



**Mayor's Office of  
Contract Services**

Testimony of Lisette Camilo  
Acting General Counsel, Mayor's Office of Contract Services  
Before the New York City Council Committee on Contracts  
(April 24, 2014)

**Bill de Blasio**  
Mayor

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Good Morning Chairperson Rosenthal and members of the City Council Committee on Contracts. I am Lisette Camilo, Acting General Counsel and incoming Director of the Mayor's Office of Contract Services (MOCS), and I am joined today by Ezra Polonsky, our Deputy Director for Research and IT.

### **Introductory Remarks**

Thank you for the opportunity to testify today about Local Law 18 of 2012 (LL 18). LL18 requires MOCS to develop a list of contracts that meet the conditions for two reporting requirements. The first category that we report on is for capital contracts registered with an initial contract value of more than \$10 million with a modification that exceeds the initial contract value by 20% or more. The second category that we report on includes previously reported contracts with subsequent modifications that exceed the last reported value by 10% or more. Once MOCS identifies the contracts in the two categories, we send the lists to the respective agencies to provide an explanation of the changes. A completed list is then compiled and sent to the Council every quarter. This law was enacted to track and provide greater clarity and transparency on the costs of capially funded contracts, promote accountability and provide agencies with information that would help with oversight. These are goals that we share with the Council.

As you know, MOCS's primary purpose is to ensure that Mayoral agencies comply with all of the legal and regulatory requirements that govern procurement. Generally speaking, that includes solicitation up through contract award. Our main point of contact at City agencies is the Agency Chief Contracting Officer (ACCO), who is responsible for performing the procedural steps related to procurement, and whom we oversee. To plan a procurement, the ACCO works with other divisions within the agency including the program division (the part of the agency with the substantive expertise to determine what goods or services the agency needs in order to fulfill its mission) and the fiscal or budget division (the section of the agency dedicated to ensuring that the agency's mission is fulfilled at a reasonable cost and within the bounds of the funding allocated by the Council and Mayor). Once the contract is awarded, the role of the ACCO and MOCS is greatly reduced,<sup>1</sup> as the contract management is taken over by the program division exclusively. The information that we compile as a result of LL18 is useful to the contracting agencies, who, having a light shined on particular procurements with large modifications, take notice. Public scrutiny of those individual contract actions, the modifications of which are attributable to preventable reasons, is a good motivator for agencies to evaluate their methods and look for ways to improve areas of weakness. However, such evaluations and analysis cannot be made within the ACCO division. In an effort to assist in disseminating the information beyond the ACCO's office, it has been our practice to share this report with City Hall.

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<sup>1</sup> After contract award, MOCS' oversight role is reduced to reviewing change orders but even such review is limited. We check to make sure the work is within the original scope and/or an acceptable type of change pursuant to both Procurement Policy Board rules, and Comptroller's directives. This includes reviewing change the order forms, cost breakdowns, agency justifications, and certificate to proceed documents.

The information contained in the LL 18 report is useful to the Council, the City and its agencies as it illustrates a bigger picture of the reasons for changes to contract values. The report provides greater insight into the complex world of planning, procurement and contract management as the reports do not merely focus on contract amounts but on the reasons that contribute to those increased amounts. Analysis of the data in the reports reveals a broad range of reasons for increases to contracts' maximum amounts, including scenarios where the increases: were unforeseen; were budget neutral or benefitted the city; or reveal room for improvement in contract planning or management.

In reviewing the 204 entries that have been reported as part of complying with LL 18, we found that that a significant number of the items reported were the result of changes that could not be have been anticipated when soliciting the contract. This includes contract increases to: cope with the damage wrought by Hurricanes Sandy and Irene to projects already underway; federal, state and city regulatory changes such as compliance with LL 87 of 2009 to reduce greenhouse gas emissions, changes to the City's M/WBE program required under LL 1 of 2013 and changes to the fire code resulting in building wide sprinkler systems; as well as unforeseen conditions such as removal of hazardous material including asbestos and mercury, contaminated soil conditions, unanticipated subsurface conditions, and structural remediation. All of the increases in these contracts were conditions that could not have been foreseen at the time the contracts were bid.

Additionally, many of the items included in the past reports were technical changes that did not impact the budget of the project but changed the contract value. For instance, a contract may be reassigned from one agency to another or it may be registered with the comptroller in two different stages. For example, for the Manhattan garage contract, the original contract was

registered by the Department of Sanitation but later transferred to the Department of Design and Construction (DDC). The funds for the contract were transferred over in two waves, showing a contract modification that looked like an increase but was really a transfer of funds between agencies done in two steps.

There may be changes to the contract that are budget neutral, that save money or even generate money. For example, the red light program was so successful in increasing safety for motorists and pedestrians in its initial scope that additional cameras were added to the contract. Those additions ultimately also generated revenue for the City as a result of increased traffic fines.

Contracts may also receive additional funding that augments the original contract amount. For example, a grant may be received which allows an agency to expand the initial implementation of a program. Lastly, requirements contracts are structured to allow an agency to use as much or as little of the services as are needed while using the City's bargaining power to lock in lower pricing. When need for the services exceed the original estimates during a contract term, the contract maximum is increased. Such an increase merely accommodates additional work that falls into the scope and is not a cost overrun.

As a response to contracts where true cost overruns occur, the City has worked to make a number of changes to aid agencies in keeping contracts within or under budget. In the area of information technology (IT), significant steps have been taken to centralize and control costs. In 2012, the New York City Technology Development Corporation (TDC) was established by the City as a not-for-profit corporation to oversee and ensure efficient and effective implementation of the City's most critical and complex information IT projects. TDC is currently staffed with

highly qualified and experienced IT professionals providing project management and citywide oversight of major IT projects. TDC works closely with client City agencies and the Department of Information Technology and Telecommunications (DoITT), the City's umbrella technology agency, to ensure all aspects of a project have appropriate support from inception to execution.

In general, projects overseen by TDC will have a budget of over \$25 million, involve multiple agencies or constitute mayoral priorities. The corporation will oversee design, vendors, installation and training providing a common framework, tools, best practices, and diagnostics for on-time and on-budget IT project delivery. TDC has already had a significant impact on IT projects across the City and is expected to save the City up to \$5 million annually compared to the cost of engaging private project management and quality assurance consulting services.

Similar efforts have been made for procurement in the construction arena. In December 2006, construction agencies began awarding contracts using the Quality Based Selection (QBS) vendor selection method. QBS allows the City to prioritize the quality of a company by focusing on its experience and technical merit approach, as opposed to lowest price bids, when awarding contracts. As a result of QBS, higher skilled vendors have been hired based on their qualifications and experience which result in better performance and fewer cost overruns. QBS is the preferred selection method as per the Procurement Policy Board and from Fiscal 2009 to Fiscal 2013, the City procured 230 contracts using QBS. Attracting these highly qualified firms, which may otherwise have been reluctant to pursue City contracts, has improved the quality of design for public construction work and realized cost savings over the life of the projects. More than half of the construction contracts included in the LL18 reports were solicited prior to the implementation of QBS for construction and construction-related vendors.

Similarly, in 2009, the City began using Prequalification Lists (PQL) from which to award contracts. A PQL allows an agency to review the qualifications of a company and deem it qualified to do the work before solicitations are issued. An agency compiles a list of such vendors and limits competition and award of certain work to those that are on the PQL. By establishing lists of qualified contactors in specific construction specialties, and limiting the competition to only those contractors, DDC for example, has started seeing better results. One example of success in using PQL's was for multiple roof replacement projects. This bid was solicited to a pre-qualified list of vendors with acceptable experience in specific roofing systems and the contracts have come in on or under budget.

The LL 18 reports provide greater insight about modifications on contracts associated with capital projects. As mentioned above, the public scrutiny on contracts included in the report due to preventable reasons is a motivating factor for agencies to evaluate their contract planning and management methods. As I settle into my new role, I will work to identify other ways to leverage the information in the reports to assist agencies in such evaluation. In the meantime, the work performed by the TDC, fuller engagement of QBS and increased usage of PQLs will yield greater success in cost containment which should be reflected in future LL 18 reports.

We look forward to working with the Council to find additional ways to help further contain cost overruns. At this time, I would be happy to answer any questions the committee may have.

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