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THE COUNCIL

Briefing Paper of the Infrastructure Division

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**Oversight – Examining the Need for Contracting Accountability and Transparency at
NYCHA in Light of Leaking Roofs at King Towers**

I. Introduction

On October 1, 2015, the Committee on Public Housing, chaired by Council Member Ritchie Torres, and the Committee on Contracts, chaired by Council Member Helen Rosenthal, will hold a joint oversight hearing entitled “Examining the Need for Contracting Accountability and Transparency at NYCHA in Light of Leaking Roofs at King Towers.” Those invited to testify include the New York City Housing Authority (“NYCHA”), the Mayor’s Office of Contract Services (“MOCS”), the New York City Comptroller (“Comptroller”) and interested members of the public, including public housing advocates and residents.¹

II. Background on NYCHA and Public Housing

Former New York City Mayor Fiorello La Guardia created NYCHA in 1934 – three years before the advent of federal public housing.² NYCHA originally served two purposes: (1) to provide low-cost housing for middle-class, working families temporarily unemployed because of the Depression and (2) to bolster the lagging economy by creating jobs for the building trades.³ Later, NYCHA’s purpose evolved into providing safe, decent housing for families with the lowest incomes.⁴

The first NYCHA development – “First Houses” – was built in 1935 and contained 123 public housing units.⁵ By 1942, NYCHA had 12 developments and 13,180 units.⁶ Today, NYCHA has 328 developments, 2,553 buildings, and 177,666 public housing units, making it the

¹ “Residents” and “tenants” are used interchangeably throughout the briefing paper.

² Peter Marcuse, The Beginnings of Public Housing in New York, *Journal of Urban History* 12(4) at 353-54 (1986); *see also* NYCHA Housing Developments, La Guardia & Addition, *available at* <http://www.nyc.gov/html/nycha/html/developments/manlaguardiaadd.shtml> (last accessed Sept. 12, 2013).

³ Marcuse, 353-54; J.A. Stoloff, A Brief History of Public Housing, Paper presented at August 14 meeting of the American Sociological Association, at 3 (2004).

⁴ Marcuse, 354; Stoloff, 1; *see also* Judith D. Feins, et al., Revised Methods of Providing Federal Funds for Public Housing Agencies, US Department of Housing and Urban Development, at 9 (1994).

⁵ Marcuse, 356.

⁶ Nicholas Dagen Bloom, *Public Housing That Worked: New York in the Twentieth Century*, University of Pennsylvania Press, at 43 (2008).

largest public housing authority in North America.⁷ NYCHA also administers Section 8 affordable housing vouchers.⁸ All told, NYCHA serves a community of 607,399 people, roughly the population of Boston.⁹

NYCHA is a “public benefit corporation,”¹⁰ a “public housing agency” (“PHA”) under the United States Housing Act of 1937,¹¹ an “authority” under the New York State Public Housing Law,¹² and, for certain purposes, a City agency.¹³ In addition to applicable federal and state law, NYCHA must abide by the City’s laws and rules related to planning, zoning, sanitation, building, and housing maintenance standards.¹⁴

III. Roof Repairs at King Towers

NYCHA has made roof repairs across its portfolio a priority. In 2013, NYCHA closed on a \$732 million U.S. Department of Housing and Urban Development (“HUD”) bond issuance called Bond B.¹⁵ NYCHA used approximately \$450 million of that bond issuance to rehabilitate building envelopes and install new roofs at over 30 developments citywide.¹⁶ Additionally, on March 31, 2015, Mayor de Blasio and Senator Schumer announced a \$3 billion grant from the U.S. Federal Emergency Management Agency (“FEMA”) to NYCHA to repair and protect 35 public housing developments that sustained severe damage during Superstorm Sandy.¹⁷ While

⁷ See NYCHA Fact Sheet (as of March 1, 2015), *available at* <http://www1.nyc.gov/assets/nycha/downloads/pdf/factsheet.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Public Housing Law § 3.

¹¹ See 42 USC § 1437a(b)(6); Public Housing Law §§ 3, 220, 400 and 401.

¹² See Public Housing Law §§ 3 and 56.

¹³ *Bass v. New York*, 38 AD2d 407, 410 (2d Dept 1972).

¹⁴ See 24 CFR §§ 5.703(g) and 902.20(e); Public Housing Law § 155.

¹⁵ See NYCHA’s Testimony at the March 21, 2014 Preliminary Budget Hearing *available at* legistar.council.nyc.gov.

¹⁶ *Id.*

¹⁷ See Mayor’s Press Release, Mayor de Blasio, Senator Schumer Announce \$3 Billion in Federal Funds to Repair and Protect 33 Sandy-Damaged NYCHA Developments Housing Thousands – Largest FEMA Grant in History, March 31, 2015, *available at* <http://www1.nyc.gov/office-of-the-mayor/news/206-15/mayor-de-blasio-senator-schumer-3-billion-federal-funds-repair-protect-33#/0>.

the FEMA funding is still being finalized, the scope of the work includes new roofs.¹⁸ Finally, in furtherance of NYCHA's goals to address its roof issues, on May 7, 2015, Mayor de Blasio announced that the City will invest \$300 million over three years for roof replacements at NYCHA.¹⁹ The first year's funding will cover roof replacement on 66 buildings at Sheepshead Bay, Queensbridge North and South, Parkside and Albany. Work began at Queensbridge on August 24, 2015.²⁰

According to NYCHA, the installation of new roofs achieves several benefits, including: preventing water from leaking into apartments or behind walls; reducing the potential for mold growth by eliminating a major source of moisture; and providing insulation on NYCHA's roof tops, thereby keeping apartments warm and reducing the overall heat load of the buildings. Further, roof work can also be achieved relatively quickly and with minimal disruption to tenants. An additional reason is that replacing roofs can significantly impact the number of reported work orders at a development.

As part of NYCHA's Physical Needs Assessment, which is required by HUD, NYCHA rates the conditions of its roofs on a scale of 1 to 5, with 5 being the worst. According to NYCHA, the roofs at the Reverend Dr. Martin Luther King, Jr. Towers ("King Towers") in Manhattan, which consist of 10 buildings and include 1,373 apartments,²¹ were rated a 5. A 5

¹⁸ See Hearing of the Committees on Public Housing and Recovery and Resiliency, Oversight - Monitoring FEMA's \$3 Billion Dollar Grant to NYCHA for Sandy-Damaged Developments, (April 30, 2015), *available at* legistar.council.nyc.gov.

¹⁹ See Mayor's Press Release: De Blasio Administration Announces \$300 Million for NYCHA Roof Replacement Over the Next Three Years, (May 9, 2015), *available at* <http://www1.nyc.gov/office-of-the-mayor/news/301-15/de-blasio-administration-300-million-nycha-roof-replacement-the-next-three-years>.

²⁰ See Mayor's Press Release – De Blasio Administration Announces Start of \$87 Million Queensbridge Houses Roof Replacement, (August 24, 2015), *available at* <http://www1.nyc.gov/office-of-the-mayor/news/574-15/de-blasio-administration-start-87-million-queensbridge-houses-roof-replacement#/0>.

²¹ See NYCHA Housing Developments – Reverend Dr. Martin Luther King, Jr. Towers, *available at* <http://www.nyc.gov/html/nycha/html/developments/mankingmartin.shtml>.

rating means that the roof is in extremely poor condition and is beyond its expected life. According to NYCHA, roof repairs at King Towers, using Bond B funds, began in April 2015.

According to recent news reports, since the beginning of roof repairs at King Towers, tenants have been experiencing severe leaks in their apartments.²² When asked about the leaks at a press conference, Mayor de Blasio commented: “That’s an absolutely unacceptable situation...There will definitely be consequences for anyone who was a part of making that mistake, and there is still an investigation going on to determine the role either of the private contractor or the staff at that development of NYCHA.”²³ At the hearing, the Committees expect to learn about what happened at King Towers and the steps NYCHA is taking to ensure that such incidents do not happen in the future.

IV. City Contracting and Procurement

New York City has a large contracting budget, having procured over \$17.8 billion of goods and services in fiscal year 2014 alone.²⁴ Typically, the procurement process occurs in the following order: (1) an agency need is identified; (2) an agency plans a procurement to fill that need; (3) a solicitation is written and published; (4) a competitive bidding process is held; (5) a vendor is selected and a determination is made concerning its responsibility; (6) a contract is negotiated and signed; (7) the approval of oversight agencies is obtained; and (8) the contract is filed for registration by the Office of the Comptroller.²⁵ The Comptroller then uploads information about the contract on the website “Checkbook NYC,” which is an online

²² Greg B. Smith, Exclusive: Roof Repairs at Harlem NYCHA Building Made Leaks Worse, Say Tenants, New York Daily News, (August 12, 2015), *available at* <http://www.nydailynews.com/new-york/exclusive-roof-repairs-nycha-building-leaks-worse-article-1.2322497>.

²³ See Mayor’s Press Release – De Blasio Administration Announces Start of \$87 Million Queensbridge Houses Roof Replacement, (August 24, 2015), *available at* <http://www1.nyc.gov/office-of-the-mayor/news/574-15/de-blasio-administration-start-87-million-queensbridge-houses-roof-replacement#/0>.

²⁴ See Making the Grade: New York City Agency Report Card on Minority/Women-Owned Businesses Enterprises 2014, *available at* http://comptroller.nyc.gov/wp-content/uploads/documents/Making_the_Grade.pdf.

²⁵ See Mayor’s Office of Contracts Services, About Procurement, *available at* <http://www1.nyc.gov/site/mocs/about/procurement.page>.

transparency tool, launched in 2010, that tracks the City’s day-to-day spending.²⁶ According to the Mayor’s Office of Contract Services (“MOCS”), which oversees the City’s procurement, the following visual demonstrates the City’s general procurement process:²⁷



The City’s procurement process is guided by the State’s General Municipal Law (“GML”) § 103, which requires that all municipal contracts be awarded to the lowest responsible bidder.²⁸ As such, City agencies award contracts based on price, quality, experience and any other relevant factor to be considered for each respective contract.²⁹ However, agencies may only award a contract to a responsible contractor who “has the technical capability and financial capacity to fully perform the requirements of the contract, as well as the business integrity to justify the award of public tax dollars.”³⁰

²⁶ See generally Office of the Comptroller, Checkbook NYC, available at http://checkbooknyc.com/contracts_landing/status/A/yeartype/B/year/117.

²⁷ See Mayor’s Office of Contracts Services, About Procurement, available at <http://www1.nyc.gov/site/mocs/about/procurement.page>.

²⁸ See General Municipal Law § 103; see also *Rosario v. Diagonal Realty, LLC*, 8 N.Y.3d 755, 763 (2007); *Wholesale Laundry Bd. of Trade, Inc. v. City of New York*, 17 A.D.2d 327, 329-30 (1st Dep’t 1962), *aff’d* 12 N.Y.2d 998 (1963).

²⁹ See Mayor’s Office of Contracts Services, About Procurement, available at <http://www1.nyc.gov/site/mocs/about/procurement.page>.

³⁰ *Id.*

Pursuant to GML § 104-b, the City must adopt internal policies and procedures governing all procurements of goods and services not required to be made pursuant to the competitive bidding requirements of § 103.³¹ Section 103 states that a competitive bidding process is not required for “public work” contracts valued at \$35,000 or less or for “purchase” contracts valued at \$20,000 or less.³² The Procurement Policy Board (“PPB”) is the body in New York City that has promulgated the City’s procurement rules.³³ The PPB rules state that competitive bidding is not required for any contract that is \$20,000 or less.³⁴ For such contracts, known as micropurchases, the Contracting Officer must simply ensure that the noncompetitive price is reasonable and that purchases are distributed appropriately among responsible vendors.³⁵ This means that such contracts are not subject to the competitive procurement process outlined above, and there is no requirement for oversight by MOCS or the Comptroller. For procurements over \$20,000, but less than the small purchase limit of \$100,000, agencies are required to solicit at least five vendors and award the contract to the lowest responsive and responsible bidder.³⁶ All other procurements over \$100,000 follow the competitive sealed bidding or competitive sealed proposal process.³⁷

Pursuant to the PPB rules, certain vendors and their principal owners must complete VENDEX Questionnaires in order to be considered for an award of contract.³⁸ Vendors are required to complete Questionnaires if they have contracts with the City valued at over

³¹ See General Municipal Law § 104-b.

³² See General Municipal Law § 103.

³³ See Mayor’s Office of Contract Services, Procurement Policy Board, *available at* <http://www1.nyc.gov/site/mocs/resources/ppb.page>.

³⁴ See Procurement Policy Board Rules, at 95, *available at* [http://www1.nyc.gov/assets/mocs/downloads/pdf/ppb/PPP_Rules_PPB%20Final%20Updated%205_12_14%20\(3\).pdf](http://www1.nyc.gov/assets/mocs/downloads/pdf/ppb/PPP_Rules_PPB%20Final%20Updated%205_12_14%20(3).pdf).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 49.

³⁸ *Id.* at 30; *see also* Mayor’s Office of Contract Services, VENDEX, *available at* <http://www1.nyc.gov/site/mocs/resources/vendex.page>.

\$100,000.³⁹ VENDEX is used to determine if a vendor is responsible or non-responsible. Prior to making its determination of vendor responsibility, agencies must ask the Department of Investigations (“DOI”) to conduct a vendor name check, which consists of a review of the names on the Questionnaire and other information to ascertain whether the business are or have been the subject of a DOI investigation.⁴⁰ According to MOCS, once a job is complete, agencies must fill out a performance evaluation for the vendor. If a vendor is deemed unsatisfactory for some reason, a caution note is placed in the vendor’s VENDEX file. Such performance evaluations and notes of caution may be taken into consideration by other agencies looking to contract with the vendor.

V. NYCHA Contracting and Procurement

NYCHA’s roof repairs are contracted per its procurement policy, which is subject to federal, state and local laws. At the hearing, the Committees expect to learn about NYCHA’s procurement policies, procedures and practices in detail, since they are not currently publicly available.⁴¹ The City has an especially heightened interest in understanding NYCHA’s procurement practices because the City is allocating NYCHA over \$610 million in capital funding in Fiscal Year 2016.⁴²

A. HUD Procurement Rules

NYCHA is required to comply with HUD’s procurement regulations.⁴³ In conformance with its regulations, HUD has developed a Procurement Handbook for Public Housing

³⁹ *Id.*

⁴⁰ *Id.* at 34.

⁴¹ See NYCHA, Vendors, available at <http://www1.nyc.gov/site/nycha/business/vendors.page>.

⁴² In FY2016, the City Council is giving NYCHA \$28,665,000 in City Capital Funds, and the Mayor/Administration is giving NYCHA \$273,429,112 in City Capital Funds and allocating \$308,000,000 in Federal Funds (CDBG-DR). See The City of New York, Adopted Capital Budget, Fiscal Year 2016, at 32C, available at http://www.nyc.gov/html/omb/downloads/pdf/cb6_15.pdf.

⁴³ See 24 CFR Part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federal Recognized Indian Tribal Governments.

Agencies,⁴⁴ which sets forth both required and recommended procurement practices applicable to PHAs and applies to all PHA procurement actions using federal program grant funds.⁴⁵ As per the Handbook, PHAs are required to establish and follow a written procurement policy that is consistent with applicable laws.⁴⁶ HUD and the Comptroller General of the United States have the right to audit all books, documents, papers and records of the PHA that are pertinent to financial assistance provided by HUD.⁴⁷

Generally, the dollar amount of a contract determines the procedures that a PHA must follow. According to the Handbook, small purchase procedures are a simplified method for acquiring supplies, materials and services (including professional and construction) that do not exceed the PHA's small purchase threshold.⁴⁸ PHAs are required to establish the dollar threshold for small purchases in their written procurement policy, but the threshold may not exceed the federal small purchase threshold of \$150,000,⁴⁹ or any lower dollar value set by the state or locality having jurisdiction over the PHA.⁵⁰ According to the Handbook, PHAs may not break up purchases into multiple smaller purchases that are less than the threshold merely to permit the

24 CFR Part 85 was superseded by 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which was published on December 19, 2014 by the federal Office of Management and Budget ("OMB") and made applicable to non-federal entities that receive federal financial assistance effective December 26, 2014. In accordance with the new OMB regulations, HUD published Notice SD-2015-01 on February 26, 2015 instructing its grantees that 2 CFR Part 200 applies to their contracts until HUD publishes its updated conforming regulations. As of the date of this briefing paper, HUD is still developing its conforming regulations and revisions to 24 CFR Part 85. However, Notice SD-2015-01 states that the procurement standards in 2 CFR Part 200 are generally consistent with the requirements of 24 CFR Part 85. *See* HUD, Notice SD-2015-01, February 26, 2015, *available at* <https://portal.hud.gov/hudportal/documents/huddoc?id=15-01sdn.pdf>.

⁴⁴ *See* HUD, Procurement Handbook for Public Housing Agencies, March 2, 2007, *available at* <http://www.hud.gov/offices/pih/programs/ph/phecc/resources/prohndbk.pdf> (hereinafter, "Handbook").

⁴⁵ Handbook at 1-1. This paper incorporates information from both 2 CFR Part 200 and the HUD Procurement Handbook for Public Housing Agencies, although we anticipate that the Handbook will be amended once HUD revises 24 CFR Part 85.

⁴⁶ *Id.* at 2-1.

⁴⁷ *Id.* at 3-3.

⁴⁸ *Id.* at 5-1.

⁴⁹ 2 CFR § 200.88. The small purchase threshold cited in the Handbook is \$100,000. However, since 2 CFR Part 200 superseded previous regulations, the applicable small purchase threshold is now \$150,000.

⁵⁰ Handbook at 5-1.

use of small purchase procedures (this practice is commonly called “bid splitting” or “unbundling”).⁵¹ However, larger purchases may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the PHA’s procurements.⁵²

Within the small purchase threshold, there is also a micro purchase threshold of up to \$3,000.⁵³ PHAs may award micro purchases without soliciting competitive quotations if the designated Contracting Officer⁵⁴ considers the price reasonable.⁵⁵ To the extent practicable, the PHA is required to distribute micro purchases “equitably among qualified vendors.”⁵⁶

For small purchases above the micro purchase threshold but below \$150,000, the PHA is required to solicit price quotations from an adequate number of qualified sources, defined as not less than three in the Handbook.⁵⁷ Quotations for small purchases may be obtained in writing, orally or through electronic means.⁵⁸ According to the Handbook, before making a small purchase award, the Contracting Officer must determine that the proposed price is fair and reasonable.⁵⁹ Additionally, HUD requires PHAs to make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement.⁶⁰ A responsible bidder is defined in the Handbook as:

A bidder who is able to comply with the required or proposed delivery or performance schedule; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, accounting and

⁵¹ *Id.*

⁵² *Id.*

⁵³ 2 CFR § 200.67. The micro purchase threshold cited in the Handbook is \$2,000. However, since 2 CFR Part 200 superseded previous regulations, the applicable small purchase threshold is now \$3,000.

⁵⁴ The Contracting Officer is defined in the Handbook as: “The Executive Director or an official authorized by the Executive Director to enter into and/or administer contracts and make related determinations and findings. For the purpose of this handbook, the term includes any PHA employee designated and authorized to perform the duties of a Contracting Officer.” *See* Handbook at 1-6.

⁵⁵ *Id.* at 5-1; *see also* 2 CFR § 200.320.

⁵⁶ *Id.*; *see also* 2 CFR § 200.320.

⁵⁷ *Id.*; *see also* 2 CFR § 200.320.

⁵⁸ *Id.* at 5-2.

⁵⁹ *Id.*

⁶⁰ *Id.* at 5-3.

operational controls, and technical skills, or the ability to obtain them; has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.⁶¹

For small purchases, the Contracting Officer has broad latitude in evaluating contractor responsibility, including personal knowledge of or past experience with the vendor.⁶²

For all PHA contracts above the small purchase threshold, HUD requires competitive procurements through sealed bids or by requesting competitive proposals.⁶³ Under sealed bids, the PHA publicly solicits bids and a firm fixed-price contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.⁶⁴ Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts, but PHAs may also use competitive proposals for construction contracts.⁶⁵

Unlike sealed bidding, the competitive proposal⁶⁶ process awards contracts on the basis of the proposal that represents the best overall value of the PHA, considering price and other factors, such as technical expertise, past experience, quality of proposed staffing, etc.⁶⁷ Generally, the competitive proposal process is used when the requirement cannot be described specifically enough to permit the use of sealed bidding, the nature of the requirement is such that the PHA needs to evaluate more than just price, or the requested work lends itself to different

⁶¹ *Id.* at 1-8.

⁶² *Id.*

⁶³ *Id.* at 6-1; *see also* 2 CFR § 200.320.

⁶⁴ *Id.*

⁶⁵ *Id.* at 6-1.

⁶⁶ There are two types of competitive proposals – Request for Proposals (RFPs) and Requests for Qualifications (RFQs).

⁶⁷ *Id.* at 7-1.

approaches.⁶⁸ The evaluation of proposals is based on the evaluation factors set forth in the proposal.⁶⁹ Unlike sealed bids, which are opened publicly, the results of proposal evaluation may or may not be disclosed, depending on state and local law.⁷⁰ After all the proposals are evaluated, the Contracting Officer is required to determine which proposals are in the competitive range, meaning they have a reasonable chance of being selected for the award given their technical evaluation results and proposed price, and classify competitive range proposals as “acceptable,” “potentially acceptable,” or “unacceptable.”⁷¹ After the competitive range is determined, the PHA then enters negotiations with the offerors to revise their proposals.⁷² After negotiations are complete, the Contracting Officer is required to invite the offerors to submit their best and final offers, which are then re-evaluated.⁷³ The contract is awarded in accordance with the terms of the solicitation, based on both price and technical merit of the proposal, and only to offerors who have been determined to be responsible contractors.⁷⁴

For construction contracts, once the contract has been awarded, a pre-construction and safety conference is held, and the PHA then issues a Notice to Proceed to the contractor stating the starting and completion dates.⁷⁵ After the work begins, the PHA is required to meet with the architect and contractor on a regular basis (usually weekly for large or complex projects) to discuss work progress, payments and any problems or deficiencies, overdue reports and the construction schedule.⁷⁶ After the construction is complete, the PHA must conduct a final

⁶⁸ *Id.*

⁶⁹ *Id.* at 7-5.

⁷⁰ *Id.*

⁷¹ *Id.* at 7-7.

⁷² *Id.* at 7-8.

⁷³ *Id.* at 7-9.

⁷⁴ *Id.*

⁷⁵ *Id.* at 11-1.

⁷⁶ *Id.*

inspection.⁷⁷ HUD requires the warranty period for all construction work to be at least 365 days from the date of final acceptance of the work.⁷⁸ For complex equipment or systems (such as boilers, air conditioning units, thermal paned windows or storefronts, or membrane roofs), HUD recommends a two-year warranty.⁷⁹ The contractor is fully responsible to correct any and all legitimate deficiencies reported within the warranty period.⁸⁰

B. Impact of State and Local Laws

2 CFR Part 200 states that the PHA “must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law”⁸¹ Similarly, the Handbook states that PHAs are required to follow applicable state and local laws on procurement, in addition to federal laws, and must comply with whichever law is more stringent.⁸²

With respect to state law, the Handbook states that PHAs are governed by two sets of state regulations – one set is called the “state enabling legislation” and the second is a separate set of state statutes or codes.⁸³ The State Public Housing Law (“PHL”) is the relevant state enabling legislation and contains some specific guidance on contracting and procurement.⁸⁴ Notably, section 151 of the PHL requires that the following contracts be procured through sealed bids: (1) contracts covering demolition, excavation, construction, alteration or renovation work costing in excess of \$50,000 and (2) contracts covering the purchase of materials or supplies costing in excess of \$25,000.⁸⁵ Section 151 also permits the PHA to reject all bids or re-advertise

⁷⁷ *Id.* at 11-4.

⁷⁸ *Id.* at 11-5.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 2 CFR § 200.318.

⁸² *Id.* at 1-3.

⁸³ *Id.* at 13-1.

⁸⁴ See Public Housing Law §§ 151, 151-a and 152.

⁸⁵ Public Housing Law § 151(1).

for bids by a majority vote of the Board or to accept a bid other than the lowest bid by a unanimous vote of the Board.⁸⁶ In addition, for contracts involving the erection, construction, reconstruction or alteration of any building or part thereof costing in excess of \$3,000,000, Section 151-a requires separate bidding specifications for the following three components of work: (1) plumbing and gas fitting; (2) steam heating, hot water heating, ventilating and air conditions apparatus; and (3) electric wiring and standard illuminating fixtures.⁸⁷ Such specifications must permit separate and independent bidding on each of the three components of work.⁸⁸ Where the preparation of separate specifications is not required for contracts involving erection, construction, reconstruction or alteration (i.e. contracts under \$3,000,000), bidders are required to submit with their bid a separate sealed list that names each subcontractor that the bidder will use to perform the work and the agreed-upon amount to be paid to each.⁸⁹

As to local laws, the Handbook states that when applicable local laws, in addition to state law, exist on procurement, the most stringent of the three applies as long as the procurement conforms to federal requirements.⁹⁰ Additionally, the Handbook acknowledges that “local jurisdictions frequently pass ordinances on specific construction practices and bonding requirements that a PHA must follow in addition to any State or local laws as long as they conform to federal requirements.”⁹¹

The Handbook states that the complex structure of federal, state and local laws pertaining to procurement and contracting activities requires a PHA to have a comprehensive understanding of the combination of rules and regulations with which it must comply.⁹² A PHA’s procurement

⁸⁶ *Id.*

⁸⁷ Public Housing Law § 151-a(1).

⁸⁸ Public Housing Law § 151-a(2).

⁸⁹ Public Housing Law § 151-a(2-a).

⁹⁰ *Handbook* at 13-2.

⁹¹ *Id.*

⁹² *Id.* at 13-3.

policy and procedures must incorporate and reflect the relationship between each set of laws and procurement practices.⁹³ At the hearing, the Committees expect to learn more about the specific state procurement statutes and codes and local laws that apply to NYCHA, and the interaction of those statutes, codes and laws with the HUD rules.

C. NYCHA's Current Policies

At the time this report was prepared, NYCHA's current procurement policy was not publicly available, but information about its procurement policies and procedures can be ascertained from publicly accessible sources.⁹⁴

Although NYCHA is not subject to the PPB rules according to MOCS,⁹⁵ NYCHA indicates that it does require bidders to complete a VENDEX Questionnaire before it will consider a bid. It is not clear if NYCHA does this voluntarily or pursuant to a legal obligation. Nevertheless, according to NYCHA, it consults VENDEX to determine contractor responsibility before awarding a contract. In addition, once a contract is complete, NYCHA says that it evaluates the contractor's performance using an internal 1 to 10 rating system and that it also provides performance evaluations to the contractor's VENDEX file.

NYCHA has also published some information about its contractor responsibility standard. According to the Office of the Inspector General's *Anti-Corruption Guide for New York City Housing Authority Contractors/Vendors*,⁹⁶ NYCHA expects contractors/vendors to perform fully, timely, and honestly in accordance with the terms of their contracts and to

⁹³ *Id.*

⁹⁴ See NYCHA, *Vendors*, available at <http://www1.nyc.gov/site/nycha/business/vendors.page> and NYCHA's Procurement Opportunities, available at https://web.nycha.info/OA_HTML/OA.jsp?OAFunc=PON_ABSTRACT_PAGE.

⁹⁵ See Mayor's Office of Contract Services, *Contracting Agencies*, available at <http://www1.nyc.gov/site/mocs/contract/contracting-agencies.page>.

⁹⁶ Pursuant to a longstanding agreement between NYCHA and the New York City Department of Investigation (DOI), the Office of the Inspector General (OIG), which is overseen by DOI, is responsible for investigating NYCHA-related criminal activity, corruption, conflicts of interest, unethical conduct, and misconduct committed by employees, residents and contractors/vendors doing business with NYCHA.

demonstrate their “responsibility” through a history of successful and honest performance. A contractor/vendor can show such responsibility by: (1) being prepared to demonstrate that they have the resources and experience to do the job successfully; (2) being prepared to publicly and truthfully disclose their management and ownership, officers and owners, with an expectation that any of their legal or performance problems will need to be explained; (3) being current on their obligations, including paying corporate, real property, payroll taxes, etc.; and (4) paying prevailing wages, where legally required.⁹⁷ In addition, the guide provides information to contractors/vendors on offering a bid or proposal, sensitive and protected information, and what to do if they are awarded a contract.⁹⁸ The guide also addresses corruption in NYCHA contracts.⁹⁹

Finally, NYCHA does release some information about awarded contracts in its monthly Board minutes.¹⁰⁰ However, the Board is only required to approve contracts valued at \$1,000,000 or more; all other contracts may be approved by General Manager.¹⁰¹ An example of a contract approved by the Board from the minutes is below:

⁹⁷ See NYCHA Office of the Inspector General’s Anti-Corruption Guide for New York City Housing Authority Contractors/Vendors, *available at* http://www.nyc.gov/html/nycha/downloads/pdf/Contractors_Vendors_AntiCorruption_Guide.pdf.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See NYCHA, Board Calendar, *available at* <http://www1.nyc.gov/site/nycha/about/board-calendar.page>.

¹⁰¹ See NYCHA’s By-Laws, *available at* http://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA_Amended_By-Laws_9-24-14.pdf.

12 Award of a Requirement Contract for Exterior Restoration for Site Specific Developments

Location:	Various (Citywide)
Submitting Department:	Capital Projects Administration
Funding Source:	Capital – City, Mixed Finance & Other
Amount:	\$12,637,732.95
Projected Section 3 Hires:	7

Authorization is requested to award this requirement contract to the lowest responsive and responsible bidder, ABAX Incorporated, for a reduced not-to-exceed amount. The first lowest bidder was deemed non-responsive for failure to submit the required signed Letter of Assent, pursuant to the Project Labor Agreement terms.

APPROVED

VI. Conclusion

At this hearing, the Committees expect NYCHA to explain its contracting and procurement policies in detail. The Committees are particularly interested in the differences between NYCHA's policies and the policies followed by other City agencies, as well as how NYCHA interprets and applies the federal, state, and local procurement schemes. In addition, in light of the reported leaking roofs at King Towers, the Committees are interested to learn whether the leaks exposed deficiencies in NYCHA's contracting and procurement policies and what NYCHA is doing to ensure that such deficiencies are addressed in the future. Lastly, the Committees note that NYCHA should make more information publicly available (e.g. through its website) concerning its contracting and procurement policies given the size of the Authority and the volume of its contracts.