

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONTRACTS

----- X

April 24, 2014
Start: 10:10 a.m.
Recess: 11:08 a.m.

HELD AT: Council Chambers
City Hall

B E F O R E:
HELEN K. ROSENTHAL
Chairperson

COUNCIL MEMBERS:

Corey D. Johnson
I. Daneek Miller
Peter Koo
Costa Constantinides
Ruben Wells
Chaim M. Deutsch

A P P E A R A N C E S

Council Members:

Peter Koo
Corey D. Johnson
Chaim M. Deutsch

A P P E A R A N C E S (CONTINUED)

Lisette Camilo
Director of the Mayor's Office of Contract
Services

Ezra Polanski
Deputy Director of Research, IT

CHAIRPERSON ROSENTHAL: Good morning. My name is Helen Rosenthal; I am the chair the City Council's Committee on Contracts. I would like to welcome you to today's discussion of Local Law 18 of 2012 and more generally the issue of cost overruns on large city contracts. Thank you all for attending. The mass quantity of humanity out there.

Umm, before we proceed, I would like to recognize the council member whose present today, Council Member Koo. Thank you for joining us and also if you are interested in keeping in touch with the committee regarding the issues that we will be discussing today, feel free to leave your contact information on the sign-in sheet on the table, and I would encourage you to do so. This is an issue that we'll be working on for a long time.

For those of you who are unfamiliar with Local Law 18, here is a little background.

In 2010, the U.S. Attorney's Office for the Southern District of New York, filed a complaint against city contractors alleging the largest fraud perpetrated against the city in its history. The subject of that fraud was CityTime, a timekeeping system whose project costs soared from \$63 million to

1
2 over \$700 million. I'm sorry; I'm just looking at
3 those numbers and thinking about all the afterschool
4 programs and pre-k programs that could have been
5 funded from that.

6 Just yesterday I read in the New York
7 Times, that three of the SAIC contractors involved in
8 the scandal were indeed convicted of corruption and
9 are potentially facing prison sentences ranging from
10 40 to 105 years. That scandal shined a light on
11 massive cost overruns and delays that plagued a
12 number of other large city projects. The Council
13 passed Local Law 18 in 2012 to improve the timeliness
14 and quality of the council's oversight of these
15 projects. Local Law 18 requires the Mayor to notify
16 the Council about cost overruns on contracts in
17 connection with large projects as those increases
18 occurs. When the council passed Local Law 18, we
19 hoped that timely notice when contract costs started
20 to creep, would allow us to better monitor projects.
21 Essentially, that the legislation would provide a
22 sort of safety net to oversee contracts that begin to
23 fall through the cracks, but we also recognize that
24 the best way to limit cost overruns is to tightly
25 manage contracts, so that projects stay on budget.

To that end, we hope the law would lead agencies to be more circumspect about their planning and management of contracts for large projects.

We also hope that the law might prompt the city to take a step back from the details of any one particular over budget project, to more comprehensively review its management of large contracts.

Today we hope to explore the larger questions that the Local Law 18 overrun reports raise. Does the City have a management structure in place to effectively oversee its contracts? What protocol exist, to contain runaway project costs? These are not small questions, millions of taxpayer dollars that are vulnerable to wasteful spending, are at stake. We hope that the Mayor's Office of Contract Services will help us shed light on those issues today.

But before we hear from MOCS, if you'll allow me a moment? Lisette Camilo is no stranger to this committee. For three years, Lisette served as counsel to the committee and over the last three years she has testified numerous times in her various roles at MOCS, but today is special, I am thrilled to

1
2 have Lisette testify this morning for the first time
3 as the newly appointed Director of the Mayor's Office
4 of Contract Services. Lisette, on behalf of the
5 committee, congratulations, we look forward to
6 working closely with you and your staff in the years
7 to come. Umm and I also, just wanted to thank my
8 staff, Tim Madisoff (phonetic) and Shannon Manigolt
9 (phonetic) for helping me, for more than helping me
10 prepare for today's hearing. Umm, you both know that
11 this wouldn't have happened without you. So thank
12 you very much.

13 So, right now, let's here from the
14 Director, and thank you again for being here, we can
15 begin whenever you're ready.

16 DIRECTOR CAMILO: Good morning Chairperson
17 Rosenthal and members of the City Council. I just
18 wanted to take one second before I jump into my
19 written testimony to say thank you very much for
20 those lovely remarks. I'm very excited to be here as
21 the incoming Director. MOCS and the Committee on
22 Contracts have a long history of working very closely
23 together and I am very excited to continue with that
24 practice. I now very much look forward to working
25 with you and committee Shannon and Tim and the rest

1
2 of the committee members. So that was just my little
3 personal statement before I jump into the written
4 testimony.

5 I am currently, acting General Counsel but
6 I am the incoming Director of the Mayor's Office of
7 Contract Services and today I am joined by Ezra
8 Polanski (phonetic) our Deputy Director for Research
9 and IT. Thank you so much for the opportunity to
10 testify today about Local Law 18 of 2012.

11 Local Law 18 requires MOCS to develop a
12 list of contracts that meet the conditions for two
13 reporting requirements. The first category that we
14 report on is for capital contracts registered with an
15 initial contract value of more than \$10 million with
16 a modification that exceeds the initial contract by
17 20% or more. The second category that we report on
18 includes previously reported contract with subsequent
19 modifications that exceed that last reported value by
20 10% or more. Once MOCS identifies the contracts in
21 the two categories we send the list to the respective
22 agencies to provide an explanation of the changes. A
23 completed list is then compiled and sent to the
24 council every quarter. This law was enacted to track
25 and provide greater clarity and transparency on the

costs of capitally funded contracts, promote accountability and provide agencies with information that would help with oversight. These are the goals that we share with the Council.

As you know, MOCS' primary purpose is to insure 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 contract at city agencies is the Agency Chief Contracting Officer or ACCO, who's responsible for performing the procedural steps related to the procurement and whom we oversee. The ACCO works with other divisions within the agencies, including the program division which is the part of the agency with the substantive experience to determine what goods or services the agency needs in order to fulfill its mission. As well as the fiscal or budget division, which is a section of the agency dedicated to insuring that the agency's mission is fulfilled at a reasonable cost and within the bounds of the funding, allocated by the Council and the Mayor.

Once the contract is awarded, the role of the ACCO and MOCS is greatly reduced. As the

contract management is taken over by the program division exclusively, the information that we compile as a result of Local Law 18 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, but in an effort to assist in disseminating the information beyond the ACCO's office, it has always been our practice to share this report with City Hall.

The information contained in the Local Law 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

revealed a broad range of reasons for increases to contracts maximum amounts, including scenarios where the increases were unforeseen or where budget neutral or benefit of city, or reveal room for improvement in contracting planning or management.

In reviewing the 204 entries that have been reported as part of complying with Local Law 18, found that a significant number of the items reported were the result of changes that could not 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 Local Law 87 of 2009 to reduce greenhouse gas emissions. Changes to the City's MWBE programs required under Local Law 1 of 2003 and changes to the fire code resulting in building wide sprinkler systems as well as unforeseen conditions such as the removal of hazardous material, including asbestos and mercury, contaminated soil conditions, anticipated subsurface conditions and structural remediation. All of the increases in these contracts were conditions that could not have

1
2 been foreseen at the time that the contracts were
3 bid.

4 Additionally, many of the items included in
5 past reports were technical changes that did not
6 impact the budget of the project, but changed the
7 contract value. For example, for instance a contract
8 may be reassigned from one agency to another or it
9 may be registered with a Controller in two different
10 stages. An additional example is the Manhattan
11 Garage Contract. The original contract was
12 registered by the Department of Sanitation but later
13 transferred to the Department of Design and
14 Construction. The funds for the contract were
15 transferred over in two ways, showing a contract
16 modification that looked like an increase, but was
17 really a transfer of funds between agencies done in
18 two steps.

19 There may be changes to the contract that
20 are budget neutral, that save money or even generate
21 money. For example, the red light program was so
22 successful in increasing safety for motorists and
23 pedestrians in its initial scope, that additional
24 cameras were added to the contract. Those additions,
25

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 little or as much 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 is 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, significant steps have been taken to centralize and control costs.

In 2012, the City Technology Development Corporation, TDC, was established by the City as a not for profit corporation to oversee and insure

1
2 efficient and effective implementation of the City's
3 most critical and complex information IT projects.
4 TDC is currently staffed with highly qualified and
5 experienced IT professionals providing project
6 management and citywide oversight of major IT
7 projects. TDC works closely with client city
8 agencies and the Department of Information Technology
9 and Telecommunications. The City's umbrella
10 technology agency to insure all aspects of a project
11 have appropriate support from inception to execution.

12 In general, projects overseen by TDC will
13 have a budget of over \$25 million and involve
14 multiple agencies or constitute mayor priorities.
15 The corporation will oversee design, vendors,
16 installation and training, providing a common
17 framework, tools, best practices and diagnostics for
18 on time and on budget IT project delivery. TDC has
19 already had a significant impact on IT projects
20 across the city and is expected to save the City up
21 to \$5 million annually compared to the cost of
22 engaging private project management and quality
23 assurance consulting services. Similar efforts have
24 been made for procurement in the construction arena.

In December 2006 construction agencies began awarding contracts using Quality Based Selection 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 qualification 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 the 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 Local Law 18 reports were solicited prior to the implementation of QBS for construction and construction related vendors. Similarly, in 2009 the City began using Pre-Qualification Lists from which to award contracts. A PQL allows an agency to review the qualifications of a company and deem it qualified

1
2 to do the work before solicitations are issued. An
3 agency compiles a list of such vendors and limits
4 competition and award of certain work to those that
5 are on the PQL. By establishing lists of pre-
6 qualified contractors in specific construction
7 specialties and limiting the competition to only
8 those contractors. TDC for example has started
9 seeing better results. One example of success in
10 using PQL's was from multiple room replacement
11 projects. This bid was solicited to a pre-qualified
12 list of vendors with acceptable experience in
13 specific roofing systems and contracts have come in
14 on or under budget.

15 The Local Law 18 reports provide greater
16 insight about modifications on contracts associated
17 with capital projects. As mentioned above, the public
18 scrutiny on contracts included in the report due to
19 preventable reasons is a motivating factor for
20 agencies to evaluate their contract planning and
21 management methods.

22 As I settle into my new role, I will work
23 to identify other ways to leverage the information in
24 the reports to assist agencies in such evaluation.
25 In the meantime, the work performed by the TDC,

1
2 fuller engagement of QBS and increased usage of PQLs
3 will yield greater success in cost containment, which
4 should be reflected in future Local Law 18 reports.

5 We look forward to working with the council
6 to find additional ways to help further contain cost
7 overruns and at this time I would be happy to answer
8 any questions the committee may have.

9 CHAIRPERSON ROSENTHAL: Thank you Lisette.
10 I have to say I really love that last sentence, "In
11 the meantime the work performed by the TDC, fuller
12 engagement of the QBS and the increased use of PQLs".
13 Alphabet soup. Terrific, thank you.

14 Just real quickly, in regards, there was
15 one in particular that you mentioned, the IT. I'd
16 like to welcome Council Member Johnson and Council
17 Member Deutsch. Thank you for joining us this
18 morning.

19 DIRECTOR CAMILO: Let's see, on page four.
20 I have a different version so I'm not sure.

21 CHAIRPERSON ROSENTHA: I'm sorry; it was
22 about the Technology Development Corporation. And if
23 you could tell me a little bit, if you know if you
24 happen to know just a little bit more about that one.
25 Because this happens to be one where we heard from

1
2 city workers, umm, who felt uncomfortable about the
3 outside, the experienced IT professionals providing
4 the project management and oversight of the major IT
5 projects? Actually, you know, it might be better.
6 Can we just flag that as one where we do some follow-
7 up because that was something that was flagged to me
8 by city workers as being one where they didn't quite
9 feel as optimistic about it.

10 DIRECTOR CAMILO: We can absolutely
11 continue that discussion.

12 CHAIRPERSON ROSENTHAL: Great. Okay. I'm
13 going to start in with the questions, unless one of
14 my colleagues would like to start. Okay.

15 So, just to start, do you, ummm. So we
16 were talking about, you mentioned it was 204
17 contracts, I think, do you have any thoughts? The
18 local law has been in place for a year, you know,
19 what are your thoughts as a new Commissioner, as how
20 you might tweak things going forward.

21 DIRECTOR CAMILO: I think that the, as I
22 mentioned in my testimony, its good information to
23 have. To see the reasons for the contract
24 modifications and from looking through kinda
25 globally, at all the different entries, it's not as

1
2 straight forward as saying, "if the contract appears
3 here, in ipso facto, it is a cost overrun". Or, you
4 know, bad management or anything like that. So I
5 think it was it certainly provides insight into the
6 varied complex world where things are, the best laid
7 plans might have a different result because of
8 unforeseen circumstances and other things that the
9 agencies can't really control. So in the sense of
10 getting a clearer picture of what's happening, I
11 think it's useful. Umm, it's not as precise in
12 flagging cost overruns and I think perhaps looking
13 for and tweaking the law to get at that, and I'm not
14 sure how you do that with the reporting tool that
15 just requires, umm, contract modification information
16 and we can certainly, you know, engage in those
17 discussions to look at other ways to get better
18 information for those purposes.

19 CHAIRPERSON ROSENTHAL: Yes, you know I'm
20 just thinking, it's almost like, umm, it's not like
21 we can really ask the agencies. Could you please
22 categorize what type of overrun this is? Legitimate,
23 legitimate or not legitimate?

24 DIRECTOR CAMILO: Right.
25

CHAIRPERSON ROSENTHAL: You know, you tell us. You can't really do that, so the question is how do you get at those and what is the... Would you be able to think about, in your mind's eye, of the 204, percentage wise, do you think you could say they're probably somewhat legitimate reasons for X percent but there were 20 that popped out at us, that we're starting to look at.

Or is that not how it works?

DIRECTOR CAMILO: Well I mean, looking through the reasons given to us, we can look and take it at face value and says, sure, you know, unforeseen circumstances, if that makes sense. That does sound like something that you really couldn't control. For the ones, where there's a question, the information that we are given is at such a high level that it's difficult for us, at MOCS we're not on the ground every day and we're not looking or experiencing what the deficiencies are. It's hard for, um, MOCS who is primarily focused on the procurement actions, umm, to make any of those evaluations or draw any of those conclusions. It takes, you know, we certainly comply with the law and see that the policy behind the law, we certainly can get behind. But the role of MOCS to

1
2 go in post award and make those evaluations and
3 determinations is a little more difficult.

4 CHAIRPERSON ROSENTHAL: Do you, when you
5 are looking at them, does sometimes, like a red flag
6 I'm sure go off and then do you pop them over to umm,
7 like DOI or do you...

8 [Interpose]

9 DIRECTOR CAMILO: No.

10 CHAIRPERSON ROSENTHAL: Do you, umm, go
11 back and ask the agency for more information, or like
12 what's even the next step.

13 DIRECTOR CAMILO: So at this point, what
14 we've done is we communicate the, we send the report
15 over to the Council, we send it over to City Hall.
16 There's nothing, no information on these reports,
17 rises to the level with such certainty that can draw
18 a conclusion that there has been fraud committed in
19 order to make a referral to DOI. We simply just
20 don't have access to that type of information, nor do
21 we have access to any information from which to draw
22 certain conclusions about whether or not it was
23 mismanagement or poor planning. We try to get the
24 informations back to the agency, which is better
25 equipped, umm, to address those issues and to folks

1
2 at City Hall who have direct oversight over the
3 commissioners and who might this report might have,
4 it might be a good place to start discussions about
5 that.

6 CHAIRPERSON ROSENTHAL: Yeh.

7 DIRECTOR CAMILO: But, past that we haven't
8 in the past, umm, been doing more than that.

9 CHAIRPERSON ROSENTHAL: Sure. So to really
10 quickly follow-up on that. So the expectation of the
11 law is that, ahh, when you send the report to City
12 Hall and to City Council, that City Council would
13 then in its oversight role, follow-up on, I can't
14 speak to City Hall, I mean hypothetically, you know,
15 someone in the Mayor's office is calling the agency
16 head and saying, "what up with that". But for City
17 Council, the intent of the law, your understanding of
18 the intent of the law could be that the City Council,
19 probably this, office, the committee in particular
20 would see a couple that would be red flagged because
21 we are just looking at it and then we might call in
22 the agency, or we would call in, or we would have an
23 oversight hearing with you and the agency to say,
24 let's look at that particular contract and see what
25 happened.

1
2 DIRECTOR CAMILO: I'm not sure that. Let
3 me backtrack. If there is particular questions that
4 arise from procurements that are listed in the
5 report, you can certainly reach out to MOCS and we
6 can certainly try and get you additional information,
7 set up meetings, to have a more flushed out
8 discussion. Absolutely, that's something that can be
9 done.

10 Whether or not, you know, the Council would
11 want to hold hearings on it, that is not for me to
12 say, but this is just public information that is
13 available that the council can do what it's gonna do.
14 But to the extent that we can have those discussions,
15 maybe not at a hearing, but at a certain offline
16 discussion with agencies, who really have the
17 knowledge and the expertise and facts behind the
18 procurements, who can better inform and answer your
19 questions. Certainly more than MOCS can.

20 CHAIRPERSON ROSENTHAL: I just, ahh.
21 Council Member Koo, did you have a question. Please.

22 COUNCIL MEMBER KOO: Thank you for coming
23 to testify. My question here today is how many
24 contracts; we have from the PVCOC (phonetic) the year
25

before, over \$10 million dollars the city awarded?

Do you know?

DIRECTOR CAMILO: I don't have that number off hand.

COUNCIL PERSON KOO: I mean roughly, you know.

DIRECTOR CAMILO: I know.

DEPUTY DIRECTOR POLANSKY: The number of contracts registered each year that are over \$10 million is fairly small, probably in the low 100s. I would guess, but we can get you that information more specifically if you want.

COUNCIL PERSON KOO: And what's the percentage of cost overrun on the contracts? 10% or 20%, or 50%?

DEPUTY DIRECTOR POLANSKY: I'm sorry; we don't have that number to hand. We could prepare something, that's a little more subtle of a question; you'd have to look at contracts from different periods, contracts that were registered this year. I'm sure very few of them are overrun, because they've just started spending. When we're talking about these large contracts, we're talking about contracts with very long time horizons. The

1
2 contracts that are reported under Local Law 18, have
3 an average life span of approximately seven years,
4 and some of them run for quite a bit longer than
5 that. So, when you're looking at this you kinda have
6 to dig a little deeper into some of the older
7 contracting if you really want to examine that
8 question. The contracts that are reported under
9 Local Law 18 are the ones that the Council felt were
10 of greatest interest because they had gone over
11 theoretically over budget for that contract by 20% or
12 more, so I think those are probably the ones that you
13 guys we most interested in focusing on.

14 COUNCIL MEMBER KOO: I assume most
15 contracts will have a cost overrun because the
16 government is paying for it. This is not only
17 happening in America, or in New York. All over the
18 world they are having the same problem. When
19 government pays for things, they always have a cost
20 overrun.

21 DEPUTY DIRECTOR POLANSKY: I wouldn't say
22 that most contracts have cost overruns. Umm,
23 certainly not without investigating the data more,
24 there are 200 reports that we've made, 200 individual
25 actions that we've reported to the Council under

1
2 Local Law 18 that it actually represents 150 or so
3 unique contracts. A few of them came back multiple
4 times, in multiple reports. So 150 contracts out of
5 a portfolio of open contracts over \$10 million of,
6 let's say a thousand or so. It's not really. I
7 wouldn't say most, that have significant cost
8 overruns.

9 COUNCIL MEMBER KOO: Another thing with the
10 most of the contracts, it's not only over costs
11 causing problems. It's the delay. When you have
12 construction work and you have a delay you have cost
13 overrun and but you also have, create a big burden
14 for the local businesses around the construction
15 area. In my district, the Murray Hill Station they
16 supposed to build a bridge over the road, and it
17 takes 10 years and finally they finished building the
18 bridge, but then find out they used the wrong
19 material and now they have a litigation. The City
20 has sued the contractor. So, I was wondering how
21 this can happen. So once the contract is awarded,
22 who monitor the progress, the construction, the
23 building department, or TDC or you guys monitor them.

24 DIRECTOR CAMILO: The contracting agency is
25 the contract manager. So they are the ones that put

1
2 together the plans, they solicited, they awarded the
3 contract, but also they manage all of the contractors
4 on a given project.

5 COUNCIL MEMBER KOO: So like I said before,
6 it's not only money from the City, but it also
7 affects the surrounding businesses. Meanwhile, these
8 small businesses, they have no parking there, for
9 years ahead. So when they complain, nobody is
10 responsible. Oh we are suing the contractors. I
11 think we have to be more responsible than that in the
12 future. Awarding contract, we have to have penalties
13 and bonuses. When you finish this project on time or
14 before, we will give you such amount bonus. It
15 happened in California after the big earthquake, they
16 had to rebuild a whole highways and the whole project
17 was finished, like a year ahead of time, because they
18 had bonuses built in so that the contractors wanted
19 to make sure they got everything done on time. So
20 when you don't have a penalty and bonuses built in,
21 the City is paying for it, so they don't care. This
22 is what happened Cedar Senai (phonetic) and all these
23 other big projects we have. Once we have a penalty
24 involved they get scared, they say let's get finished
25 on time, t

1
2 DIRECTOR CAMILO: We understand that the
3 delay always affects the surrounding communities and
4 there are certainly several instances where this city
5 has tried to expedite construction. I know that one
6 of them in particular, I think that is on the report,
7 we increased, the City increased the upfront costs in
8 order to expedite completion of the project. I know
9 that we have included damages for delay requirements
10 in the New Standard Construction Contract. If there
11 is deemed a delay that is attributable to the city
12 agency, the contractor can actually recoup some of
13 the funds, or there's a damage provision. So we are
14 working at addressing those in a systemic way. I
15 also know that, for certain IT contracts there are
16 bonuses for expedited delivery. So there are things
17 that are currently being worked on going forward.
18 Because a lot of the things as are mentioned, a lot
19 of the contracts that appear on the report are older,
20 so they might not have had the benefit of many of the
21 new or innovative ways that the City has tried to
22 address all of these concerns. But there are
23 mechanisms to address at least most of the concerns
24 that you raise.

25 COUNCIL MEMBER KOO: Thank you very much.

DIRECTOR CAMILO: You're welcome.

CHAIRPERSON ROSENTHAL: Thank you Council Member. Council Member Johnson?

COUNCIL MEMBER JOHNSON: Thank you Madam Chair for holding this hearing today and to the Committee staff for the good preparation today. I have a few questions. I appreciate you being here this morning. I think this a timely topic given that we are in the middle of budget season and we are looking at all sorts of these contracts and how they affect the city moving forward in our plans as we move forward.

When there is a vender that is going over contract, how is it determined or is there a database where vendors are flagged or if vendors are consistently not meeting the time schedule that they are supposed to, or it's looking like the money is going to be higher than the \$10 million, it is flagged in some way? If this happens consistently, are they put in special database? I know that we had a hearing on Parks, a few weeks ago and the Parks Department said, you know, they have an open bidding process, they must by procurement law, but what happens, is if you have someone who is not getting

1
2 the work done in a sufficient way, either it's not
3 done with the quality that's needed or there are
4 significant cost and time overruns. There are
5 provisions in place where they don't have to allow
6 that person to bid in the future; they get put on a
7 list. So I wanted to understand if there are
8 provisions like that for you all, as well?

9 DIRECTOR CAMILO: Yes. Sort of. So we
10 don't prevent city vendors from attempting to do
11 business. So, a vendor with a spotty performance
12 record will always be free to submit bids for
13 contract awards. We do not have a debarment
14 provision, like some other entities to. However, if
15 there is a vendor that has poor performance, there is
16 a database that contains all of the performance
17 evaluations for city contract, that's shared with all
18 of the city agencies that reflects evaluations on
19 time, reflects performance on MWBE performance, on
20 fiscal and timeliness of their requisitions. And
21 then, any other measure?

22 [Crosstalk]

23 DIRECTOR CAMILO: And quality of the work,
24 of course. Once they are weighted all of those
25 performance evaluations are uploaded in a centralized

place our VENDIX system and that's available to all city agencies.

COUNCIL MEMBER JOHNSON: What role do those evaluations play?

DIRECTOR CAMILO: I'm getting to that.

CONCIL MEMBER JOHNSON: Okay.

DIRECTOR CAMILO: So every time a city agency is about to award a contract to a vendor, they must make sure that the proposal or bid that they submitted is responsive. So they make sure that the solicitation asked for was complied with, but b. that the vendor is a responsible vendor. And responsibility is defined as having the capacity to do the work as required and the required business integrity to justify the use of public tax dollars. So the performance evaluation is one of the factors that the city agencies take into account when determining responsibility. And so, if you have a vendor with a very long history of very bad reviews, that is certainly something that an agency can decide, is material and they don't have to, in fact. They can't find them responsible and therefore skip to the next bidder.

1
2 COUNCIL MEMBER JOHNSON: Who is allowed to
3 make that decision in the city agency? Is it General
4 Counsel, is it a Commissioner.

5 DIRECTOR CAMILO: It's the Agency Chief
6 Contracting Officer. When they find a vendor non-
7 responsible, because that's the tool that you use,
8 under the current policy board rules, there are
9 appeal rules and those appeals come up to MOCS. So
10 we are ultimately, we review all of the evidence and
11 either approve or deny an appeal.

12 COUNCIL MEMBER JOHNSON: I have a couple
13 more questions. How do agencies, what are the
14 guidelines in place to control any type of, I think
15 it's called scope creep, where things are creeping as
16 part of the costs, which aren't initially determined
17 as part of the scope of the project, what is done to
18 control that?

19 DIRECTOR CAMILO: A number of things. Any
20 additions or enhancements to a particular contract,
21 and Ezra help me out if I get this wrong, is overseen
22 by the contract management as well as, I think the
23 budget, the fiscal side, so once the different
24 additions start piling up, they have to undertake an
25 evaluation to make sure it is within scope. If it is

1
2 not within scope, then we would have to amend the
3 contract in order to essentially change the terms and
4 conditions, which is a pretty large undertaking. And
5 that goes to a number of levels of review, including
6 MOCS review and ultimately controller review.

7 COUNCIL MEMBER JOHNSON: How often does
8 that happen?

9 DIRECTOR CAMILO: That I don't know. We
10 don't have numbers for that.

11 COUNCIL MEMBER JOHNSON: It would be
12 helpful to understand how often, you know, these
13 contracts are going back because initially when they
14 are granted, people are saying they are going to be
15 within a certain scope and then it changes for some
16 reason, to understand why that's happening.

17 DIRECTOR CAMILO: Sure.

18 COUNCIL MEMBER JOHNSON: If it's
19 substantive.

20 DEPUTY DIRECTOR POLANSKY: Well, that is
21 one of the things that Local 18 was intended to look
22 at and in our somewhat less quantitative, but
23 qualitative review of the answers that we've received
24 about why these contracts have expanded. We find
25 that there is really a variety of reasons.

Sometimes, there scope creep, no question, but we have seen a lot of explanations that the contract in question, got additional funding, either a grant from the State of Federal Government or additional Council funding was added to a particular project and so they increased the scope to accommodate the additionally funded items. There are also any number of contracts that ended up on the Local 18 report where they identified additional scope that they could add because they felt that it would be in the city's long term best interest, either increasing the money on the design contract, because it would save money in the construction contract, and the funds that are saved on the other contract are not reflected in the Local 18 report, so you only see the increase. Or they found a different technology, or approach, that they felt would save money in the long term in maintenance costs. When they make these findings at the agency, MOCS is not directly involved and it's a little difficult for us to second guess it, as we are not the experts in the particular field. But that is the kind of thing we are seeing in response to Local Law 18 and when you see that it's very hard to know without doing a real case by case, in depth analysis,

whether that is really something that we should be encouraging, because it is saving us money in the long term, or it might be scope creep somewhere hidden there. It's very hard to tell.

COUNCIL MEMBER JOHNSON: I appreciate the information. Thank you Madam Chair.

CHAIRPERSON ROSENTHAL: Just to follow-up actually, Council Member, if I may, I'm so, umm. I'm looking at an example that's similar to what Council Member Johnson just brought up, that was similarly hard for me to understand in reading the explanation. So fundamentally, the explanations that are provided on the sheet that goes to the public, to answer the question, why did the maximum contract value increase. The agency writes what's in that box and um, the MOCS, umm, and that's simply recorded and that's what in the document.

DEPUTY DIRECTOR POLANSKY: Yes, we review it for basic consistency and logic, but we don't have any particular insight as MOCS into the project management of those contracts.

CHAIRPERSON ROSENTHAL: May I just ask, just to be clear, is it because, you know, the agency

1
2 is not set up to do that? Is it because the agency
3 doesn't have the staff to do that?

4 DEPUTY DIRECTOR POLANSKY: It's not in our...

5 [Interpose]

6 CHAIRPERSON ROSENTHAL: It's not in your
7 scope.

8 DEPUTY DIRECTOR POLANSKY: That would be
9 scope creep for MOCS.

10 [Laughing]

11 CHAIRPERSON ROSENTHAL: Huh. Okay. So the
12 one I'm looking at, just to help me keep wrapping my
13 head around this. There was a project, a DDC
14 project, umm, really over that one? I was going to
15 do the cost saving one first.

16 Sorry, only because we were talking about
17 the cost savings one. Just for a second, but then I
18 am going to go back to the fire department.

19 But on the DDC one, umm, which was an
20 engineering design services during construction for
21 PSAC 2 which I don't understand what that is, but
22 okay. The explanation of the costs overrun is that
23 they were evaluating engineering measure which saved
24 over \$50 million in construction costs, which is
25 cool, and hypothetically that shows up in the capital

1
2 budget, somewhere and then additionally, the original
3 design scope was increased to include expanding
4 service for IT infrastructure. So hypothetically,
5 you have a contract whose original value was \$32
6 million, I think maximum contract amount, means where
7 it is today. I don't really know what that means, at
8 \$56 million. So hypothetically, it went up by \$24
9 million which includes a savings of \$50 million or
10 the \$50 million offset is somewhere else and it only
11 went up \$24 million for the IT part?

12 DIRECTOR CAMILO: Let me take that. I'll
13 start and you finish.

14 Capital projects have a number of different
15 component parts that are different contracts. On
16 this particular design contract, when it was first
17 let, it was one amount. Then there was a decision to
18 have a value engineering component to it, which
19 essentially reviews what was done and makes
20 recommendations to see if there is any other way to
21 reduce the amount of construction costs in another
22 contract. So that requires an additional expense of
23 money, to do that review, to make those
24 recommendations and to change the plans. In this
25 case, that's what happened. So the design contract

1
2 certainly went up, because of the additional work to
3 do the value engineering review, evaluation and
4 planning, but the cost savings were realized in the
5 construction contract and in the overall cost of the
6 project, which is not reflected here. This report,
7 they go by contract by contract.

8 CHAIRPERSON ROSENTHAL: And that's the \$50
9 million to somewhere else?

10 DIRECTOR CAMILO: Correct.

11 CHAIRPERSON ROSENTHAL: Do you wanna finish
12 this?

13 DIRECTOR CAMILO: I finished it apparently.

14 CHAIRPERSON ROSENTHAL: Can you just keep
15 going, so that cost of value engineering was \$24
16 million?

17 DIRECTOR CAMILO: And here's where there is
18 a deficiency. MOCS knows that this stuff at a higher
19 level. We don't have the expertise to go back. To
20 know the information about what component part of the
21 increase was allotted to the different actions that
22 were taken. We can certainly look into that for you,
23 and get that information to you.

24 CHAIRPERSON ROSENTHAL: Sure.

25 DIRECTOR CAMILO: We happily can do that.

CHAIRPERSON ROSENTHAL: Because again, what's happening here, just to sorta think out loud about what you said in response to my first question, what's happening here is that we're doing what Local Law 18 envisioned. You've sent over the report, we're now looking at the report, it's an oversight committee and we're saying to you, huh. And you're saying, yeh, let's look into that.

DIRECTOR CAMILO: And we'll help you get that information, absolutely.

CHAIRPERSON ROSENTHAL: Okay. Thank you. I'm going to pass this over to Council Member Deutsch. But just really quickly, did you happen to notice that one before this hearing? Did that one pop out at you? By any chance, do you recall, or someone on your staff. Did anyone flag that one? I'm just curious. Because it was \$24 million, which again is a lot of after school programs.

DIRECTOR CAMILO: The project itself was something that MOCS has a lot of involvement with because it's the police academy project. Um, for a number of reasons, and I think that when those decisions were made, or office, I'm sure had some involvement.

CHAIRPERSON ROSENTHAL: Wait, I'm sorry, so your office was involved in this?

DIRECTOR CAMILO: So the PSAC is a very big project that has been going on for a while, and so I think that office historically has been involved in trouble shooting certain contract issue. If not for this particular report was it something that we got involved in and asked what about the cost overruns, or what does this mean? But in general, I think that MOCS had discussions with DDC on this project in general. I can't speak to what specifically we worked on, but it was certainly on our radar.

CHAIRPERSON ROSENTHAL: So I know that this is day two for you, so, but I know you've been there for a long time also. So which division within MOCS would be working with DDC on a regular basis, or is there an individual?

DIRECTOR CAMILO: It depends on what the issue is.

CHAIRPERSON ROSENTHAL: This particular one. I'm just curious.

DIRECTOR CAMILO: For this one?

DEPUTY DIRECTOR POLANKSY: I assume that when the initial contracts were let, the team at MOCS

1
2 that reviews procurements was involved in making sure
3 that they were all let appropriately. When changes
4 are made to contracts, above certain dollar
5 thresholds, those come back to MOCS as well for
6 review for procedural adherence. Procedural
7 requisites, I'm sure that would have come as well.

8 CHAIRPERSON ROSENTHAL: So did this one
9 come back to you for procedural?

10 DEPUTY DIRECTOR POLANSKY: I'm sure it must
11 have. I didn't see it. I'm not in that part, but I
12 believe it did. I am pretty sure that this project
13 overall has been on City Hall's radar, although there
14 different people at City Hall for a number of years.

15 CHAIRPERSON ROSENTHAL: Just by chance, is
16 there anyone from your office here who might have
17 been involved in it.

18 DIRECTOR CAMILO: It's just a different
19 division.

20 CHAIRPERSON ROSENTHAL: I don't know MOCS
21 as well.

22 DIRECTOR CAMILO: I mean I think that, for
23 example, any of the change orders. We review certain
24 change order, like Ezra pointed out, for procedural
25

reasons. And those definitely went through our procurement review unit.

CHAIRPERSON ROSENTHAL: Okay.

DIRECTOR CAMILO: You know we have a labor unit, dedicated to that. That's what we might have seen worked on those issues related to this particular project.

CHAIRPERSON ROSENTHAL: So just in getting to know each other, this is the kinda thing that doesn't pass the smell test for me. Umm, this is the kinda thing I look forward to exactly following-up on. Because, just reading the language, which I know is not fair, but just reading the language here, you know, the cost of doing the value engineering was \$24 million. Whatever firm that was, that did the value engineering, wow.

Okay, I'm going to pass it over to Council Member Deutsch.

Sorry, I'd just like to recognize Council Member Constantinides who is here, welcome. Thank you.

COUNCIL MEMBER DEUTSCH: Thank you Chair. I think that one of the best ways to prevent cost overruns or a way to have some type of oversight is

1
2 to have an online process with, not only elected
3 officials, but the public can view on any given
4 project, where the project is holding, how much money
5 was spent, what the deadline is. You know, we as
6 elected officials, we give our millions of dollars in
7 capital money with contracts and like the Chair just
8 mentioned, with twenty plus million dollars in
9 design. You know when the public sees twenty plus
10 million for design on a project, they will start
11 questioning and we have to get back with answers. So
12 I think that when you're talking about millions and
13 millions of dollars, we should have some type of
14 online process where the public can view of where the
15 project is holding, how much money was spent, when
16 the end date it, when the completion date it. And
17 this way we have some accountability and oversight of
18 how the money is spent and where the money was spent.

19 DIRECTOR CAMILO: I think that it would be
20 great to have an online portal of information where
21 you can check in to see status. That would be great,
22 not only for the elected officials, but for city
23 officials as well. You know, it's a very large...

24 [Interpose]
25

1
2 COUNCIL MEMBER DEUTSCH: But if you just
3 take off a few million from the \$24 million on the
4 design of the project, we have enough money to spend.

5 DIRECTOR CAMILO: You're gonna need more
6 than a couple of million to set that platform up.

7 COUCIL MEMBER DEUTSCH: You can cut it down
8 from \$24 million and go down half. Maybe less.

9 DIRECTOR CAMILO: And it would still need a
10 number of millions of dollars more to complete a
11 project that complicated and widespread. But you
12 know, we agree with you. That would be a very large
13 IT undertaking. Yeh. But that would be a great
14 tool. You're right. But right now we don't have the
15 funds to build that system.

16 COUNCIL MEMBER DEUTSCH: So in other words
17 that would be a good way to have oversight on how the
18 money is spent.

19 DIRECTOR CAMILO: Any information that is
20 presented in a public way, I think it would be
21 helpful for the public. Sure, we're not. Yes,
22 absolutely. We just don't have that functionality
23 right now. And to bring something like that online
24 is quite a large undertaking.
25

1
2 COUNCIL MEMBER DEUTSCH: This is something
3 we need to work on.

4 DIRECTOR CAMILO: Sure.

5 COUNCIL MEMBER DEUTSCH: This is gonna save
6 us money. Thank you.

7 [Pause]

8 CHAIRPERSON ROSENTHAL: Sorry about that,
9 I'm in the middle of another project, so I apologize.
10 I'm just gonna continue if that's alright. Thank
11 you. And that's something that we took notes on, so
12 I would really like to follow-up with you about and
13 work with you on.

14 So, it's interesting to hear about the
15 Police Academy, it sounds like to you have a role in
16 the procurement process of that. Is that considered
17 one of the major contracts that you would have? So
18 what are the criteria for contracts where you have an
19 active role? Like, so you have an active role in
20 that one, in watching it and looking at the...

21 [Interpose]

22 DIRECTOR CAMILO: We look at a change order
23 that is above 10% over the contract value. Right?

24 CHAIRPERSON ROSENTHAL: In the procurement
25 department?

DIRECTOR CAMILO: Yes the Procurement Review Unit.

CHAIRPERSON ROSENTHAL: Sorry, right.

DIRECTOR CAMILO: But we check to see to make sure all of the paperwork is there and that the justification for the change order all fall within scope of the original contract. So that's the extent to which we review that process. But in terms of providing an opinion asked to the appropriateness or the decision making in pursuing additional funds, we don't, that's not what our process focuses on.

CHAIRPERSON ROSENTHAL: Hmmm. So an increase could fall within scope and within scope in a way is language, its words, right?

DIRECTOR CAMILO: Not just words. For example, the Requirements Contracts, we have a scope that is not defined for the project but rehabilitation of homeless shelters, I'm making this up right. And a certain amount is dedicated to the contracts when it's registered. Those estimates for requirements contracts are just estimates and if within the term of the contract more work is needed than anticipated at the outset, then there is a request to add money into the contract, using change

orders. They're all the subsequent work has to do with rehabilitating that homeless shelter.

CHAIRPERSON ROSENTHAL: That scope. But is anyone looking at the justification for the change order. Is that happening? Are you expecting that that happens at the agency level? I mean, what if, the change order falls within the scope, but is speculative?

DEPUTY CAMILO: That review does not happen within MOCS. I believe that review happens at the agency level and I believe OMB.

CHAIRPERSON ROSENTHAL: And the controller?

DEPUTY CAMILO: No? Maybe.

CHAIRPERSON ROSENTHAL: Umm. So, in a Requirements Contract like that, um, would there be a situation where you would request or the procurement unit would request that instead the agency bid out that new component.

DEPUTY CAMILO: That's a business decision for the agency to determine. If there is a contract within its terms, so it's an open contract, it hasn't expired, we're still under a contractual relationship with the vendor and that work falls within scope, we don't opine as to whether or not they should re-bid

1
2 or not, because it is still a vehicle that they can
3 use.

4 CHAIRPERSON ROSENTHAL: Lisette, may I beg
5 your indulgence for a moment or longer? It just so
6 happens that today I am in the final throws of the
7 negotiation for a land use deal in my district and
8 apparently it's being considered not over at the
9 Chambers. And, I postponed it as long as I possibly
10 could, but I really need to get over there. I don't
11 know what the process is for this, but is there a way
12 to put this hearing, press the pause button, for an
13 unspecified amount of time, and come back where we
14 will perhaps, anyone, I'm making this up, who wants
15 to come back, leave your cell phone number and we'll
16 give you a call when we resume. Because I can't even
17 say it's going to be half an hour. The lawyers are
18 writing up language on this deal and there is another
19 hearing in here at 1:00. I don't know what to do.
20 Hang on.

21 [Pause]

22 CHAIRPERSON ROSENTHAL: I think we're going
23 to do both of those things. I think we're going to
24 adjourn the hearing for now. Just adjourn. I'd like
25 to continue this hearing, umm, next week. Uhh, but

1
2 in the meantime, maybe we can start to follow-up
3 offline on some of these things. I really am so
4 sorry. Thank you for your indulgence.

5 [Pause]

6 CHAIRPERSON ROSENTHAL: So this hearing is
7 recessed. You will be the first witness to be called
8 up as soon as you can be called up and I thank you
9 for coming George, cause I know it was a hardship.
10 Thank you.

11 [gavel]

12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify there is no relation to any of the parties to this action by blood or marriage, and that there is no interest in the outcome of this matter.



Date 05/05/2014