

WHAT DOES NYC VENDEX SAY ABOUT YOUR COMPANY AND YOU?

By Henry L. Goldberg, Esq.

For several years, the Mayor's Office of Contracts ("MOC") has been operating a computerized Public Access Center¹ to provide interested parties with onsite access to the City's automated Vendor Information Exchange System ("VENDEX"). VENDEX procedures require all contractors (and subcontractors) on public contracts to complete Business Entity and Principal questionnaires before a contractor will be awarded a job. The system was established in 1987 and automated in 1990 pursuant to New York City's Administrative Code² and designed to inform a contracting agency whether a contractor or subcontractor, in addition to being the lowest responsive bidder, is also a "responsible" bidder, entitled to awarded a public contract. Responsibility, in the context of public bidding, encompasses issues such as integrity and past performance, and is a broad enough topic on its own to be the subject of another article to appear in the near future.

MOC has now made the revised VENDEX Questionnaires available "online." See www.nyc.gov/vendex. Currently, the Public Access Center has only two computer terminals at its offices, available on a first come, first served basis. Public contractors would be well advised

¹ The Public Access Center is at 253 Broadway, in Manhattan, and is open Monday through Friday, from 9:30 a.m. to 5:00 p.m.,

² New York City Administrative Code §6-1161.2

to periodically check their own company's VENDEX data for accuracy and currency. Public contractors can also call MOC with any additional questions at (212) 341-0933 and/or fax number (212) 788-0093, Attn: Annette White.

The following reports and documents are available on the VENDEX system:

Standard Reports

Business Profile for an Entity
Complete Caution List (by request)
Select Caution List
Contract Performance Evaluation Reports
Minority/Women Companies Awarded Contracts
Entities Related to a Business (Parents, Subsidiaries, Principals and Affiliates)
Total Contracts for One Object Code (Budget Sub-Category) (by request)
Total Contracts for One Agency and/or Vendor (by request)

Documents

Business Entity Questionnaire
Not-For-Profit Organization Questionnaire
Principal Questionnaire
Subcontractor Questionnaire
(As of July 1, 2004, MOC is no longer accepting anything but the Vendor Questionnaires and the Principal Questionnaires.)

A search can be made using the vendor's name, contract number, procurement ID number or the company's address (if located in New York City).

The Public Access Center also provides information to the public from the OASIS system, which is maintained by the City Comptroller's office. OASIS contains copies of contracts between the City and its vendors. Members of the public are not allowed to view complete contracts, but for a fee they can request that sections of a contract be copied and made

available. Information not available at the Public Access Center, such as past performance evaluations and "Caution" warning documentation can be obtained through statutory Freedom of Information Law requests.

Many contractors have long complained that VENDEX procedures are overly rigid and unduly onerous. VENDEX has humorously been likened to "Roach Motel" - once information goes into the Vendex system, it never comes out. Sometimes often stale or misleading information is carried in VENDEX, and unless strong, affirmative action is taken to correct or eliminate it, there are no procedures for purging the system. In partial response to such problems, the New York City Charter Revision Commission conducted a series of open meetings and hearings to investigate the process. It concluded that many of the complaints were valid

The Commission, however, did not propose specific changes. Rather, it sought to compel the Mayor and the Comptroller to begin substantive discussions regarding reformation of the procurement process and rationalization of the VENDEX system. Although NYC Charter amendments mandating change were rejected by voters this past November (2003) in the most recent election, it appears that the Mayor's office has responded positively to the Commission's proposal. It has released a report outlining the Mayor's future plans regarding contract procurement reform. Specifically, the report notes that the Mayor is in favor of allowing contractors to address and correct problems in their past VENDEX listings in such areas as integrity, financial capability and contract performance. We encourage the Mayor and the Comptroller to implement VENDEX reform as soon as possible.

G&C Commentary:

In any event, contractors should remain aware of precisely what it is, or is not, of record in their own VENDEX listing. It's at least as important as assuring the accuracy of your personal credit rating, perhaps more so. Keeping abreast of this public information - both about your own company and about others - is often essential.

On these pages we have warned of the potential for abuse of the VENDEX system by public agencies seeking to discredit a contractor. (See, "Agency Abuse of NYC Vendex – Is There a Constitutional Right of Protection?" G&C Blueprint Summer 2003). Contractors should take every opportunity to use their right of access to public documents. The only way to protect against VENDEX abuse is to be aware of the content of your own company's report and to move aggressively, if need be, to assure its accuracy.

It should also be noted that the current administration's use of VENDEX is markedly different from that under the prior administration, which clearly had less of a business and more of a prosecutorial mindset. MOC can be, and now should be, be a valuable resource for any public contractor. Let's hope that that is the ultimate outcome of any proposed changes.