
5 some attention to and look to for vote and
6 consider a rule for vote into CAPA. Let us
7 begin.

8 First item, Rules for PPB vote on
9 adoption. We're going to begin with the HHS
10 Accelerator. I'm going to turn to Andrea.

11 MS. GLICK: In this rule, it will
12 give the authority of the HHS Accelerator
13 Director the authority. It will define, it's
14 a procurement method for client services
15 contracts. It establishes a process for
16 soliciting proposals from prequalified
17 vendors through the HHS Accelerator platform.

18 THE CHAIRPERSON: Discussion?

19 MS. GLICK: I guess it's time to
20 vote.

21 THE CHAIRPERSON: May I have a
22 motion?

23 MR. BEST: I'll move that in to be
24 adopted.

25 MR. SANDLER: Second.

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2 THE CHAIRPERSON: All in favor.

3 (Chorus of ayes.)

4 THE CHAIRPERSON: Opposed?

5 (No response.)

6 THE CHAIRPERSON: So moved. We'll

7 move to the second item, Andrea.

8 MR. SANDLER: Is there somebody

9 appointed to that position already?

10 MS. GLICK: Right now it's Louisa

11 Chafee.

12 THE CHAIRPERSON: Are we ready to

13 move to the second item, Investment Managers

14 Search?

15 MS. GLICK: This is an alternative

16 method of procuring Investment Management

17 Services for pension assets in the retirement

18 system. It's leveraging financial databases

19 and other analytical resources that will be

20 used for the investment consultants and the

21 goal is to increase competition and expand

22 the universe of investment managers that the

23 city has. That's what the rule is for.

24 THE CHAIRPERSON: Discussion?

25 (No response.)

1 Procurement Policy Board - 10/24/13

2 THE CHAIRPERSON: May I have a
3 motion to vote it in?

4 MR. SANDLER: So moved.

5 MS. BUDZIK: Second.

6 THE CHAIRPERSON: All in favor.

7 (Chorus of ayes.)

8 THE CHAIRPERSON: Opposed.

9 (No response.)

10 THE CHAIRPERSON: So moved.

11 The third item.

12 MS. GLICK: This is to add the best
13 value consideration in the Recommendation for
14 Award, which is PPB 2-09. What we're doing
15 is it would set forth criteria which would be
16 used to determine that value if an award is
17 made to a bidder whose bid represents the
18 best value to the City. It's to add
19 language. It's a conforming rule.

20 MR. STEIN CUSHMAN: This is cleanup
21 from the last best value rules we adopted,
22 the agreement we made last time voted into
23 draft when we were voting the final --

24 MR. SANDLER: Say that again.

25 MR. STEIN CUSHMAN: The PPB adopted

1 Procurement Policy Board - 10/24/13
2 the best value rule changes as final last
3 time. We had decided that we'd make one
4 additional change, which was to make sure
5 that the recommendation for award included
6 discussion of the application of the criteria
7 for best value award. And so you voted this
8 in the draft last time. So it's a conforming
9 rule.

10 MR. BEST: So this is a conforming
11 rule to complete what we did before?

12 MR. STEIN CUSHMAN: Right.

13 MS. GLICK: Right.

14 THE CHAIRPERSON: Any further
15 discussion?

16 (No response.)

17 THE CHAIRPERSON: Motion.

18 MR. BEST: I'll move it.

19 MR. SANDLER: Second.

20 THE CHAIRPERSON: All in favor.

21 (Chorus of ayes.)

22 THE CHAIRPERSON: Opposed?

23 (No response.)

24 THE CHAIRPERSON: So moved.

25 And the third rule for vote.

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2 MS. GLICK: This is for the Sole
3 Source PPB Rule 3-05. There was a recent
4 amendment to change the micro purchase rule
5 to increase the threshold from \$5,000 to
6 \$20,000. And in order to be consistent with
7 those changes, we felt it necessary to change
8 the sole source threshold, which was \$10,000
9 previously and now the procedures to be
10 followed should start, at those procurements
11 20,000 and over.

12 THE CHAIRPERSON: Discussion?

13 (No response.)

14 THE CHAIRPERSON: May I have a
15 motion?

16 MR. BEST: So moved.

17 MR. SANDLER: Second.

18 THE CHAIRPERSON: All in favor.

19 (Chorus of Ayes.)

20 THE CHAIRPERSON: Opposed.

21 (No response.)

22 THE CHAIRPERSON: So moved.

23 All right. Now we will have a
24 presentation of reports concerning the use of
25 Social Impact Investment Funding.

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2 MS. GIFFORD: Alison Gifford from
3 Deputy Mayor Gibbs' Office.

4 So, as I explained last week, the
5 interim report gives background on social
6 impact bonds and the Innovative Demonstration
7 project that the City undertook, and some
8 background on social impact bonds, which are
9 actually not bonds, but social impact
10 investment funds. But the common term is
11 "social impact bonds," so we'll refer to them
12 as "social impact bonds".

13 They use funds from outside the City to
14 implement certain social service initiatives,
15 which are intended to have cost savings for
16 government. And in a social impact bond
17 model, the intervention produces enough
18 savings to not only repay for the funder for
19 the initial delivery of services, but also to
20 fund the intervention in the long-term.

21 So since SIBs offer the opportunity to
22 expand government resources during a time of
23 constrained spending and shift government
24 focus to preventative intervention that
25 result in long-term social and financial

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2 benefits, the City embarked on an innovative
3 demonstration project to test the model.

4 And the interim report explains what
5 this innovation demonstration project was.
6 The City needed an innovative procurement
7 method to test the model because of the
8 funding model because the funding mechanism
9 is innovative, and because this SIB pilot is
10 taking place on Rikers Island, which I'll
11 explain, it requires more than three years
12 allowed under the current PPB Rule to be
13 implemented and achieve savings.

14 So the innovative demonstration project
15 was structured in two phases. And the first
16 phase was the successful launch of the
17 nation's first social impact bond on Rikers
18 Island. So all adolescents on Rikers Island
19 are receiving a cognitive behavioral therapy
20 intervention, which is intended to reduce
21 recidivism to such an extent that the City
22 has achieved enough savings to -- the
23 cognitive behavioral therapy intervention is
24 funded by entities outside of the City, by
25 Goldman Sachs and Bloomberg Philanthropies.

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2 And the goal of the project is to reduce
3 recidivism to a degree that the City achieves
4 enough savings to repay the initial
5 investment and also to continue the
6 intervention on Rikers. So that's Phase I,
7 successfully launched.

8 And Phase II, the City issued a Request
9 for Expression of Interest for more social
10 impact bond projects and we received 13
11 proposals in response to our Request for
12 Expression of Interest. So that's the
13 interim report.

14 The final report gives an update on both
15 phases of the innovative demonstration
16 project. Phase I, the social impact bond on
17 Rikers Island, between January 2nd when the
18 program went full scale and --

19 MR. SANDLER: January 2nd of what
20 year?

21 MS. GIFFORD: 2013. And actually,
22 we have updated numbers. In the final report
23 between January 2nd and June 30th, 2013, over
24 1,000 adolescents had received the CBT
25 intervention. And between July, August,

1 Procurement Policy Board - 10/24/13
2 September, about 600 more adolescents have
3 received the intervention. So it's above
4 over 1,500 since the program went full-scale
5 in January. The City feels confident that
6 the program will lead to reduced readmission
7 and resultant long-term City savings.

8 And Phase II, the City has
9 identified the strongest proposals that we
10 received in response to our Request for
11 Expression of Interest, and we are currently
12 moving forward with multiple projects.

13 The final report also introduces the
14 rule that we're hoping to get voted into the
15 CAPA process. Because of the success of
16 Phase I and Phase II, we feel that social
17 impact bonds do expand government resources
18 and they do shift government focus towards
19 preventative interventions that have the
20 ability to achieve short- and long-term City
21 savings.

22 We would like to encourage providers to
23 approach the City with potential social
24 impact bond projects. So we have added
25 social impact -- we would like to add Social

1 Procurement Policy Board - 10/24/13
2 Impact Investment Funding Agreements to the
3 Negotiated Acquisition section because in a
4 social impact bond, the City must work with
5 the providers in order to determine whether
6 their intervention is a viable social impact
7 bond, whether the intervention they are
8 proposing has the ability to achieve enough
9 City savings to repay the investment that
10 comes from outside of the City.

11 We know from our experience with the
12 innovative Request for Expression of Interest
13 that we would not have been able to move
14 forward with the projects that we're moving
15 forward with without engaging with the
16 providers to refine the proposals that they
17 brought to the table. And we're also
18 proposing an Open-Ended Negotiated
19 Acquisition process because in a social
20 impact bond we don't know the scope of
21 services that we're looking for before we
22 solicit ideas from outside of the City. And
23 we define what a Social Impact Investment
24 Funding Agreement is. And as we discussed at
25 the last meeting, we made a clarification

1 Procurement Policy Board - 10/24/13
2 that funds will come from entirely outside
3 the City in a Social Impact Investment
4 Funding Agreement, but the purpose of the
5 rule is to bring social impact bond ideas to
6 the City, encourage providers to approach the
7 City, and allow the City to engage with these
8 providers in order to really fine-tune the
9 project and determine whether they would be
10 viable projects. And also, it allows the
11 City to not define a strict scope of services
12 before issuing Request for Expression of
13 Interest or Request for Proposals because we
14 do not know exactly what kind of project
15 we're looking for without engaging with the
16 providers.

17 MR. SANDLER: So what is the rule
18 that we're proposing here?

19 MS. GLICK: It's under Exhibit G.
20 You see it the underline, it talks about the
21 Social Impact Investment Funding Agreement
22 and we're adding it to the Negotiated
23 Acquisition rationale when you can use it
24 under these circumstances. Now we're adding,
25 because we have time's of the essence or

1 Procurement Policy Board - 10/24/13
2 funds were going to be lost quickly if we
3 didn't have a procurement done in time. And
4 now we're adding this rationale as well.

5 MR. SANDLER: So how did you
6 solicit and get 13 RFIs if we don't have a
7 rule?

8 MS. GIFFORD: It was part of an
9 innovative demonstration project, so it was a
10 year long.

11 MR. SANDLER: So there are 13 that
12 are now pending?

13 MS. GIFFORD: So we're moving
14 forward with -- we've selected the strongest
15 proposals and we're currently moving forward
16 with these projects.

17 MR. SANDLER: And the "we" is which
18 part of the government?

19 MS. GIFFORD: Yes.

20 MR. SANDLER: Which part of the
21 government? What agency?

22 MS. GIFFORD: The -- well, the
23 proposals were -- I'm working with Kristin
24 from the Mayor's Office and --

25 MR. SANDLER: The Mayor's Office is

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2 the --

3 MS. GLICK: No, the HRA, NHRA, yes.
4 They're the Procurement Agency of Record.

5 MS. GIFFORD: Yes.

6 MR. SANDLER: And so let me just --
7 so we're going to have -- so if the rule
8 allows you to incorporate what you've been
9 doing into the negotiated -- and I notice you
10 call them "Social Impact Investment Funding
11 Agreements" as opposed to "bonds".

12 MS. GIFFORD: Because they're not
13 actually bonds.

14 MR. SANDLER: Right. So we have to
15 learn new lingo. We shouldn't call them
16 bonds, should we?

17 MR. BEST: We're not.

18 MS. GIFFORD: We're not. If you
19 were to go home and Google "social impact" --
20 we have to change it. From the City, we have
21 to change how the world's talking about it.

22 MR. SANDLER: We have to stop
23 talking in code.

24 MR. STEIN CUSHMAN: We do talk in
25 shorthand a little bit. The difference is to

1 Procurement Policy Board - 10/24/13
2 the extent that there's a bond that's issued,
3 the bond would be issued by the contractor to
4 a funding entity itself that the City is not
5 a part of at all. So the outside world looks
6 at it and calls it a "bond" because it's an
7 investment vehicle for outside investors to
8 the social services contractor that's
9 actually providing the services under the
10 program. The contract with the City is a
11 procurement contract. We're not a party to
12 anybody's bonds. We can't be a party to
13 somebody's bonds. All they have with us is a
14 procurement contract where we pay when
15 certain milestones are met. What they have
16 with us is a funding agreement. What they
17 have with the outside party would be a bond.

18 MR. BEST: But I think we take your
19 point as accurate language is always better
20 than lingo.

21 MR. SANDLER: So just going back to
22 the Rikers Island, and you have this report,
23 who has hired the people to do the social
24 work in Rikers Island?

25 MS. GIFFORD: The organization MDRC

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2 is acting as the intermediary in the project
3 and they have entered into contracts with the
4 service providers, the Osbourne Association
5 and Friends of Island Academy, and they're
6 overseeing the nonprofits who are delivering
7 the services.

8 MR. SANDLER: Do they have a
9 contract with the City as well?

10 MS. GIFFORD: MDRC has a contract
11 with the City.

12 MR. SANDLER: That requires the
13 City to pay anything to them?

14 MR. STEIN CUSHMAN: If they meet
15 the milestones and --

16 MR. SANDLER: So this is the
17 contingent.

18 MR. STEIN CUSHMAN: They'd provide
19 the services for a couple of years -- I think
20 it's four years of services -- and you start
21 after year two, measuring outcomes to see if
22 they're meeting certain outcomes and then
23 depending on which outcomes they meet or how
24 many they meet, the amount of payments would
25 vary depending on the outcome. If they don't

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2 meet a certain minimum threshold, there's no
3 payment at all. They have to meet certain
4 thresholds to the point where it at least
5 makes up the money so the City is not losing
6 money.

7 MR. SANDLER: So the way this works
8 is the funding comes from private sources who
9 pay the money to another private organization
10 which has a contract with the City to provide
11 the services?

12 MR. STEIN CUSHMAN: That could be,
13 but it doesn't have --

14 MR. SANDLER: I'm talking about the
15 Rikers Island.

16 MR. STEIN CUSHMAN: MDRC is
17 receiving funding from an outside party that
18 they are using to pay a contractor to provide
19 the services. To the extent that that
20 contract will get paid from the outside --

21 MS. GIFFORD: Friends of Island
22 Academy.

23 MR. STEIN CUSHMAN: Friends of
24 Island Academy. MDRC will get paid depending
25 on whether milestones are met.

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2 MR. BEST: Paid by the City?

3 MR. STEIN CUSHMAN: Yes, paid by
4 the City. When MDRC gets paid by the City,
5 they can repay their investment. The City
6 doesn't get involved with the terms of the
7 agreement between MDRC, our contractor, and
8 the investing party. Those are whatever
9 agreements they reach between themselves.

10 MR. SANDLER: So the risk is all on
11 the private funder. They may get nothing out
12 of this.

13 MR. STEIN CUSHMAN: That's correct.

14 MR. SANDLER: And we get the
15 services on a daily basis as long as the
16 contract functions.

17 MR. STEIN CUSHMAN: Right.

18 MR. BEST: And we pay only if we
19 get the results we want and to the extent we
20 get the results we want.

21 MR. STEIN CUSHMAN: Right. And the
22 idea is that a private party comes up with an
23 idea that will hopefully save the City a
24 bunch of money. They can implement it with
25 outside funding at the start so we don't have

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2 to risk any money. If they do a really good
3 job and they save the City a lot of money
4 during the period of that contract, they will
5 get back not only what they spent on the
6 services, but an extra increment. It gives
7 sort of the incentive for the private
8 investment to fund this. The City then,
9 without having to front any money ourselves
10 and put any money as risk, gets to find out
11 whether the approach actually works, actually
12 saves the City money.

13 After you've gone through this initial
14 period where it's been tested, the City, if
15 it's a great idea, will end up incorporating
16 it and provide the services ourselves to
17 regular fee-for-service contractor.

18 MR. SANDLER: I mean, if it could
19 work, you could then continue the service if
20 you --

21 MR. STEIN CUSHMAN: Right.

22 MR. SANDLER: On
23 ordinary-contractual basis.

24 Are these contracts only available
25 for social services areas?

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2 MS. GLICK: No.

3 MR. SANDLER: Could somebody say,
4 you know, "Let me hire police and show you
5 that crime will go down and you'll have less
6 crime in an area, and therefore, you'll save
7 money?" You could do that with this?

8 MR. STEIN CUSHMAN: Well, it has to
9 be --

10 MR. SANDLER: I mean, could you do
11 it? What are the limitations on this?

12 MR. STEIN CUSHMAN: Well, the
13 scenario that -- from a procurement
14 standpoint, it has the option for those
15 things being done outside the context of
16 client services. The exact example you posed
17 may have other issues related to the
18 privatization of the police force. You still
19 have --

20 MR. SANDLER: You have a fire
21 company. Let us run our own fire company and
22 you'll never have to come visit us.

23 MS. BUDZIK: To follow up on your
24 questions, I mean, the rule doesn't require
25 it be a not-for-profit. It could be a

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2 for-profit company that comes in to --

3 MS. GLICK: It doesn't say.

4 MS. BUDZIK: -- do X, Y, Z --

5 MS. GLICK: That's correct.

6 MS. BUDZIK: -- and if I can do it

7 more cheaply --

8 THE CHAIRPERSON: Just reading

9 Section D --

10 MR. BEST: Well, the definition of

11 Social Impact Investment Funding Agreement

12 says the method for funding human client

13 services, or with CCPO approval other

14 services at no net cost to the City. So

15 conceivably, it could be other services but

16 it would have to be with CCPO approval.

17 MS. GLICK: Correct.

18 MR. BEST: And as I think Steve

19 pointed out, there would probably be some

20 legal limitations on certain things that

21 under Charter or State Law we could not

22 contract out. So, you know, the parameters

23 of that aren't spelled out in this rule,

24 obviously, but those are real.

25 MR. SANDLER: So what is the --

1 Procurement Policy Board - 10/24/13

2 let's go back to the Rikers Island. How long
3 has this been going on, since January of
4 2013?

5 MS. GIFFORD: Full-scale
6 January 1st, 2013.

7 MR. SANDLER: That's only eleven
8 months. What is the reporting requirement?

9 MS. GIFFORD: The first reporting
10 on recidivism, one year at risk for the first
11 year cohort that was served by the program.
12 Those results will come out in the summer of
13 2015 because we have to service the
14 adolescents for a year and then give them one
15 year at risk, for measuring them one at risk
16 and two years at risk in the community. But
17 I mean, internally, we have a structure where
18 we're receiving quarterly reports from both
19 the intermediary and the independent
20 evaluator, which is just looking at more
21 programatically what's happening on island
22 with the program, how many adolescents have
23 been served, the preliminary analysis in
24 terms of meeting between males and females,
25 who's achieving steps at a faster rate, just

1 Procurement Policy Board - 10/24/13
2 kind of getting a sense of what's happening,
3 the kind of interim markers. But we won't
4 have a full analysis on recidivism until
5 summer 2015.

6 MR. SANDLER: Is this information
7 publicly available or do you have to request
8 information concerning the contract?

9 MS. GIFFORD: The reports, the
10 interim reports, are not publicly available.

11 MR. SANDLER: Is the description of
12 the project publicly available?

13 MS. GIFFORD: Oh, yes.

14 MR. SANDLER: And where do you find
15 that?

16 MS. MISNER: There's a number of
17 websites, if you go to the MDRC website, if
18 you go to --

19 MR. SANDLER: And MDRC, that stands
20 for what?

21 MS. MISNER: It used to be a full
22 name but now it's really just MDRC. It used
23 to be Manpower Demonstration Research
24 Project. If you go to their website or if
25 you go to Department of Corrections' website,

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2 there's a lot of information about the
3 project. There's a number of very public
4 conferences. When we release it, we put out
5 a PowerPoint sheet available with all the
6 details.

7 MR. SANDLER: That's good. Thank
8 you. Now, going back to the rule, do we have
9 any reporting requirements in this rule to
10 report back to the public on these kinds of
11 contracts?

12 MS. GLICK: No.

13 MR. BEST: Presumably, the payments
14 would be public if they were made, I mean,
15 because all City payments are public.

16 MS. GLICK: The checkbooks.

17 MR. STEIN CUSHMAN: My money -- I
18 apologize. My money would be -- it would be
19 publicly available information to the extent
20 that if people sought out information on what
21 payments were being made on a contract, it
22 would be publicly available information to
23 the same extent that all payments on
24 contracts would be publicly available.

25 MS. BUDZIK: But you wouldn't get

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2 information on payments made until the City
3 started to make the payments of the initial
4 funding because the private funding would
5 probably not --

6 MR. SANDLER: Is there any reason
7 to have more public disclosure when a private
8 entity is paying for a public service than is
9 normally the case, such that, I mean, you
10 have a five-year contract? Should there be a
11 requirement of a report every year as to
12 what's happened? I mean, this is unusual in
13 the sense that you have private people paying
14 for public services and I guess the
15 suggestion I put on the table is whether
16 there should be, in our rules, some
17 requirement to report publicly in a public
18 way.

19 THE CHAIRPERSON: Concerning the
20 accountability, checks and balances?

21 MR. SANDLER: And also whether we
22 get anything for it. There's so many ins and
23 outs of these public/private relationships.

24 MS. BUDZIK: Who does the
25 measuring?

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2 MS. GIFFORD: The Vera Institute of
3 Justice.

4 MS. BUDZIK: So with the MDRC
5 project, it's an independent --

6 MS. GIFFORD: It's an independent
7 evaluator and that's with, I mean, every
8 Social Impact Investment Funding Agreement.
9 We'll need an independent -- we believe we'll
10 need an independent evaluator to --

11 MS. BUDZIK: And who pays for the
12 independent evaluator?

13 MS. GIFFORD: It will depend on the
14 project. In this specific project the
15 funding for the evaluator is coming from
16 Bloomberg Philanthropies.

17 MS. MISNER: It's an outside foundation
18 funding the evaluation.

19 MR. SANDLER: I think there should
20 be public reporting on this. I mean, if
21 Goldman Sachs hits a winner here, we'll hear.
22 But suppose it's a total failure, would we
23 hear of it?

24 MS. MISNER: Yes.

25 MR. SANDLER: I'm not sure we

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2 would. Why would anybody publicize a
3 failure?

4 MS. GIFFORD: I mean --

5 MS. MISNER: Vera will be putting
6 out a report of the final analysis of the
7 project. And also, MDRC is putting out a
8 report of the progress to date, which will be
9 coming out in the next couple months.

10 MR. SANDLER: And that's as a
11 result of the contract, right? Not our rule.
12 I'm suggesting there should be something in
13 the rule about public reporting.

14 THE CHAIRPERSON: And let me just
15 -- I want to make sure I understand. Are you
16 concerned both about public reporting of the
17 outcomes as well as the disclosure of the
18 contract terms?

19 MR. SANDLER: Yes, I think both.

20 MR. BEST: Well, let me press a bit
21 on this.

22 MR. SANDLER: I'm raising the
23 issue --

24 MR. BEST: Let me press you a bit
25 on this.

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2 MR. SANDLER: Okay. This is CAPA,
3 right?

4 THE CHAIRPERSON: Right.

5 MR. BEST: So the question I think
6 you're raising is actually -- because
7 generally on a contract, we wouldn't have
8 such a reporting requirement. On a general
9 run-of-the-mill contract you wouldn't have a
10 rule. You might want it in the contract. It
11 might be a good policy on the particular
12 contract, but it is not going to be in our
13 rules. So the issue you're raising is
14 because this is privately funded, to provide
15 a service at no cost to the City, that the
16 rules, rather than doing it on a
17 contract-by-contract basis, the rules
18 themselves should potentially, or you're at
19 least asking whether they should, include a
20 reporting requirement beyond what we would
21 normally require for a contract.

22 MR. SANDLER: Right.

23 MR. BEST: And that's because it's
24 privately funded.

25 MR. SANDLER: Well, yeah, because

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2 Goldman Sachs is using Rikers Island to run
3 an experiment for which they'll get a lot of
4 credit. Why shouldn't the government, if
5 they're going to run an experiment on our
6 property, why shouldn't we be entitled under
7 the rule to have reports and data?

8 MR. BEST: I'm not saying we
9 shouldn't --

10 MR. SANDLER: But I'm just saying
11 why rely entirely on the contract to preserve
12 those rights?

13 MR. BEST: Well, I guess the thing
14 that is confusing me about your question is
15 that it's premise, that Goldman Sachs is
16 running an experiment on our property. I
17 don't actually see it that way. I see it as
18 they're providing funding for something the
19 City wants to run an experiment on. And so
20 that's not to say -- I'm not sure about your
21 question -- but I'm not sure that the basis
22 for it ought to be because we think some
23 outside group is coming in to run an
24 experiment on the City's premise but they're
25 forcing the City to do this. This is because

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2 the City wants to do it, which is why we need
3 a rule for it, because the City wants to do
4 this experiment.

5 Now, it may be that it's a good idea
6 anytime the City does an experiment to report
7 on it, right? But I'm not sure whether I
8 think it belongs in the Procurement Rules.

9 MR. STEIN CUSHMAN: Also, if you're
10 choosing to do it just for this type of
11 contract, it has the feel that you're saying
12 that it's sort of more important to keep
13 track of whether a program is successful when
14 it's funded by outside funds than you do if
15 you're having a program that's being
16 implemented and funded with City funds. And
17 that almost seems backwards to me.

18 THE CHAIRPERSON: As I listen to
19 the conversation, I think what I'm honing in
20 on is there is a concern about how one
21 measures success and then how, you know, what
22 are the checks and balances? So the
23 contractual relationship, there are two
24 contractual relationships. There's one with
25 MDRC. And then the second is between MDRC

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2 and the provider of the service. And so as I
3 think about this, how do you ensure -- what
4 I'm honing in on is how do you ensure that
5 what was intended between MDRC and the City
6 is then actualized in the relationship
7 between MDRC and the provider to ensure that
8 the money then flows appropriately. That's
9 what I'm --

10 MR. BEST: I would suggest the
11 following because I think it's a really
12 interesting question you phrased. I'm not
13 sure if I see it exactly the same way you do,
14 Ross, but I think it's a really interesting
15 question and I get your perspective on this.
16 It seems to me, since we're putting this into
17 CAPA, that we ought to see what kind of
18 comment we get. I would propose putting it
19 into CAPA and let's see what kind of comments
20 we get on that and consider the issue before
21 we vote on it, because I can also think of
22 other ways this could be addressed separate
23 and apart, you know, in terms of operations
24 for the government, separate and apart from a
25 PPB Rule.

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2 You know, there are sort of things the
3 Mayor or an agency could require whenever
4 they do something like this that might not be
5 necessary to -- you could maybe get the same
6 result without putting it into the PPB Rule
7 because I personally think there's something
8 a little anomalous about putting in a
9 reporting requirement in here beyond what we
10 do for another contract, but I want to think
11 about it. So I would suggest that maybe we
12 put this into CAPA and talk about it and
13 think about it in terms of, see what comments
14 we get, first off; and secondly, think about
15 whether we want to do something like this and
16 if there's another vehicle or if the rule is
17 the best way to do it before we finalize the
18 rule.

19 MS. GLICK: To operationalize it,
20 wouldn't you have a performance evaluation
21 that you have to do of every contract anyway?
22 And some agencies have their own evaluation
23 tool that they use before they decide what
24 the final performance evaluation is, and so
25 operationally may require that there be some

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2 standard tool that's used before they prepare
3 the performance evaluation.

4 MR. BEST: There's also CCPO
5 approval required before you can go forward
6 with something outside the human services
7 area, so there's some play there for imposing
8 things as a condition of CCPO approval for at
9 least nonhuman services contracts. So some
10 of the places that might be more problematic
11 that you raised, there may be other vehicles
12 to impose a reporting requirement than the
13 rules. And I think it's a serious question.

14 MS. BUDZIK: Andrea, you made a
15 very good point. I'm a little rusty on what
16 the rules are in terms of conformance
17 requirements. Two question that there are
18 criteria: And just from a CAPA perspective,
19 if this rule were voted into CAPA and it was
20 determined through that process that you
21 needed something specific to add to the
22 performance report requirements, could you do
23 that?

24 MS. GLICK: You'd have to do
25 another process conforming amendment, like we

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2 just did for some of these other rules, but
3 you could do it.

4 MR. STEIN CUSHMAN: If you're going
5 to tinker with the language in 3-04, the
6 proposed language, you would then have to ask
7 whether the change was so significant as to
8 require that you put out a draft in CAPA. If
9 you're going to put it back in 4-01 and make
10 a change to a completely different rule that
11 you had not included any change to in this
12 draft, you'd have to do that, like with the
13 2-09 that we just voted on today.

14 MS. BUDZIK: If you were to put in
15 the -- I don't know if it's called the
16 statement phases in purpose -- but if you
17 were specifically to solicit in the CAPA
18 notice comments on these kinds of issues, is
19 that helpful?

20 MR. STEIN CUSHMAN: It is helpful.
21 Whether or not the rule, the change, would
22 require it starting over again as a draft is
23 a decision that the Law Department, I would
24 defer to my colleagues and legal counsel.
25 They have always in the past had a line that

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2 when you moved to a different section that
3 had no change before -- I don't know of any
4 situation where they said it wasn't
5 significant enough to require a starting
6 draft, but I would pose that question to them
7 and let them answer it.

8 THE CHAIRPERSON: I just want to
9 jump in here. The last sentence in Paragraph
10 D that reads: "If the contractor meets
11 outcome set forth in the contract with the
12 City that results in documented cost savings
13 to the City, the contractors pay a
14 predetermined portion of the documented
15 savings." So there in that sentence it
16 speaks to by way of -- I think what it is --
17 a FOIL, or that information --

18 MS. GLICK: It's foailable.

19 THE CHAIRPERSON: -- is foailable,
20 would be readily available. You've got the
21 contractual terms that would set out. What
22 are the requirements?

23 MR. BEST: Well, that's if the City
24 ends up making a payment. I think Ross'
25 question is what if it doesn't work and we

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2 don't make any payment, shouldn't we still
3 have some kind of reporting requirement on
4 how the contract worked out.

5 MR. SANDLER: It is -- I'm thinking
6 on the fly, so what I would like to see from
7 a public point of view. When you start off
8 with a plan, a five-year plan, if you end up
9 with the same plan the fifth year, I'd be
10 surprised. Nothing works that way.

11 THE CHAIRPERSON: Right.

12 MR. SANDLER: So things get changed
13 along the way. And hopefully you change it
14 and you figure out how to do it, and in the
15 end you have really a successful project.
16 That's what you'd like. So I would like to
17 see the rule say something about that the
18 contract shall have in it regular reporting
19 requirements as appropriate and that there'll
20 be a requirement of a final public report at
21 the end of the contract term.

22 MS. GLICK: But we don't typically
23 prescribe contract terms in the PPB Rules.

24 MR. SANDLER: But this is
25 effectively an experimental program. And the

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2 value to the City is if you get benefit, but
3 it's also the knowledge that you gain. And
4 I'm thinking about from the public point of
5 view that that's a valuable commodity. And
6 so I would suggest that the contract require
7 regular reports, whatever's appropriate,
8 given the contract, but that there be a
9 requirement of a public final report at the
10 end.

11 THE CHAIRPERSON: We can make a
12 motion.

13 MS. BUDZIK: I have a question and
14 this is going to bring it back to the more
15 traditional procurement stuff. When you say
16 you select the strongest proposals, do you
17 have criteria for determining what those are?

18 MS. MISNER: Based on HRA following
19 Procurement Rules, we listed out what the
20 criteria is and that's what they're evaluated
21 by. That's what we use to look at it.

22 MS. GLICK: So the recommendation
23 for awarding included the basis for award
24 prior to submission and registration.

25 MS. BUDZIK: Since this is going to

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2 be -- I mean, my sense is you're having
3 almost a generic RFP.

4 MS. GLICK: Kind of open-ended.

5 MS. BUDZIK: A very open-ended
6 generic RFP. What are your criteria?

7 MR. SANDLER: They could be
8 generic. I don't know what they are. It
9 could be probability of success.

10 MR. STEIN CUSHMAN: There has to
11 be. We may end up investing a certain degree
12 of City resources when we implement these
13 programs. So we would only do these programs
14 when we believe there's a reason for
15 likelihood of success. I offhand don't
16 remember the exact criteria that were listed
17 in the RFEI.

18 MS. MISNER: It has to be usually a
19 preventive program that can demonstrate there
20 will be City savings, that is reasonable
21 evidence of success with an organization that
22 has established performance measures or
23 examples of success in the past, an
24 established organization with an intervention
25 that can demonstrate has evidence base behind

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2 it that will save the City money.

3 MR. SANDLER: It's a very
4 intelligent way to go about business where
5 you have so many philanthropic organizations
6 that are willing to fund and willing to do
7 this, so this is fine.

8 My suggestion of reporting is only to
9 make it more public as opposed to make it
10 harder. And the criteria should be pretty
11 much as you said. I'm thinking of any number
12 of things. Suppose you had a program that
13 you thought you could get eighth graders to
14 pass algebra better than the schools are
15 doing it and you could fund it, why not do
16 that and have fewer dropouts?

17 MR. BEST: So I guess the place
18 that I differ with you somewhat is not in
19 terms of whether people should know what
20 happened. I agree with you that's a good
21 idea. It's a question of the mechanism for
22 that happening. That is, I am hesitant to
23 put in a PPB Rule and reporting requirement
24 because I think it would be anomalous in our
25 rules. It's not something I actually want to

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2 start putting into the PPB Rules because I
3 think it will -- I'm not sure I like that
4 precedent as we sit here sort of thinking
5 this through at the table.

6 On the other hand, I also think that
7 it's, you know, given that I agree with you
8 about the public knowing the results of any
9 contract including these, I think that there
10 may be -- I can probably think of other ways
11 operationally that the City could implement a
12 reporting requirement that would be binding
13 on agencies that would require being put in
14 the PPB Rules. That's something I want to
15 think about while this is in CAPA rather than
16 withdrawing it from CAPA now. And if it
17 turns out that the Law Department said --
18 that we all decide as a Board that the best
19 thing to do is actually to have a reporting
20 requirement on this and it turns out that the
21 Corporation Counsel's Office says, "Well, you
22 really have to resubmit it to CAPA in order
23 to do that," which I don't think you'd have
24 to, frankly, but if they did, we could
25 resubmit it to CAPA at that point. But it

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2 strikes me we may be able to come up with
3 something that satisfies the concern you've
4 raised without delaying implementation. So
5 I'd like to sort of leave this as is, see if
6 we can come up with something else that would
7 deal with this issue, another mechanism, and,
8 you know, we can talk about that before the
9 rule gets voted.

10 MR. SANDLER: I think that's okay,
11 except I think that the reason why we have
12 published rules is we have published rules.
13 And if the mechanism is some guidance
14 document from the Mayor's Office of Contract
15 Services, I don't think that's the way we
16 should be going.

17 MR. BEST: I can think of something
18 better than that.

19 THE CHAIRPERSON: Do I have a
20 motion --

21 MR. SANDLER: Let me say one more
22 thing about this. This is Negotiated
23 Acquisition and in Negotiated Acquisitions we
24 have all sorts of special rules where we have
25 concerns. This is not a competitive system.

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2 You may have an RFI out there, an RFP, but
3 it's not competitive. This is a negotiation
4 where some agency officials for very good
5 reasons decide something is really good to
6 try and so there are all sorts of reasons to
7 have checks on Negotiated Acquisition, even
8 with the best of intentions.

9 MR. BEST: And I think that's an
10 interesting argument and I think that if in
11 fact you'd look, it's entirely possible. I'm
12 open-minded about this, and it's entirely
13 possible that during the CAPA process, before
14 we vote when we talk about this, I may come
15 around to that point of view. It's possible.
16 I'm not sure yet. I'd like to think through
17 if there's other ways we can do this that
18 would be sufficiently binding but not in the
19 rules. And they may not make sense. We may
20 decide that's the best way to go, but I think
21 we can talk about that before we vote on it.

22 THE CHAIRPERSON: Very good. So do
23 I hear a motion to vote the rule as is into
24 CAPA?

25 MR. BEST: I'll move it.

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2 THE CHAIRPERSON: Second it.

3 MR. SANDLER: I'll second it.

4 MS. BUDZIK: What we struggle with,
5 we think the rule needs a little more meat on
6 it.

7 THE CHAIRPERSON: We're actually in
8 the voting process.

9 MS. BUDZIK: So I'll explain the
10 vote.

11 We support this going into CAPA but
12 we would actually expect to see a fair number
13 of or maybe flesh out the process criteria,
14 maybe some of the issues that you've talked
15 about. We would certainly expect to meet
16 with the City, Mayor Gibbs' Office, the Law
17 Department, to discuss that.

18 THE CHAIRPERSON: Okay. So moved
19 and seconded. All in favor.

20 (Chorus of Ayes.)

21 THE CHAIRPERSON: Opposed.

22 (No response.)

23 THE CHAIRPERSON: So moved. Rule
24 goes into CAPA. All right.

25 It appears there is no further business,

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2 so we are adjourned.

3 (Time noted: 10:55 a.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

I, DANIELLE CAVANAGH, a Notary
Public within and for the City of New York,
do hereby certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such
proceedings.

I further certify that I am not related
to any of the parties to this action by blood
or marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 31st day of October 2013.

DANIELLE CAVANAGH

Procurement Policy Board

October 24, 2013

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