

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON HOUSING AND BUILDINGS JOINTLY WITH
COMMITTEE ON CONTRACTS

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April 21, 2015
Start: 01:40 p.m.
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HELD AT: Council Chambers - City Hall

B E F O R E:
JUMAANE D. WILLIAMS
Chairperson

COUNCIL MEMBERS:

ANTONIO REYNOSO
ERIC A. ULRICH
HELEN K. ROSENTHAL
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ROSIE MENDEZ
YDANIS A. RODRIGUEZ

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

Carrol Turner

Lafandra Brown

Ithier Lopez

Maritza Silver Ferrel
Coordinator
Real Affordability for All

Vicki Been
Commissioner
HPD

Parris Simmons
Local 79

Xavier Givens
Local 79

Nicole Vecchione
Researcher
Laborers Union

Melissa Shetler
Community Organizer

Johnny Zeda

Glenn Hatcher
Vicinity District Council of Carpenters

[gavel]

CHAIRPERSON WILLIAMS: Good afternoon

everyone and thank you for coming. Thank you also for your patience. My name is Council Member Jumaane Williams, Chair of the Committee on Housing and Buildings, Co-Chairing with Council Member Helen Rosenthal who is the chair of Contracts Committee. I'm also joined by Council Members Cornegy, Ulrich, and Koo. As we are all aware the mayor's housing plan seeks to create or preserve 200 thousand units of affordable housing over 10 years. The administration estimates that 194 thousand construction jobs will be created in order to meet these ambitious goals. And has further stated that it is committed to ensure that these jobs will be quality jobs with fair wage, fair wages. I'm sorry we're also joined by the, the public advocate who I forgot to mention council Tish James and by Constantinides. Sorry about that Madam Public Advocate. We are here today to discuss those jobs and the developers who receive city subsidy for affordable housing developments across the city. Specifically we will learn more about the city's oversight and accountability measures

related to wage violations by affordable housing developers and what efforts are made to mitigate these harms. I think we can all agree that developers and contractors who have wage violations or similar labor law violations should not continue to receive taxpayer funds in the forms of contracts and subsidies. Just this month we learned that five construction contractors working on New York City public works projects were arrested on charges that they underpaid their employees nearly one million in wages and tried to operate kickback schemes. More egregious cases like this have come to light this year alone. So I'm interested in learning how we combat such bad actors. The women and men risking their lives every single day at various construction sites not only deserve a safe working environment but also deserve to be paid the full wages they are entitled to on a consistent basis. In light of the increased availability of minority women owned developers who could be used, it is not clear why the city would continue to approve and renew contracts with developers, contractors, and subcontractors who have proven time and time again that they cannot be trusted to be reliable stewards

of public funds. On that note the committee expects to learn more about the administration's enhanced review procedures for these contractors and developers. I'd also like to hear about how the administrations work, actively working to engage... developers and contractors... moves forward with implementation of the housing plan. In just a moment I'm going to have Council Member Rosenthal give her opening. I did want to set some expectations. We are primarily going to be one... the administration give us a overview of how the RFP process works discussing many of the issues with wage violations and how we deal with bad actors. There are other issues that have to do with contracts most prevently when it comes to MWBE, prevailing wage versus unions to name a few. Those issues for the most part will be discussed hopefully at another hearing. These are very robust discussions and I want to make sure we have enough time in each of these hearings to cover them all. So I just want to set expectations of what we can expect to get out of this hearing today and what we cannot. So I'd like to call on my co-chair Council Member Rosenthal.

CO-CHAIRPERSON ROSENTHAL: Thank you very much Co-Chair and Chair of the Housing and Buildings Committee Jumaane Williams. I appreciate your holding this hearing. I'm Helen Rosenthal, Chair of the City Council's Committee on Contracts. And I'm pleased to join you in holding today's oversight hearing on the labor practices of housing developers who contract with the city. But as we saw most recently and as you mentioned have subcontractors who do not pay their workers. Most in particular the masons, the carpenters and in scaffolding. There are laws and regulations in place to prevent unfair labor practices such as wage theft and to ensure that employers, especially those contracting with the city are treating their workers fairly and equitably. Notably the city is required to contract exclusively with businesses that are deemed responsible and in compliance with labor laws. Obviously responsibility means that the city contractors perform not only their duties but that their subcontractors perform their duties with integrity and reliability to assure good faith performance. Recent instances of wage theft suggest the city has failed to ensure that contractors in

the construction industry are abiding by the state law or that these contractors are making sure that their subcontractors are abiding by state law. As Council Member Williams noted just this month the attorney general identified five contractors who neglected to pay their workers properly. And when they are made to do so will owe millions of dollars in back pay for, to those workers who have constructed affordable housing in our city. As we work to develop the mayor, as we work to develop more affordable housing in the city we need to ensure that such developments are not built on the backs of workers who are being paid below the prevailing wage or not paid at all. And although the city is limited in its ability to enforce labor laws which almost entirely fall under the state's jurisdiction it's imperative that we identify such injustices to hold city contractors and the subcontractors accountable and to prevent contracting with these developers in the future. Give the, given the magnitude of this issue we look forward to hearing from the Department of Housing and Preservation and Development and the Mayor's Office of Contract Services to discuss their plans

to identify such egregious behavior and prevent wage theft in other unscrupulous business practices among contractors as the mayor's housing plan moves forward. I thank you all in advance for your testimony and especially to those workers who have come out today who are going to share their stories of the realities of what it's like working for such subcontractors. I expect this hearing will help us identify solutions to the problem of wage theft in our city. Thank you.

CHAIRPERSON WILLIAMS: Thank you co-chair. I'd like, I think the public advocate has an opening statement she'd like to make.

PUBLIC ADVOCATE JAMES: Thank you Chairpersons Williams and Rosenthal for the opportunity for, to allow me to participate in today's oversight hearing. I'm somewhat disappointed that the administration is not here. I understand that they will be here at a later hour but I wanted to hear the testimony from the administration, from MOCS as well as HPD but unfortunately I have another meeting scheduled at this hour. I will follow up with the administration to discuss my concerns which are included in this,

in my brief remarks. By now we have all seen JDS Development and Property Markets Group 111 West 57th Street development. This building is a symbol of missed opportunity for union workers as well as a glaring safety hazard. Why is all this important? Because of the poor track record of subcontractors hired to work on this project. For example Parkside Construction, a non-union concrete contractor was hired by JDS. And last September as we all know a Parkside worker was killed after a concrete slab fell on him while he was working on a 37th Street hotel development. At another site in my former district at 81 Fleet Place in Brooklyn the Federal Department of Labor issued 11,900 dollars in fines because the company lacked safety equipment. And there was the New York state lawsuit against Parkside from 2013 for failing to pay more than 174 thousand dollars in workers compensation insurance. In January I wrote to these companies; JDS and PMG and at the top of the list of my concerns was the need to establish strong safety protocols at the 57th street site. I noted that JDS and PMG must only consider hiring contractors with the highest standards on safety. Outstanding complaints or

violations as well as any troubling accidents or incidents must be considered when choosing which contractors will be hired to work on the site. And their response to my letter was that they respected my comments on work place safety and noted that the ownership of 111th West 57th has established a track record when it comes to successfully completing complex structures. But my concern was not over the owner. It was over non-union subcontractors hired by the owner. As we move forward with the mayor's housing plan we must ensure that developers only hire contractors with the highest standards on safety and that outstanding complaints or violation are considered. You see I know a little bit about this because in my former district as part of the redevelopment of downtown Brooklyn as you can recall when I was the city council member I recall a number of fatalities and incidents of non-union workers. In fact my office as long, along with the community that I represented had to bury quite a few of them. Non-union job sites are statistically more dangerous. A building trades employees association study found that 65 percent of stop work orders issued by the city's building

department and 75 percent of recorded fatalities on construction jobs nationally come on non-union projects. And while I support the mayor's housing plan and while I support the effort to rezone parts of the city we much remember that to achieve the goals set forth in this plan we will need to increase density. But safety cannot be compromised when density is increased in any type of development from West 57th to Pitkin Avenue. We must stop having to count how many workers will die in our city before developers learn that cutting corners is blatantly unacceptable public, is an unacceptable public safety hazard. And finally I'd like to bring up the minority and women owned business enterprises as a component of the mayor's housing plan. As most of you know I've urged this administration to hire a chief diversity officer and I've been very critical of this administration with respect to their performance as it relates to WMBEs. In minority and women's businesses can be used as a pathway to success and as a means to address income inequality in the city. It is imperative that HPD follows through on its commitment to promoting the participation of WMBEs

in the development and management of affordable housing subsidize, subsidize, subsidize under city sponsored programs. My hope is that HPD requirement for all developers receiving HPD financing to submit WMBE utilization plans is a requirement that ensures this pathway is actually created. It is also my hope that records on WMBE utilization rates will be shared in a timely manner and easily accessible to the public as well as to the two chairs as well as the members of these two committees so that we can work together to ensure compliance. Again I thank Chair Williams, I thank Chair Rosenthal, and I thank all of the members of these two city council committees for indulging me. And I thank you for the opportunity to be here today. Thank you.

CHAIRPERSON WILLIAMS: Thank you Madam Public Advocate. We've also been joined by Council Members Rodriguez, Levine, Crowley, Deutsch, and Miller. Thank you again for your opening statements. I'd like to thank my staff for the work they did to assemble this hearing including Nick Smith my Deputy Chief of Staff, Jen Wilcox and Shejuaday Codray [sp?] councils to the committee,

Guillermo Patino and Jose Conley [sp?] Policy Analyst to the committee, and Sara Gastelum the committee's finance analyst. With that said we're going to call up our first panel. This is a panel of affected workers. Maritza Silver Farrel Real Affordability for All, Carrol Turner, Lafandra Brown, and Ithier Lopez. Can you all raise your right hand please? Do you affirm to tell the truth, the whole truth, and nothing but the truth in your testimony before this committee and to respond honestly to council member questions. You can begin. We'll set the clock for three minutes and you can begin at your leisure.

CARROL TURNER: Hi, good afternoon. My name is Carrol Turner. I work with, I work 13 years with... affiliated companies... affordable housing. And I'm here today just to enlighten you, the council members, on what is going on. We've been rob from our pay prevailing wages job, mistreated, verbal abuse, racial abuse, but what I'm here mainly about is that the HPD people are affiliates, always give this family owned company subsidies off our own taxpayers money to cheat us. We have been disbarred from doing prevailing wages job before, changed the

company name and comes back. The same name, the family name doesn't change, only the company name. Still they do affordable housing job and rob us of our, of our wages. And it's been going on 13 years I've work with them. And just for one example sun, last Sunday I was going over my paystub for prevailing wage job. And just 12 months those family just buy me a loan. I have lost 7,800 dollars roughly checking, and that's for one year. And this is been going on for 13 years of.. and they've been getting jobs as subcontractors and being doing that for years. Isn't, I think it is time for HPD, the city council members and who so ever is in charge to take a deep look at these people to know that we get up every morning. We go out there, leave our family who is depending on us to, to provide for them. And when we work so hard we lost our money which is wage theft which is not right. It can't be fear between man or god. And there's two things; greed and need. The greedy and the needy is two totally two different person. And my boss is not needy. He's a very very greedy person. The Auringer family is a greedy family and I'd like you, sincerely I beseech and ask you to

look deeply to those people so they can be all
accountable, all them accountable for what they've
been doing to us as workers who, who've been
working for, for this, for this family owned
company for all these years. And I ask you for your
help here today. Please help us, look into it and
help us. Thank you very much.

[applause]

CHAIRPERSON WILLIAMS: So...

[applause] [gavel]

CHAIRPERSON WILLIAMS: We are, try our
best to keep it down so we do one of these if you
appreciate what's being said.

LAFANDRA BROWN: Hello good afternoon.

My name is Lafandra Brown. I also have worked for
the Auringer companies and its affiliated companies
for almost a year. And on these jobs with this non-
contractor I have received the same treatment that
my co-workers have endured as far as wage theft. My
vision has been impaired. I can barely see you now.
I've been racially discriminated against. I've been
called monkies. I've bit spit at. I've been
sexually assaulted by company management amongst a
number of other things. It is, it, it's mind

boggling how the city and the state keeps funding a company like this. These are the abuses that we receive out there every day not knowing if we're going to make it home. We have to stop. We need your help. You have to stop this guy. He's abusing and he's killing us out there.

ITHIER LOPEZ: Good afternoon. My name's Ithier Lopez. These are my fellow strikers. I'm been affiliated with the Auringer family for 10 years. And just to touch on some light basis safety issues and safety training and safety precaution. These guys, they don't take no safety measures. They don't train their, their workers. I'm an example. They put me on a job. They told me follow the next guy. I fell off a building and impaled a rebar through my hand. They have no regards to safety like in jobs like to the community. And like Carrol and Lefandra says, wage theft. We've been misclassified on prevailing wage job. We've been robbed our wages weekly. And this is not just a story we're telling. I've been on strike going for a year. And like Carrol and Lefandra says we need you guys' help and we're out here. We're standing for what we believe in and this is it. Thank you.

MARITZA SILVER FERREL: Good afternoon.

My name is Maritza Silver Ferrel. I am the coordinator of the Real Affordability for All Coalition. We are the largest coalition of tenants and workers fighting for affordable housing and good union jobs. I would like to thank the committee for the opportunity to testify today.

They, real affordability for all coalition is committee, committed to ensuring that we address the growing affordable housing crisis using numerous strategies including building new units and preserving existing affordable housing. Sorry. With particular emphasis currently on those in New York City Housing Authority and the Rent Stabilization system from our perspective new affordable units are desperately needed. But they should not be built by developers who use contractors that have a history of stealing from their workers. Indeed one of the major reasons why there is a such a affordable housing crunch in New York is because workers aren't making enough to be able to afford their rent and basic needs. That is why we must avoid developers like Mountco which uses contractors that were recently arrested after

an investigation by Attorney General Eric Schneiderman and Department of Investigation Commissioner Mark Peters determining that they had stolen wages from its employees when doing work on the Sugar Hill house in Harlem. We need to take a hard line against Mountco, on other developers that have business with the city. And at the time, at the same time pray on the workers. It is imperative that as we undertake a great effort to build affordable housing that this city needs we do it in the right way. Developers like Mountco who have a history of working with contractors with track record are breaking the law have simply shown that they do not know how to build the right way. I will like to thank you again for the opportunity to testify this afternoon and will look forward to continuing to work with the city council and administration so we can jointly ensure that workers with good union jobs construct housing that is actually affordable to the majority of New Yorkers. Thank you very much.

CHAIRPERSON WILLIAMS: Thank you very much for your testimony. The, the three workers

work for the same company? And what was the name of the company and the family?

CARROL TURNER: It's, the, the, the family name is Auringer, A U R I N G E R. And it's Thomas, Dave, and Michael.

CHAIRPERSON WILLIAMS: Thomas, Dave, and Mike. And spell Auringer again please.

CARROL TURNER: A U R I N G E R.

CHAIRPERSON WILLIAMS: G E R.

CARROL TURNER: Yeah. And those company, when I start working with them they were Super Structure then it's New York Plank, New York...

CHAIRPERSON WILLIAMS: Sorry just let's, let's go through the companies. When you first started it was what?

CARROL TURNER: Super Structure.

CHAIRPERSON WILLIAMS: Super Structure.

CARROL TURNER: Yeah.

CHAIRPERSON WILLIAMS: And then it was.

CARROL TURNER: Then it was New York Plan.

CHAIRPERSON WILLIAMS: New York...

CARROL TURNER: Plan.

CHAIRPERSON WILLIAMS: Plan?

CARROL TURNER: Yes.

CHAIRPERSON WILLIAMS: Okay.

CARROL TURNER: New York Pre-cast.

CHAIRPERSON WILLIAMS: New York Pretax?

CARROL TURNER: Pre-cast.

CHAIRPERSON WILLIAMS: Precast.

CARROL TURNER: Then you have... Urban
Directors. That's the, that's the name that they're
going on...

CHAIRPERSON WILLIAMS: Urban Directors?

CARROL TURNER: Yeah. And you have US
Crane and Rigging.

CHAIRPERSON WILLIAMS: US Trade and
Rigging?

CARROL TURNER: US Crane.

CHAIRPERSON WILLIAMS: Crane. US Crane
and Rigging.

CARROL TURNER: Crane and... US Crane and
Rigging.

CHAIRPERSON WILLIAMS: Okay.

CARROL TURNER: ... New York Steel and...

CHAIRPERSON WILLIAMS: New York Steel.

CARROL TURNER: New York Hoist.

CHAIRPERSON WILLIAMS: New York...

CARROL TURNER: Hoist. That's the
outside...

CHAIRPERSON WILLIAMS: Hoist.

CARROL TURNER: ...elevator...

CHAIRPERSON WILLIAMS: Those are all the
company names they work under?

LAFANDRA BROWN: They work under all
those names.

CARROL TURNER: That, that's the name
they work on. And I work in Kingston upstate and
under the name of Port UN Trucking also.

CHAIRPERSON WILLIAMS: Port Union
Trucking.

CARROL TURNER: Port UN Trucking.

CHAIRPERSON WILLIAMS: Port UN Trucking,
upstate. Are any of you had union jobs or are all
these nonunion jobs?

LAFANDRA BROWN: All nonunion.

CARROL TURNER: All nonunion.

CHAIRPERSON WILLIAMS: I appreciate you
coming to share your story. I was just thinking if
you don't have a concern that they would find out
and, and do some sort of retribution. Is that a
concern that you have?

CARROL TURNER: We are on strike. We have been pfft, that's nothing new to us. For instance if you as a worker stand up for your right...

CHAIRPERSON WILLIAMS: So you're you're all three currently on strike?

[cross-talk]

CARROL TURNER: Yes we are.

ITHIER LOPEZ: We're just, we're just standing up for the, the rest of the workers that still in the struggle, still getting their wages robbed and isn't, and isn't, you know it didn't just stop because we three went on a strike. It's still going on. Like he believes he runs the city. You go outside right now and you look up and you see one of his cranes. You know this guy's real arrogant.

CHAIRPERSON WILLIAMS: How, how long have you been in strike? How many people are on strike.

ITHIER LOPEZ: Well I've been on strike going on a year, me, me and Carrol Turner.

LAFANDRA BROWN: Eight months.

CHAIRPERSON WILLIAMS: And how many people are there?

ITHIER LOPEZ: There's one other guy right now. Anthony Sharbrineer [phonetic].

CHAIRPERSON WILLIAMS: And who's working with you to organize the strike?

ITHIER LOPEZ: Eddie Jorge.

CHAIRPERSON WILLIAMS: From, from...

LEFANDRA BROWN: The Ironworkers.

CHAIRPERSON WILLIAMS: Ironworkers Union. Thank you very much. Madam Co-Chair.

CO-CHAIRPERSON ROSENTHAL: [off mic] I'm going to, Public Advocate James could you start while I get my head together?

PUBLIC ADVOCATE JAMES: [off mic] No...

CO-CHAIRPERSON ROSENTHAL: Well I... So have your firms been... have you spoken to the attorney generals?

CARROL TURNER: Well that's what we're about to, that's why we are going over some of our pay stubs, our W2 form because what... as a worker. When we get our W2 form to file tax it never matches with our last paystub.

CO-CHAIRPERSON ROSENTHAL: Right.

CARROL TURNER: So we going through all those note to go to get them to see if we can speak with the attorney general.

CO-CHAIRPERSON ROSENTHAL: Has anyone from a city agency ever reached out to you and have you spoken to them about what's going on?

CARROL TURNER: While we meet some of the council members this is not our first time here. I think this is our third time I'm been speaking, I meet with Andy King and some other council members you know that...

CO-CHAIRPERSON ROSENTHAL: But anyone from a city agency?

CARROL TURNER: No, no not that I'm aware of.

CO-CHAIRPERSON ROSENTHAL: The Department of, City Department of Investigation?

CARROL TURNER: No not that I'm aware of.

CO-CHAIRPERSON ROSENTHAL: The mayor's Office of Contracts.

CARROL TURNER: No.

CO-CHAIRPERSON ROSENTHAL: So I thank you for coming and testifying at this hearing. I'm

very disappointed to hear that no city agency has reached out to you or worked with you on your issue. I can only draw conclusions about what that means in terms of the city's knowledge to not contractor allow a subcontract again with these companies that are treating you so wrong. So I'm going to reserve my questions for those city agencies. And it's my understanding they may not even be here to testify today. So I'm very disappointed about that because in my oversight position I plan to write this wrong. Thank you.

CARROL TURNER: Thank you very much.

CHAIRPERSON WILLIAMS: I just wanted to just be clear. You said you've, you've come before the city council to express this issue before?

ITHIER LOPEZ: One time we was here and Carrol Turner spoke and Eddie, I guess Eddie spoke on my behalf because I had to leave and HPD was here. And I kid you not like 10 minutes that after they left HPD's calling my phone. Oh come we want to meet with you we want to sit down. And I sat down with HPD and they, they, they wasn't straight forward us. Like you know they just like oh make a

complaint. But they, they, they didn't want, they wasn't really being straight forward with us.

CHAIRPERSON WILLIAMS: Did you make the complaint that they suggested?

ITHIER LOPEZ: Not really because we, it was 70 guys is like, like I said these, this, this company's been robbing wages for years. They settled a lawsuit back in what 2009 and, and we currently got... [cross-talk]

CHAIRPERSON WILLIAMS: Sorry so... there, this company has already settled a lawsuit for wage theft?

ITHIER LOPEZ: And we currently on...

CARROL TURNER: Yes.

ITHIER LOPEZ: ...another one right now with 70, 70, 70 employers. That's right now on a class action lawsuit about wage theft and misclassifications on prevailing wage jobs.

CHAIRPERSON WILLIAMS: I mean, I mean I think all of us up here are outrageous think, I mean this is outrageous to hearing this particularly if it's as blatant as what you're saying that your check's not even matching up with your W2 form and if it's their second go around in

1 settlements I really need to hear from
2 administration why we can't do anything to one stop
3 that and two why we have to continue contracting
4 with them and give them our dollars. So I'm sorry
5 that, if we didn't hear it before but I'm, I'm, I
6 know I can speak for my colleagues we're outraged
7 in hearing what it is you're going through and
8 similarly not getting any recourse. But I will when
9 administration comes up I want to specifically ask
10 about the conversation they had with you and what
11 particular follow up has happened. Has anyone
12 reached out to the attorney general's office or...

14 CARROL TURNER: As I was saying, that's
15 why I was saying earlier that I, we are going
16 through our pay stubs and our W2 form because that
17 is one of the thing that we want to speak with the
18 attorney general and let him know what's really
19 taking place with this subcontractor.

20 ITHIER LOPEZ: We basic, we basically
21 got to build up our evidence because we can't just,
22 we can't just go with hearsay and he say. We got to
23 show him proof.

24 CHAIRPERSON WILLIAMS: Well we
25 definitely hear you today. And we're going to

definitely at minimum get some answers. And the purpose of this hearing because there's too many stories like you out there and there people who think they can just rip people off and nothing's going to happen and, and we have to make sure that that is not the case. And that's why we're here today. So thank you for the stories.

ITHIER LOPEZ: Thank you for hearing us.

CHAIRPERSON WILLIAMS: The public advocate has some comments.

PUBLIC ADVOCATE JAMES: Thank you Mr. Chair and Madam Chair. So I just need to peel back and, some of the facts. The name of the company is A U R I N G E R, Auringer?

CARROL TURNER: That's the owner, that's the owner name. That's the, the name off the, the, the owner... Thomas, Michael, and Dave.

PUBLIC ADVOCATE JAMES: Okay what is the name of the company?

CARROL TURNER: Right now it's Urban Erectors.

PUBLIC ADVOCATE JAMES: Spell it for me.

CARROL TURNER: U R B A N...

PUBLIC ADVOCATE JAMES: U R, Urban...

1 COMMITTEE ON HOUSING AND BUILDINGS 29
2 CARROL TURNER: Yeah and Erectors, E R E
3 C T O R S.
4 PUBLIC ADVOCATE JAMES: Erectors.
5 CARROL TURNER: And they have New York
6 Steel.
7 PUBLIC ADVOCATE JAMES: New York, New
8 York Steel?
9 CARROL TURNER: Yes and, and you have US
10 Crane and Rigging.
11 PUBLIC ADVOCATE JAMES: US what?
12 CARROL TURNER: Crane.
13 PUBLIC ADVOCATE JAMES: Crane?
14 CARROL TURNER: Yes. And Rigging.
15 PUBLIC ADVOCATE JAMES: And what's the
16 last one?
17 CARROL TURNER: Rigging, R I G...
18 PUBLIC ADVOCATE JAMES: Rigging.
19 CARROL TURNER: ...G I N G.
20 PUBLIC ADVOCATE JAMES: US Crane and
21 Rigging?
22 CARROL TURNER: Yes.
23 PUBLIC ADVOCATE JAMES: Okay.
24 CARROL TURNER: And you have also New
25 York Hoist.

PUBLIC ADVOCATE JAMES: New York...

CARROL TURNER: Hoist, H O I S T.

PUBLIC ADVOCATE JAMES: Hoist?

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: So it's Urban Erectors, New York Steel, US Crane and Riggers, and New York Hoist, correct?

CARROL TURNER: Yes that's correct.

PUBLIC ADVOCATE JAMES: And my, I understand you testified earlier that they have been disbarred. What...

CARROL TURNER: Yeah.

PUBLIC ADVOCATE JAMES: What company had been disbarred, which one of those four?

CARROL TURNER: I think that was Super Structure.

PUBLIC ADVOCATE JAMES: So that's one you did not give me. Super...

CARROL TURNER: Structure.

PUBLIC ADVOCATE JAMES: Super structure?

CARROL TURNER: Yeah yeah that's the name that was going on at the first one I start working with them in 2001 and then they changed that name so they don't go by that name anymore.

PUBLIC ADVOCATE JAMES: So originally they went under Super Structure, they were disbarred, they came back under another name...

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: And that name was?

CARROL TURNER: New York Plank and New York Pre-Cast. They used both names.

PUBLIC ADVOCATE JAMES: New York Plank and, and New York...

CARROL TURNER: Pre-Cast.

PUBLIC ADVOCATE JAMES: Pre-Cast.

CARROL TURNER: Yes. They use both names.

PUBLIC ADVOCATE JAMES: What were they debarred for?

CARROL TURNER: Because of the same prevailing wages job...

PUBLIC ADVOCATE JAMES: Wage theft?

CARROL TURNER: Wage theft, basically yeah wage theft.

PUBLIC ADVOCATE JAMES: And...

ITHIER LOPEZ: They, they misclassify the workers on the...

PUBLIC ADVOCATE JAMES: I was going to get to that next.

ITHIER LOPEZ: So in terms of Urban Erectors, New York Steel, U..., United, US Crane and Rigging, New York Hoist, as well as New York Plank and New York Recasting [phonetic], are all of them each in, each company, are they, have they violated wage theft laws? Yes or no.

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: Okay. Have they engaged in discrimination? Yes or no.

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: Have they engaged in sexual harassment? Yes or no.

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: Have they engaged in racial remarks? Yes or no.

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: Okay. Have they been reported to HPD or any other agency? Yes or no.

CARROL TURNER: Yes. I, one time we went to, we meet with Davin Rosenthal, I think his name...

PUBLIC ADVOCATE JAMES: Who is Davin Rosenthal?

CARROL TURNER: I think it's... I think he's head of HPD. That was... they told... [cross-talk]

PUBLIC ADVOCATE JAMES: Okay.

CARROL TURNER: ...100... Street I think we went.

PUBLIC ADVOCATE JAMES: So you mate, you meet with a representative from HPD regularly?

CARROL TURNER: No, we only met him once.

PUBLIC ADVOCATE JAMES: Once. And when was that last time you met with him?

CARROL TURNER: That was last year. I don't quite remember.

PUBLIC ADVOCATE JAMES: Has there been follow-up since then?

CARROL TURNER: No, we never follow-up.

PUBLIC ADVOCATE JAMES: And you met with this gentleman in regards to all of the violations with, and all of these companies?

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: And you have not heard from Mr. Rosenthal since then?

CARROL TURNER: No we haven't.

PUBLIC ADVOCATE JAMES: And that was
over a year ago yes?

CARROL TURNER: No... it's, I don't think
it's... a year ago but it's close to a year.

PUBLIC ADVOCATE JAMES: It was in 2014,
yes?

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: And have you,
and you've I think you in response to council
member to the, to Chair Williams' question you gone
to the Attorney General's Office?

CARROL TURNER: No we haven't gone to..
[cross-talk]

PUBLIC ADVOCATE JAMES: You have not.

CARROL TURNER: But we are...

PUBLIC ADVOCATE JAMES: But you're
considering that?

CARROL TURNER: Yes.

PUBLIC ADVOCATE JAMES: Okay. And last
but not least... misclassification. Can you walk me
through what that is, what that means, and how they
do it? I think the gentleman, the third gentleman
spoke about it. Could you walk me through that sir?

ITHIER LOPEZ: Okay we're Ironworkers.

PUBLIC ADVOCATE JAMES: Ironworkers.

ITHIER LOPEZ: Yes. And they misclassify us and they put us low, lowest rank...

PUBLIC ADVOCATE JAMES: What does that mean they misclassify you?

ITHIER LOPEZ: Because when you're in a prevailing wage job you're supposed to label your workers. You got ironworkers. You got laborers. You got... You got electricianists [phonetic]. The list goes on. And they put us as laborers which would be the lowest rate.

PUBLIC ADVOCATE JAMES: Ah. And when in fact you're a, you are...

ITHIER LOPEZ: A ironworker.

PUBLIC ADVOCATE JAMES: ...an ironworker.

ITHIER LOPEZ: Yes.

PUBLIC ADVOCATE JAMES: And so the rate for ironworkers is what?

ITHIER LOPEZ: Like I said I never got paid the real rate from them so I wouldn't know.

PUBLIC ADVOCATE JAMES: So, but the lowest rate is for laborers?

ITHIER LOPEZ: Correct.

PUBLIC ADVOCATE JAMES: And you consistently are paid a laborers rate?

ITHIER LOPEZ: Correct.

PUBLIC ADVOCATE JAMES: When you're supposed to be paid a higher rate?

ITHIER LOPEZ: We supposed to be getting paid a higher rate in general because our company doesn't provide benefits at all.

PUBLIC ADVOCATE JAMES: Right. Got it. And you report those violations to HPD or to what agency?

ITHIER LOPEZ: We haven't reported nothing. We went to our HPD like Carrol was saying and he just came up with a bunch of things and he never got back to us and we never got back to him.

PUBLIC ADVOCATE JAMES: Okay. So I thank you for those, those answers. I really appreciate your testimony here today. Thank you for your honest but more important for your bravery. Obviously as the chair mentioned I am outraged by all of the allegations that have been indicated. There needs to be a full investigation. It's my understanding that MOCS which is the agency that's responsible for keeping vendex is not testifying

here today. If that is that too is outrageous. We need to get to the bottom of this and the fact that HPD has not gotten back to you in a year is something that this committee as well as this public advocate will get to the bottom of. I thank you for testifying and I look forward to working with you in the future.

ITHIER LOPEZ: Thank you for...

PUBLIC ADVOCATE JAMES: Keep hope alive.

And...

CARROL TURNER: Thank you very much.

PUBLIC ADVOCATE JAMES: ...and victory is ours.

CARROL TURNER: Yeah and...

ITHIER LOPEZ: Thank you.

CARROL TURNER: ...he said... told me that this is my city I do whatever I want in this city because this is my city. Thomas Auringer he told me that.

ITHIER LOPEZ: Thank you.

CARROL TURNER: Thank you.

CHAIRPERSON WILLIAMS: Wait. This, some of our colleagues have some additional questions.

Just to, just to follow-up... Do you remember when you had the conversation with HPD?

ITHIER LOPEZ: I couldn't, I couldn't tell you over the top of my head.

CHAIRPERSON WILLIAMS: And you think his name was David?

ITHIER LOPEZ: No his name is Dave, David Rosenthal. He contacted me personally.

CHAIRPERSON WILLIAMS: David Rosenthal from HPD.

ITHIER LOPEZ: Yeah.

CHAIRPERSON WILLIAMS: Okay. My colleagues has some questions. I'm going to set the timer for five minutes. And we have Council Member Crowley and Council Member Miller.

COUNCIL MEMBER CROWLEY: Back in November the building, Housing and Buildings Committee had a hearing shortly after the daily news reported that there were many contractors such as the ones that you're describing that received low interest loans and tax abatements and said that there were 41 million dollars in city grants or over 206 million dollars' worth of tax credits given to companies that had already been found to

have deplorable records as it relates to exploiting their workforce. I cannot believe we're already an hour and 20 minutes into the hearing and the commissioner is just walking in. It shows a blatant disrespect for this committee and the council.

Answers to questions did not come back in that November hearing and we have been waiting patiently, I certainly have as a council member for today to ask some serious questions as to why we are becoming accomplice to this exploitation, why the city is giving money to these developers who continue to not even pay a living wage, let alone a prevailing wage, companies that are not paying unemployment insurance or overtime and, and to understand that you have complaints of sexual harassment and that these sites are not even safe.

And in addition to you not getting paid a fair wage. I cannot believe that our city is still giving money to these contractors and letting this work happen. 16 months into the de Blasio administration. So I'm happy to see that the commissioner is finally here and I look forward to getting some answers to these serious questions

that you're bringing about in your testimony. Thank you.

CARROL TURNER: Thank you.

CHAIRPERSON WILLIAMS: Just for clarity the second time it's come up. The Commissioner has, although not, I haven't agreed with every answer she's given she has consistently been responsive to the committee and consistently been on time to the committee. This particular hearing was supposed to start at 1:00. We did get information prior that something urgent came up. We did have the curtesy of getting the information. So I appreciate that from the commissioner and I don't feel she had disrespected the committee at this point. Well things come up so thank you for letting me know. Council Member Miller.

COUNCIL MEMBER MILLER: Thank you Mr. Chair. And anybody you could answer, but could you speak specifically or highlight instances of safety violations or, that you've incurred on a work site?

ITHIER LOPEZ: For instance when you're cutting a plank you know that dust, that dust is poison, you supposed to use water. And when you're cutting plank and around the community, around

schools you're just, you're just poisoning everybody.

COUNCIL MEMBER MILLER: Have any..

ITHIER LOPEZ: I mean I, I could go on with a list. And these guys they have us cutting rebars with carbon blades with no, with no eyewear, you know welding without masks. She was a victim to that you know. I mean I got a long list you want me to keep going?

COUNCIL MEMBER MILLER: Is that how you injured your eye?

LAFANDRA BROWN: Yes sir.

ITHIER LOPEZ: These guys, they don't, they don't... [cross-talk]

COUNCIL MEMBER MILLER: Could you speak to, could you, could you speak to any injuries that, that, that any of you have occurred, have occurred while on the job site?

LAFANDRA BROWN: That I was told to weld by company management, they were planking and grouting all at one time and they wanted to finish a certain section up on the deck with the grout but it had to be the rebar, the four foot rebars had to be welded across the T. I am a fireguard, I'm a

licensed torch operator. I'm a licensed signal and rigger. I however am not a welder. And my boss made me, he said weld or get off my job.

COUNCIL MEMBER MILLER: And, and, and because of that you sustained an eye injury?

LAFANDRA BROWN: Yeah.

COUNCIL MEMBER MILLER: Was any worker's compensation involved?

LAFANDRA BROWN: No.

COUNCIL MEMBER MILLER: Anyone else...

LAFANDRA BROWN: That's being taken care of now on the legal side.

COUNCIL MEMBER MILLER: Okay.

ITHIER LOPEZ: When I first started 10 years ago I fell off a building because they didn't tell me well the rebar snapped and I fell off a building the rebar impaled through my right hand.

COUNCIL MEMBER MILLER: Did you receive worker's compensation?

ITHIER LOPEZ: I didn't even know there's, there was a such thing.

COUNCIL MEMBER MILLER: Is workers compensation sign posted on the work sites?

LAFANDRA BROWN: No.

CARROL TURNER: Oh I got my fingers crushed as you could see here and my boss told the foreman oh you tell Turner he can cut off his F-ing finger and sue me or come back to work or else I'm going to fire him. And I'm the sole bread winner for the family so I have to go back to work.

COUNCIL MEMBER MILLER: So needless to say you didn't receive workers compensation either?

CARROL TURNER: No I never... I get, get injured on the job more broken fingers, slipped disk in my back, I never receive workers comp...

COUNCIL MEMBER MILLER: Did you report it to the company?

CARROL TURNER: Yes I did.

COUNCIL MEMBER MILLER: In the instance that you were asked to weld when you were not certified, are there other instances of, of mis-certificate, or, or working outside of title?

LAFANDRA BROWN: All the time. Basically it's do what I tell you or get off my job.

COUNCIL MEMBER MILLER: Are these, are these jobs that require a particular certification or skill set?

LAFANDRA BROWN: Some of them are, some of them aren't.

COUNCIL MEMBER MILLER: Have anybody ever worked in, worked on jobs that they were not certified to do?

ITHIER LOPEZ: Not me.

COUNCIL MEMBER MILLER: No.

[background comments]

COUNCIL MEMBER MILLER: I have heard instances of, of false certification being distributed on worksites... [cross-talk]

ITHIER LOPEZ: That was actually... [cross-talk]

COUNCIL MEMBER MILLER: Can anyone testify to that?

ITHIER LOPEZ: I think we've met before. And he gave me a Master Riggers card because he, he, but that's like a tear off card like you know he's supposed to be on the site while I'm there but he would just give it to me and leave and be like oh you, you the foreman of this rigging job.

COUNCIL MEMBER MILLER: Mm-hmm. Did you, did, were, were you trained or, or certified to do so?

1
2 ITHIER LOPEZ: I was not, I, I'm not a
3 certified master rigger but I did take the 30 hour
4 tour crane and rigging course but no I'm not a
5 master rigger.

6 COUNCIL MEMBER MILLER: Okay. Thank you.

7 CHAIRPERSON WILLIAMS: The, the more
8 questions that I ask like it goes from outrageous
9 to horrific. I, this is just kind of unbelievable
10 what, what I'm hearing. I'm going to ask one of my
11 staff members or one of the housing staff members
12 to get your information. I'd like to meet with you
13 relatively soon and really get into the heart of
14 this. And I'm going to reach out to the, the
15 buildings commissioner shortly after this hearing.
16 I'd also like if you can tell me a few of his
17 sites. I'd like to show up and make a visit and
18 really see what's going on. There's no way that we
19 can hear this and not move on the craziness that
20 we're hearing with people injured and, I mean this
21 is, I don't, I'm not even sure what to say about
22 what's happen, if this is really happening today
23 and if it's the three of you that means there's a
24 whole lot more out there who don't even know where
25 to go and may not even know how bad they are being

abused right now. So thank you so much for giving this testimony. I wish I had more than words right now to help you. But I guarantee you this is not going to be forgotten when this hearing is finished. Council Member Cornegy.

COUNCIL MEMBER CORNEGY: I just wanted to follow-up on the chair's question. Can you tell me if you know where they're operating right now and under what name?

CARROL TURNER: Yes we can. And this, this, the last three name; Urban Erectors, that's, and US, New, US Crane and Rigging, New York Steel, and New York Hoist because we always visit the job sites, you know try to talk to our co-workers and... [cross-talk]

COUNCIL MEMBER CORNEGY: Can you tell us where they're operating right now?

ITHIER LOPEZ: Right now if you go outside and you look up they doing, they doing the, they did the Pratt and they, they doing another one right here...

CARROL TURNER: Right... [cross-talk]

ITHIER LOPEZ: Go outside and look up they got... [cross-talk]

CARROL TURNER: ...University. They doing a job on Close Avenue in the Bronx I don't, and they doing the next one on Boone Avenue also in the Bronx. They doing 15 Jackson Street in Brooklyn also. That's...

COUNCIL MEMBER CORNEGY: Thank you. So if you could just... okay she's writing it down. Alright so we, we certainly would like to follow-up. And I just want to know for the three of you who now find yourselves in a strike situation what was the tipping point for you going out on strike as opposed to some of your colleagues who obviously are still on jobs.

CARROL TURNER: Basically we're just tired of the treatment; the verbal abuse, the racial abuse, the wage theft, you, we could work like 40 hours, as 40 hours is a work week. And when you go to collect your, your pay you get paid for 35, 38 hours, that's is just apart from the prevailing wages job that we weren't paid properly.

COUNCIL MEMBER CORNEGY: And if you don't mind me asking how are you, since this is not union how are you sustaining yourself through the strike period?

CARROL TURNER: We've been really being funded by the international union... so that's, that's basically... that's all we, we, we surviving at this time.

COUNCIL MEMBER CORNEGY: And are you having any actions on the job sites that you're aware of? Are you going in and participating in actions?

ITHIER LOPEZ: We visit the job sites and stuff. But they, they intimidate the guys that are still working and they, you know they taught me oh you go next to those guys you're getting fired.

COUNCIL MEMBER CORNEGY: Okay thank you.

CHAIRPERSON WILLIAMS: Thank you all for your testimony. Thank you all for testimony and we make sure we get your information we definitely will follow up. And thank you Maritza as well. Oh we've been joined by Council Member Koslowitz, Mendez, and Reynoso. Next up we'd like to call Commissioner Vicki Been from HPD and Baaba Halm from HPD as well. Welcome Commissioner. And thank you for giving us the heads up that you were going to have an issue before the hearing today. I'm sure you heard at least a bit of the back and forth we

had there which is horror that they're going through right now. So I'm sure that's not in your testimony necessarily but after that we'll probably have some questions about what we just heard. So if everyone who's going to testify raise your right hand. Do you affirm to tell the truth, the whole truth and nothing but the truth in your testimony before this committee and to respond honestly to council member questions? Thank you very much. And you can... hold on one second. Do you have a copy of your testimony?

VICKI BEEN: Did we distribute it? Oh. Thank you. Sorry. Thank you.

CHAIRPERSON WILLIAMS: Thank you very much. You can begin.

VICKI BEEN: Thank you. And I do apologize for not being here when the hearing started. Unfortunately something came up with the mayor that just required my immediate attention. So my apologies. No disrespect intended to either the council members or to any of the witnesses or, or anyone in the room. So as you know I am Vicki Been. I am the Commissioner of Housing Preservation and Development and I'm joined by Baaba Halm who's the

1 assistant commissioner of government relations and
2 regulatory compliance. Today we're here to discuss
3 how we screen and monitor the contractors who are
4 retained by developers to work on HPD assisted
5 projects. And what we do when the contractor is not
6 living up to their responsibilities. I'm doing
7 something wrong. Let's see. There. Oh okay. Sorry.
8 As you well know of course HPD's mission is to
9 improve the availability, affordability, and
10 quality of housing in New York City. And as the
11 nation's largest municipal housing agency we work
12 with private, public, and community partners to
13 strengthen neighborhoods and enable more New
14 Yorkers to become homeowners or to rent well
15 maintained affordable housing. Now I, I mention
16 that because I think it's important to talk for a
17 minute about how we do our work. As you know HPD
18 does not actually build or rehabilitate housing.
19 Instead HPD provides loans or other assistance to
20 developers who agree to build new housing. And
21 similarly except in emergency situations we don't
22 rehab existing housing but again we provide loans
23 or other assistance to owners who are, who are
24 renovating their properties for use as affordable
25

housing. So the contractors working on these city assisted property, projects are not selected by HPD and they have no direct legal or contractual relationship with HPD. They are not city vendors and they are not subject to the city's procurement rules okay? So that's a, a very fundamental difference. And let me just illustrate with a, a graphic. Basically we provide assistance in the forms of, of loans, grants, etcetera to we call a sponsor. Who we provide assistance to the property owner who we refer to as the sponsor of the development. That sponsor selects and contracts directly with the general contractor which is that second curly cue. The general contractor then contracts directly with any subcontractors that they may need depending upon the job okay? So, so that means again that we do not have any direct legal or contractual relationship with either the general contractor or the subcontractor that the general contractors hire. So now I want to distinguish that just because it, it is sometimes unclear from the work that we sometimes do under our emergency repair program or our alternative enforcement program. So when we believe that we

1 have to step in and do repair or rehab to an
2 existing building because it's an emergency
3 condition or unfortunately when we have to do
4 something like emergency demolition work that is
5 performed by contractors that we select and that we
6 retain directly and have a contractual relationship
7 with. And so that kind of work is subject to the
8 city procurement rules because the city is directly
9 contracting for construction services. So our
10 office of enforcement and neighborhood services
11 retains contractors to perform, perform repair,
12 rehab, or demolition work only in those situations
13 as I mentioned where there's an emergency and the
14 owner has failed to comply with its legal
15 obligation to perform that work. So I understand
16 the, you know what we're talking about here today
17 to be more along the lines of the sponsor review
18 issues where we are not contracting directly with
19 the general contractor or the subcontractors our
20 real relationship is with the sponsor right. I'm
21 happy to answer any questions about the AEP or the,
22 or the, I'm sorry Emergency Repair Program or the
23 Alternative Enforcement Program where we are direct
24 contractors but I'll focus my remarks on, on the
25

other situation. Okay so we do basically three things. We do what we call sponsor review. We do labor monitoring. And we do what we call enhanced review. Our sponsor review procedure, our labor monitoring efforts, and our enhanced review process are intended really to do three things. First they're intended to screen out bad actors to prevent work from going to developers and prevent them from hiring contractors that do not comport with wage and construction quality standards or have other issues that bear on their competence or their integrity. The second thing is that we are trying to monitor. We monitor work that we are financing to ensure compliance with those wage and construction quality standards. And finally we try to deter bad behavior. We try to carefully scrutinize when there are things in someone's history that give us cause for concerns. And we impose conditions upon those sponsors when we identify those kinds of, of issues through what we call enhanced review. And I'll go through each of those steps in a minute. But through those efforts we try to, we let developers and others know whether the firms that they are thinking about

dealing with as a contractor or as a subcontractor will require rigorous monitoring and they, those procedures also allow us to refuse the participation of firms who despite enhanced review do not live up to their obligations. So let me start with... I keep doing this wrong... with sponsor review. So for new construction and rehab affordable housing projects prior to receiving assistance from us, so prior to getting a loan or whatever it is that we're using the sponsor and its general contractor are required to complete the agency sponsor review process. That process, our sponsor review process is an extensive background check that's intended to verify the integrity and the competence of entities and individuals that are seeking to participate on HPD projects. So the entity, its affiliates, and their principals in individual officers have to complete an extensive disclosure statement which captures information covering a range of topics. The disclosure statement covers among other things whether they have any outstanding code violations, any arrears on taxes, water/sewer charges, and other municipal charges, performance on prior governmental and

private projects, performance on prior governmental and private loans and other obligation, criminal investigations, convictions, enforcement actions, and administrative proceedings. The sponsor review unit also checks databases and other sources at the local state and federal levels to determine whether there were any outstanding issues that might raise questions or concerns for the agency before proceeding with a project. So the kinds of, of issues that we identify during sponsor review, some of those issues can be resolved by the sponsor or the general contractor before closing. So for example if they have an outstanding housing code violation that can be fixed or if they are in tax arrears they can pay those tax arrears and we can then go forward if that's the only issue that's on the table, we can go forward with the closing. However other issues may be too serious or too difficult to resolve. So criminal behavior, dishonesty, loan defaults, or some history of poor quality work are obviously red flags that can't, that present a significant hurdle to going forward with the closing. Those issues may lead us to either tell a sponsor that we are not willing to

close on the project or if the issues are with a general contractor we will tell the sponsor that we will not close on the project unless they select another general contractor. On average about 400 projects each year require financing through, receive, not, many more require, but they receive financing from HPD. The sponsors and the general contractors for each project as I said have to go through our sponsor review process. And the type of information and the breadth of the data that we consider in determining whether an entity has the competence and the integrity to participate in any of our supported projects is deeper and more extensive we believe than any housing finance entity in the nation. For example we've talked extensively with Seattle and San Francisco. They do not conduct background checks what's so ever. They look at the financial wherewithal with the sponsor through a review of audited financial statements but they do not look at that long list of things that, that we ask for disclosure and then we review those things as, as well. The state housing finance agency uses a questionnaire that is similar to ours but not nearly as detailed and, not nearly as

detailed as the one that we use. Okay. So that's sponsor review. So once somebody passes sponsor review and we go through and, go ahead and, and close the deal with them then we do very active monitoring of the project as it proceeds. Though our labor, we, and we do this in two ways. Through our labor monitoring unit which we call LMU we try, we rigorously enforce prevailing wage standards when they apply to a particular job. So our LMU ensures that contractors and subcontractors working on prevailing wage projects are complying with wage and labor law requirements during the course of construction. So contractors and subcontractors are required to pay, to give us weekly payroll information and our labor compliance officers review that weekly payroll information. They compare the payroll information against the pertinent prevailing wage schedule. In addition, they, LMU sends verification letters to workers at their home addresses and conducts unannounced visits to construction sites to interview workers about what they are getting paid. The letters in the interviews provide an opportunity for workers to let us know of any payment discrepancies and to

furnish payroll information independently. So that's what our labor monitoring unit does and it is focused on the compliance with prevailing wage requirements that may be applicable to a particular job. In addition we have what we call our building and land development service or our bills [phonetic] unit. And those inspectors are regularly on site during construction. They record information about the subcontractors that are on the job, the number of workers that are on the job, the progress of the construction, and any quality problems that they see. They share that information when they get back to the office. They share that information with the labor monitoring unit to support our investigations of prevailing wage issues. When we believe that a prevailing wage or a labor law violation has occurred we have several remedies. We can withhold loan advances for the completed work. Those are the advances that the sponsor uses to pay contractors and we can withhold them until all outstanding violations are addressed. A second thing that we do is that we can collect restitution from the subcontractor or the general contractor and disperse that back to the

workers if we believe the workers have been underpaid. And then third is we can work with law enforcement entities to pursue criminal sanctions against that contractor or subcontractor. So those are the remedies that, that we use. Now on our... sorry I seem... I keep going backwards, I'm sorry. One of the things that I think that we face and you can see it in the, in the testimony that you've received earlier is that our enforcement efforts while we get the payroll records, we compare the payroll records. We, we have people on the site who are our eyes and ears. We rely very heavily on the workers themselves. We really need workers to come forward and let us know when they see, when they are being underpaid, when they think that they are being mistreated, those kinds of things. And that is difficult. It's difficult because workers fear retaliation as we just heard. They fear that if they complain their, the contractor might be removed from the job and then they would lose their job. And they fear being blacklisted from future employment opportunities because they have complained. So that is a, you know a, a very unfortunate fact of life on these jobs and it makes

it difficult for workers sometimes to come forward. Our compliance officers try to build trust with the workers by giving them a confidential hotline where they can call and tell us anonymously or confidentially about problems that they're seeing, by the fact that we drop in unannounced on webs, on worksites so that the employer cannot hide something that they're doing because they know that we're coming. We do site visits on weekends and after, and in the evening to try to, you know to track down instances of noncompliance. And we also offer workers if they don't want to be seen talking to us on site that they can meet with us in some offsite location in order to tell us the information. To, to strengthen our oversight role on HPD supported projects in 2012 the agency instituted what we call our enhanced contractor review policy or short form is enhanced review. The enhanced review policy supplements but does not replace the other two, other two review processes that I just described. So enhanced review basically applies extra scrutiny to contractors that have failed in some way in the past to comply with labor or construction quality standards. So a contractor

can be placed on enhanced review if they have outstanding penalties for past labor law violations of 500 thousand or more, if they have had a history of multiple or significant construction quality issues, if they've had a history of multiple or significant labor law or construction law violations, or if they are subject to state or federal debarment. So any of those things would trigger enhanced review. Now our enhanced review process is a, is on a project by project basis and project by project we determine whether or not to approve the participation of a contractor or to impose special requirements as a condition of closing the financing with that contractor. The additional conditions that may be imposed include third party monitoring that's paid for by the general contractor and conducted by an independent labor monitor, labor compliance service provider. The third party monitors are intended to help the general contractor improve its internal controls to ensure compliance with the labor laws. It does not replace labor monitoring unit monitoring. It is an addition to LMU monitoring. Third party monitors can cost as much as 2,000 dollars per unit. We

impose that cost on the general contractor if under enhanced review. A second thing that we can do is ramp up the enforcement, ramp up the monitoring by our labor monitoring unit as well. We also can conduct project specific award conferences with all of the subcontractors to review the labor laws and to review the prevailing wage regulations and, and procedures so that we are, we are, because we have done it ourselves we, we can require that, that those be brought to the attention of all subcontractors. And then finally we can review all the subcontractor contracts to ensure that the required contractual language and the prevailing wage schedules are made part of those contracts between the general contractor and the subcontractor. Now although enhanced review has been in place only for a couple of years since 2012 as I said we believe that it has been effective in preventing the participation of actors with a history of noncompliance with labor or construction quality issues in HPD sponsored projects. And in subjecting those actors to rigorous monitoring when warranted. In order to strengthen the program, it is a relatively new program and we are constantly

evaluating what we can do to strengthen it. We have several issues that are on the table and that we are now exploring with the corp council to be sure that we're on strong legal ground. And I want to just take a minute to talk about those. So one thing that we are considering is requiring all general contractors to obtain the... or I'm sorry... requiring all contractors subject to enhanced review to complete a compliance action plan that's acceptable to HPD. We now talk through with the, with the contractors that are, are, are subject to enhanced review, what kinds of steps they are going to take, but we are considering requiring them to file that action plan in writing and outline the specific steps the contractor will take to improve its internal controls and ensure compliance with all the laws, regulations, or contractual obligations. A second thing that we are, that we are, are considering is requiring general contractors to obtain the prior written approval of HPD before retaining or using or allowing any of its subcontractors to retain or use whether directly or indirectly any subcontractor who is on enhanced review status. Many general contractors

1 already avoid subcontracting with any firm that's
2 on our enhanced review list. But we can, we are
3 considering further ensuring that the general
4 contractor takes it seriously its obligation to
5 monitor its subcontractors by requiring advanced
6 approval and the imposition of additional
7 conditions when necessary if they are using a
8 subcontractor who is on the enhanced review list.
9 As I said we're working closely with the law
10 department on possible improvements to the program
11 and, and changes to the program to ensure that our
12 changes are legal and comply with due process but
13 we are anxious to hear your views about what else
14 we could be doing and we are constantly looking to
15 see what more we could be doing to ensure that our
16 jobs are, that the people who are working on our
17 jobs are complying with the law. So in closing our,
18 our sponsor review processes, our labor monitoring
19 activities and the extra scrutiny that we place
20 through the enhanced review process is, I have
21 described our developers and the integrity of the
22 contractors, the integrity, the safety, the quality
23 of the contractors that they select, their
24 compliance with wage and labor laws are important
25

components to our obligation and our mission to build and maintain affordable housing. And we are continually looking for ways to strengthen our procedures so that we can ensure compliance on the jobs. So thank you for the opportunity to testify, for your interest in and partnership on these issues and I welcome your questions and any suggestions that you have about strengthening our, our systems. So thank you.

CHAIRPERSON WILLIAMS: Thank you for your testimony. We're also joined by Council Member Barron. And we were briefly joined by Council Member Johnson who I believe is chairing another hearing. Thank you for your testimony. I do have a few questions but first I wanted to see if you can walk through the RFP process, just how it works... any, anything you can tell me about how you designed the RFP, is it HPD that puts out the RFP and then reviews it... how does that whole process work?

VICKI BEEN: Okay. I'm happy to do that but I wanted, I want to make sure that we're clear on the distinction. So in our RFP process we are, so we use RFP processes when we own the land and we

are disposing of that land. That is a fraction of the 400 odd deals that we do in a year. Most of the time a, an owner is coming to us either with land or with a building and we do not in that instance go through an RFP process. So we're only using the RFP process where we are disposing of city owned land okay. So when we're disposing of city owned land we go through an RFP process that basically is intended to make sure that we're getting competitive bids both in terms of the, the financing of the project, what the project would provide, the design of the project so our RFP process for example will... let me, let me, actually let me not use that one because I don't think we've announced the winners yet so let me not use that one. But, but let's say if we have a piece of land and we're RFP-ing that land then we say we want, you know we envision that a bear minimum is this set aside, this number of units of affordable housing, these income levels, we, we think it's really critically important in this neighborhood that there be community facility space or enhanced retail or that kind of thing. But then we, we put the, we put the RFP out and ask people to bring us

very extensive plans for what exactly they would build. In the, in the response to the RFP they have to submit the documents that they would submit in sponsor review right. So we have those documents as we're reviewing the RFP process right. So if somebody was not able to pass our sponsor review process they would not be awarded the RFP. But mostly the RFP is looking for design, the number of units, the affordability, etcetera. So that's what the RFP process is, is, is focused on. It, it uses the sponsor review process in order to make sure that we're not awarding the RFP to somebody who would not, who would not pass sponsor review.

CHAIRPERSON WILLIAMS: But it's... HPD does write the RFP when you're disposing of city owned land?

VICKI BEEN: Yes, usually, usually. Sometimes we partner with EDC some, so sometimes EDC partners with us and takes the lead. Mm-hmm. [cross-talk]

CHAIRPERSON WILLIAMS: This is going to be for another hearing but...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...I'm going to ask anyway. Are there opportunities in our writing to favor MWBEs, to discuss union/non-union in the writing of the, of the RFP itself?

VICKI BEEN: So in the RFP process now we specify that we, obviously that we do not discriminate in any way and that we have, and that we very much welcome MWBEs right, minority and women business owned enterprises. In addition we have one RFP as part, as, as you know we rolled out a very sensitive MWBE program where we asked MWBEs to respond to what we call and RFQ or request for qualifications and if they qualify and go on that preapproved list then they are the only ones allowed to bid on a dedicated pipeline of projects. And the idea behind that is to help MWBEs sort of gain more experience so they're more competitive in general on RFPs. So for that particular MWBE program we have a dedicated pipeline that is dedicated to MWBEs on our prequalified list.

CHAIRPERSON WILLIAMS: And prevailing wage, union, are there ways that you can use RFP to make sure that that's happening, well maybe not union but at least prevailing wage?

VICKI BEEN: Well if we anticipate that the funds would trigger prevailing wage we would specify that in the RFP.

CHAIRPERSON WILLIAMS: Because I just, getting more information...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: From what I'm told some of folks who been... one of the reasons that the state has been doing much better, unfortunately city is still pretty dismal, but the state is doing much better is because they did some reworking of the RFPs. And I don't know if you have heard anything like that. Are you, are you looking into what the state to see how we can do better on some of them?

VICKI BEEN: Well we did look in, we extensively looked into what the state does I designing the MWBE program that I mentioned. And we, I, I understand that the, you're talking about the averages for the state programs and the averages for the city programs but we believe we have the most extensive MWBE program in the nation. We're the only ones in the nation that have the prequalified list and the dedicated pipeline. We

just I think as you know graduated our first class through a, a special year long course that we offered to MWBEs. So we actually think we're doing you know more than the state is doing in terms of, of similar kinds of things right, similar development projects.

CHAIRPERSON WILLIAMS: Where, I, I have a slight different perception but again it's, we're going to hopefully go deeper in the, to those questions in some additional hearings. Now you said that that, they do RFP process in the city owned land and...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...what if it's non-city owned land.

VICKI BEEN: If it's not city owned land then the owner comes to us and asks us if we would be willing to help finance the project in exchange for the housing being affordable. So we can't, they own the land. We can't...

CHAIRPERSON WILLIAMS: Okay.

VICKI BEEN: ...let somebody else do the work on the land if they own it.

CHAIRPERSON WILLIAMS: So you mentioned that H, HPD does not select the contractor and has no direct legal or contractual relationships I guess in the ones that are not a city owned with a contractor?

VICKI BEEN: No. Even, even where city owned land is RFP-ed we sell the land to, to whoever is selected through the RFP and they become the owner. And then we provide financing to them as the owner and sponsor they then contract with the general contractor.

CHAIRPERSON WILLIAMS: So the only people who have a legal contractual relationship with the contractor is a sponsor?

VICKI BEEN: That... we have a really, we have, our arrangement is with the sponsor. The sponsor then makes arrangements with the general contractor.

CHAIRPERSON WILLIAMS: But then based on your testimony afterwards you do need, have some legal authority to oversee the...

VICKI BEEN: Yes.

CHAIRPERSON WILLIAMS: Okay. Through the active monitoring and... So even though there's no direct legal...

VICKI BEEN: Contractual relationship there's a regulatory relationship, yes.

CHAIRPERSON WILLIAMS: Okay.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: Now where I get confused is sometimes I heard that, and I want to be clear if they do something wrong...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...can HPD bar them from, bar the sponsor from hiring them if city funds are being used.

VICKI BEEN: Okay so I wanted, so this has been confusing and so let me unpack it. Okay so the word debar to me means we say you cannot be on any HPD jobs you know for some period of time or forever right? We do not believe, or we have been advised by legal counsel that if all we are doing is saying you are debarred by the federal government or you were debarred by the state government therefore we automatically debar you

from any HPD job in the future that we do not have the legal authority to do that. Okay. That's...

CHAIRPERSON WILLIAMS: Say that one more time.

VICKI BEEN: So to me debar means saying across the board we will not do business with you period because of the fact that you were debarred by the federal government or by the state government right? We have been advised by legal counsel that we do not have the authority to do that, that we are preempted from doing that okay? That's debarment okay? However when we look at any sponsor or any contractor we are looking for all of, I mean one of the questions that we ask is have you ever been debarred and we ask for all kinds of violation, you know the entire history of any violations etcetera. And we take those violations into account in deciding whether or not to go forward on an individual project by project basis with that sponsor. So the distinction that I'm drawing is do we automatically say don't even bother to come in the door, we will never consider doing business with you because you were debarred by a federal or state government versus we will

take that into account and decide whether or not to go forward with you on a project by project basis. We do the latter. We believe we have the legal authority to do the latter. We do not believe we have the legal authority to do the former.

CHAIRPERSON WILLIAMS: Okay so in your example they are already debarred in federal and state.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: Now what if the city goes and does a review...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: There is a contractor that has a sign that says I steal wages and has all the proof laid out?

VICKI BEEN: We would not go forward.

CHAIRPERSON WILLIAMS: You, you, you have the authority to not go...

VICKI BEEN: On a project by project basis we would not go forward. And if he, that person came in with the same evidence on each and every project on each and every project we would say no thank you. What we are told we cannot say is don't bother because you are completely debarred

forever on the basis of your federal or state debarment. But we can look project by project, situation by situation and on that basis say well you do not have the integrity or we are not sure that you will follow the construction quality or labor law or construction law and therefore we are not doing business with you on this project.

CHIAR: Are you, so that, does that also go for principal owners of the contracting company or is that only for the company itself?

VICKI BEEN: All of our processes are both the company and the principals.

CHAIRPERSON WILLIAMS: So are you aware of any companies now or principals of companies that have been found to violate wages or labor laws that currently still have HPD money in their projects, have received contracts through sponsors that all have a contract with HPD??

VICKI BEEN: I'm sorry so the, is, so is the question are we doing or have we done business with somebody who has been debarred?

CHAIRPERSON WILLIAMS: That's one question. And are, are you doing business with

people who are known to have stolen wages, stolen wages in the past?

VICKI BEEN: So... okay let me separate those out. Do we... I am not aware of... So as... let me go back. So these are the criteria that will put somebody on our enhanced review list. And one of the criteria of course is a debarment. So it is theoretically possible that we have done business with somebody who is on enhanced review who has been debarred. I know of no such person but I will get back to you to confirm if there's somebody beyond my knowledge right. On the labor violations there are people on the enhanced review, on the enhanced review list who we are subjecting to enhanced review who have been found, who have been found to owe money for past labor law violations right. Not, I'm sorry, who have been found, who have been, who have had withholdings but they will have paid them before we will go, do business with them. So in other words, I'm sorry, I, that, that, there was a lot in that sentence. There are people on our enhanced review list who have been found to have not paid their appropriate wages and therefore had withholdings against them right. We, before we

will do business with them we will require that those withholdings have been paid right.

CHAIRPERSON WILLIAMS: Why would we not consider the fact that they have stolen the wages in the past be one of the things that we consider whether they should be on the contract again?

VICKI BEEN: It is something that we consider. It is something that we absolutely consider. And so if we know that somebody has in the past had a labor law violation or prevailing wage violation we will have a discussion with them and we will review what was wrong with your procedures then that allowed that to happen, how have you fixed them, what are you doing that, so that, to assure us that that would never happen again. We absolutely do that.

CHAIRPERSON WILLIAMS: Okay. But so for clarity there... are there, are there contractors now that have stolen wages that are currently in contract with a sponsor who HPD has a contractual relationship with? Are they on jobs now that they get HPD funds?

VICKI BEEN: So many, most, many times, I'm not sure most but I think most the labor law

violations or the prevailing wage violations have been with subcontractors right. So that's the issue. So are there people, are there, are there jobs in which there is a subcontractor who has in, sometime in the past been found guilty of a labor law violation, yes I believe that there are.

CHAIRPERSON WILLIAMS: How...

VICKI BEEN: Again...

CHAIRPERSON WILLIAMS: ...how are we holding those... So you're saying if they're on a job now they have paid back all of their wages that they owed before, even a subcontract...

VICKI BEEN: Yes. Mm-hmm. If we knew that a subcontractor had not paid a past labor law violation we would...

[background comments]

VICKI BEEN: Right, we would not go forward.

CHAIRPERSON WILLIAMS: So there's a few companies that have been thought to owe wages and may actually have been proven to owe wages, I think MDG Design is one. I was told Mountco and Lettire. Are those familiar to you?

VICKI BEEN: Can you repeat the question? That...

CHAIRPERSON WILLIAMS: There are some that are either reported or have been proven to have wage theft in their history..

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...and to name a few MDG Design, Lettire...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...and Mountco.

VICKI BEEN: Yes. Mm-hmm.

CHAIRPERSON WILLIAMS: Are you familiar with them?

VICKI BEEN: Yes I am.

CHAIRPERSON WILLIAMS: So have, do you, are they currently on jobs now?

VICKI BEEN: Yes they are.

CHAIRPERSON WILLIAMS: And they have been proven to have wage theft in their history?

VICKI BEEN: In the past, mm-hmm.

CHAIRPERSON WILLIAMS: So why are they currently on...

VICKI BEEN: Because in discussions with them and in reviewing their processes we discussed

with them what went wrong, why did it go wrong, how do we know that it's not going to happen again, what are the internal controls that you've put into place to make sure that it never happens again and we were convinced that they had cleaned up their act.

CHAIRPERSON WILLIAMS: And have they paid back all the wages that they owed?

VICKI BEEN: Yes, mm-hmm.

CHAIRPERSON WILLIAMS: Okay. So there is nobody, there is no contractor or subcontractor on a job that HP, has HPD funds that currently owes back wages that you know of?

VICKI BEEN: That are outstanding?

CHAIRPERSON WILLIAMS: Yes.

VICKI BEEN: Well okay let's separate out because I want to be clear that I'm answering your question, you know that I'm answering the question that you're asking. There may be contractors or subcontractors who are accused of some misdeed right. Until they are convicted of that or until they agree on that then they, then I cannot take action, right. So that, so that's one issue. If they are found to have, have done a labor

law violation to have violated the labor laws and owe money I will not go forward with them, we will not go forward with them until they have made good on that. If we found out after going forward with somebody that then, then have wages, I mean then a fine was imposed or withholding was imposed we would, we would not let them go forward until they paid that, correct? That is correct.

CHAIRPERSON WILLIAMS: I am concerned that the only thing they would have to do is repay the back owed wages...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...and, and make I guess a promissory note that they won't do it again. Because all that says to me is that I have to do it until I get caught then pay it back and I'll be okay. So why would we not hold anyone even as an example and say because you did this...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...you're not someone that the city should work with on this particular project or even the next particular project?

VICKI BEEN: I'm, that's a very valid question. It's one that we've wrestled with a lot. And so the issue for us is there are people who do a very very good job on the affordable housing who have made a mistake or who have you know not sufficiently monitored their subcontractors, not sufficiently you know turned a blind eye when they should have seen that something was going wrong. They have made a mistake. And to us the issue is do we not do business with them forever or do we say this is really, has to be cleaned up, has to be rectified, and if we believe that they are making, that they are taking the steps to rectify that and to clean it up to give them another chance. If it happens repeatedly then we're done. That's enhanced review and then we're done right. Again on a project by project basis.

CHAIRPERSON WILLIAMS: Has anybody been on enhanced review that you subsequently had said you're not going to work or you have worked with authorities to bring criminal action?

VICKI BEEN: Thank you. I'll probably have some questions after my co-chair and my colleagues. And to my colleagues I know, I just

want to reiterate what we're focused on in the, in the hearing. We're focused on the RFP process, wage theft, and bad actors. I know that having been on the other side you probably will ask whatever you want but they, they are not prepared to answer too many questions about MWBEs, prevailing wage, and union jobs. Thank you very much. And Madam Co-Chair.

CO-CHAIRPERSON ROSENTHAL: Thank you so much Chair Williams. And thank you Commissioner Been for coming and for this really helpful presentation. So your presentation has sort of sparked a few questions in my mind's eye. One is that do you have just the numbers of... well online you have a list of 26 contractors who are currently under enhanced review...

VICKI BEEN: Uh-huh.

CO-CHAIRPERSON ROSENTHAL: ...is that correct? And...

VICKI BEEN: Yes, mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...three of them... well one thing is disconcerting that the four contractors that the previous panel referred to in their own experience of wage theft are not listed

here on the enhanced review. I would love an answer as to why they're not if those groups... they seem like groups that are probably contracting with you, maybe they're not contracting with you otherwise but I'd love for you to review them and get back to us as to whether or not you're contracting with them.

VICKI BEEN: We will do so. When, when my team heard the testimony we ran it through our, our current jobs and we found none of them on current jobs. So...

CO-CHAIRPERSON ROSENTHAL: Okay.

VICKI BEEN: ...but you know we will go back and double check that because...

CO-CHAIRPERSON ROSENTHAL: Thank you. Three of the groups that are listed and I, I, just to follow-up on Council Member Williams' point three of the groups are listed on your enhanced review list Lettire, Mountco...

VICKI BEEN: Mountco.

CO-CHAIRPERSON ROSENTHAL: ...and Procida have, have, it's my understanding from the unions have continued to engage in wage theft despite the fact that HP, and despite that HPD continues to

award new contracts to them. And I was wondering what your sense is on that.

VICKI BEEN: So all of them are on enhanced review. Let's see Lettire...

CO-CHAIRPERSON ROSENTHAL: When was, like what was the last contract issued to Lettire, when did it get issued?

VICKI BEEN: Okay so Lettire, the last contract that I show is June 14, June of 2014.

CO-CHAIRPERSON ROSENTHAL: So when you issued that contract you believed that they were free and, that they had taken care of any past problems? In other words were they still on enhanced review for not paying back wages when you then issued the contract to then?

VICKI BEEN: Yeah I just, I just want to, to, to go back to my, my chart here because, to remember, my relationship is with the sponsor. And the sponsor then contracts with a general contractor like Lettire.

CO-CHAIRPERSON ROSENTHAL: Hang on one sec... [cross-talk]

VICKI BEEN: That said...

CO-CHAIRPERSON ROSENTHAL: ...let's go
back...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...while you're
saying that because I want to catch up with you.
The sponsors are people that you've signed off on?

VICKI BEEN: No. The sponsors are the
owners of the properties.

CO-CHAIRPERSON ROSENTHAL: And the
sponsors, is there a list of sponsors you won't
work with because they contract with this, with bad
actor...

VICKI BEEN: Well a sponsor can be on
our enhanced review list right.

CO-CHAIRPERSON ROSENTHAL: Okay so are...

VICKI BEEN: So...

CO-CHAIRPERSON ROSENTHAL: ...any of the
sponsors who chose Lettice on your enhanced review
list? Sorry I'm catching up to you. I know it
sounds like it's a complicated process.

VICKI BEEN: Yeah. Okay. So I'm sorry I,
I'm, I misspoke on... But let me, let me...

CO-CHAIRPERSON ROSENTHAL: That's okay.

VICKI BEEN: ...clarify here because I'm getting...

CO-CHAIRPERSON ROSENTHAL: I guess fundamentally what I'm asking is how does the information about these bad actors subcontractors or contractors...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...get communicated to a sponsor and between sponsors.

VICKI BEEN: Got it.

CO-CHAIRPERSON ROSENTHAL: So, and, and where I'm going on this ultimately...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...although let's keep going is...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...that I would like to see some larger city wide, the city itself taking responsibility for the actions of these contractors and subcontractors...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: And perhaps that better belongs in MOCS for example because I don't... even if you are working on enhanced review

with one subcontractor does SCA know that that subcontractor is a subcontractor...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...that has engaged in wage theft. So all those things are my concern.

VICKI BEEN: Okay. So, so there's a lot packed in there. Let me try to untangle it. So I misspoke on, when, so the owner of the property is the sponsor. And for those we do the sponsor review that I indicated. There are people who do not pass sponsor review. I do not publish a list of those. Those are property owners that you know come to us and say we have a piece of property and we, if we don't think that they are outstanding people that we would want to work with we do not do business with them. We don't publish a list of them. We can consider doing that but it's, you know but they are like I own you know 2570 you know 1st Avenue, whatever, and I'd like to use it as affordable housing and we say after sponsor review no thank you right. Okay so then there are the then, but if we approve a sponsor the sponsor contracts with a general contractor and the general contractor you

know sponsors with the subcontractors. When we put a general contractor or a subcontractor on our enhanced review list that is public information right. So and my understanding is that other agencies within the city are also checking our enhanced review list. In fact I've had discussions with other agencies about people on our enhanced review list right. So I think that information is getting shared. What, what I think we are frustrated by and I think is, is, is something that is very much needed across the city and the state is that we find it very difficult if somebody had a prevailing wage violation with let's say the school construction authority we don't necessarily find that out because there is no centralized database of prevailing wage violations. Somebody can see that somebody has gotten on our enhanced review list because of a prevailing wage violation but there's no central database of all prevailing wage violations across the city, state, or federal government. That is something that we find very frustrating and we would, you know I think that is an area where progress could be made.

CO-CHAIRPERSON ROSENTHAL: Let's say a sponsor precedes to hire...

VICKI BEEN: Uh-huh.

CO-CHAIRPERSON ROSENTHAL: ...a contractor or a subcontractor who's on your enhanced review list.

VICKI BEEN: Uh-huh. So many times they do not because that is the deterrent effect that I mentioned. By publishing the list of who's on our enhanced review we're saying very clearly to sponsors if you hire this general contractor or if your general contractor hires this subcontractor you are going to be, you're under enhanced review. This is going to be watched carefully. In many cases the sponsor will say no thanks I won't go forward right. If they do go forward with somebody who is on our enhanced review list then we subject that contractor or general, that contractor or subcontractor to one of the, to the kinds of conditions that I mentioned earlier, either extra monitoring, etcetera.

CO-CHAIRPERSON ROSENTHAL: So is the sponsor who in 2000, in, I'm going to make this up right, a couple months before June 2014...

VICKI BEEN: Uh-huh.

CO-CHAIRPERSON ROSENTHAL: ...but the sponsor who chose the company Lettire..

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: Is that sponsor currently on the enhanced review list?

VICKI BEEN: So, so sponsors are not on enhanced review. They're just dinged, you know they are weeded out through the sponsor review process, only contractors... [cross-talk]

CO-CHAIRPERSON ROSENTHAL: So I guess what I'm saying is what are the consequences to a contractor or to a owner, a sponsor of their subcontractor being on the enhanced review list?

VICKI BEEN: They know that their job is going to get extra monitoring and extra attention and it may cost them more to hire a third party monitoring, the third party monitor.

CO-CHAIRPERSON ROSENTHAL: How many times has hiring a third party monitor worked or not worked?

VICKI BEEN: Well...

CO-CHAIRPERSON ROSENTHAL: So if we can give an example of a case where somebody was on

enhanced review, they were being subject to that,
and at this, and during that period of having a
monitor on site...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...they
continued in wage theft what happens then?

VICKI BEEN: If we have a situation
where there is a third party monitor...

CO-CHAIRPERSON ROSENTHAL: Mm-hmm.

VICKI BEEN: ...and never the less the,
the, there is a wage theft or that kind of thing
that is certainly an instance in which we would be
working with the Department of Investigation and
possibly other law enforcement authorities.

CO-CHAIRPERSON ROSENTHAL: How many
cases...

VICKI BEEN: We have had those
situations arise.

CO-CHAIRPERSON ROSENTHAL: Without
naming any names at all, I'm not interested in
names, how many cases went to DOI in 2014 and how
many to DOI year to date in 2015? How many
companies?

VICKI BEEN: Okay. So, so I'm told that we have, we have referred 11 contractors to DOI but I don't have it broken down in the yearly way that you have it broken down. We're happy to... [cross-talk]

CO-CHAIRPERSON ROSENTHAL: Could you break it down for us by year?

VICKI BEEN: Okay.

CO-CHAIRPERSON ROSENTHAL: And how many have been, what do you know about the outcome after you refer it to DOI?

VICKI BEEN: So once we refer something to DOI we frequently go through a period of time when we don't know what's going on because their criminal investigation is proceeding. And in some instances DOI or other law enforcement officer, or other law enforcement agencies ask us to back off, to let them do their criminal investigation.

CO-CHAIRPERSON ROSENTHAL: And during that time would you ever let a new contract go out to that... Would you, how do you prevent a sponsor from hiring that contractor or subcontractor...

VICKI BEEN: So I...

CO-CHAIRPERSON ROSENTHAL: ...during that time period?

VICKI BEEN: I cannot publish a list of our referrals to DOI because that would compromise their investigation. So I cannot publish that, that is true. So as soon as...

CO-CHAIRPERSON ROSENTHAL: So there's no way a sponsor would know not to hire this firm?

VICKI BEEN: Would not, would know that there is a DOI invest, or other law enforcement action proceeding they would not know that. They would know about the past. They would know that the person was on enhanced review but they would not...

CO-CHAIRPERSON ROSENTHAL: Right.

VICKI BEEN: ...know...

CO-CHAIRPERSON ROSENTHAL: That it's been ramped up to DOI.

VICKI BEEN: They would not know...

[cross-talk]

CO-CHAIRPERSON ROSENTHAL: Do you know how many times...

VICKI BEEN: I'd know of no way that they would know that. Let's... [cross-talk]

CO-CHAIRPERSON ROSENTHAL: ...in the 11 cases that have been referred to DOI do you know how many of those have since been hired by a sponsor or contractor.

VICKI BEEN: On... No we could, I don't know that off hand. We could figure it out for our jobs obviously not, not more broadly.

CO-CHAIRPERSON ROSENTHAL: You could figure it out... [cross-talk]

VICKI BEEN: ...for our jobs.

CO-CHAIRPERSON ROSENTHAL: ...for your direct...

VICKI BEEN: Right, right.

CO-CHAIRPERSON ROSENTHAL: ...HPD jobs...

VICKI BEEN: Right.

CO-CHAIRPERSON ROSENTHAL: ...but hypothetically you're not hiring those companies on the enhanced review list so that number's going to be zero, I would assume.

VICKI BEEN: Remember enhanced review is the contractor or subcontractor and our arrangement is with the sponsor. But it, but...

CO-CHAIRPERSON ROSENTHAL: I thought you were, sorry I was trying to... [cross-talk] stay with

you. I thought you said you couldn't do the broader list of the sponsors and what they had done but that you could do your narrow list of what HPD hires, no?

VICKI BEEN: For your...

CO-CHAIRPERSON ROSENTHAL: ...remember the small amount of HPD direct work, I'm wondering... maybe I'm, take a minute, maybe I'm not explaining it right.

VICKI BEEN: I'm, I'm sorry I'm confused about whether you're talking... So I, I focused most of my attention on the situations where we are, our relationship was with the sponsor because we're financing an affordable housing project. [cross-talk] Are you asking me about the... [cross-talk]

CO-CHAIRPERSON ROSENTHAL: Let's move on. It's not, I, I want to let my colleagues ask questions and it's really okay. Can I just ask one other question on another area?

VICKI BEEN: Sure, sure sorry I'm...

CO-CHAIRPERSON ROSENTHAL: I'm wondering if you feel you have enough staff in the labor monitoring unit in the sponsor review unit...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...and in the enhanced monitoring unit.

VICKI BEEN: We, right now I feel like we have, could we use more sure. And that goes back to the budget discussions you know that are underway right.

CO-CHAIRPERSON ROSENTHAL: If you had more, setting aside the budget discussions, if...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...you had more what would the result be? Would more contractors or subcontractors be on the enhanced list? Would you be able to... like you were mentioning the labor monitoring unit tries to have relationship with the workers but clearly the workers who were here today had never heard of a city agency reaching out to them. So I'm wondering like how effective are the letters that are sent out to the workers. And could you look at paystubs of you know...

VICKI BEEN: We do look at, we do look at the payroll records which are the paystubs. So we do look at those now.

CO-CHAIRPERSON ROSENTHAL: Well...

VICKI BEEN: But, but to your broader question...

CO-CHAIRPERSON ROSENTHAL: Yeah.

VICKI BEEN: If we had more people on sponsor review we do every, we never move forward until we have completed sponsor review. If we had more people maybe that would go faster. But it wouldn't, I don't think it would weed out any more people because we do a very thorough sponsor review on those it just takes a while because of, of our staffing. In terms of labor monitoring if we had more people in the field making unannounced visits, that kind of thing, would it make a difference... you know I would assume it would make a difference, I can't quantify exactly what difference that would make right an whether there some you know marginal value, you know some margin after which having more people doesn't make a difference I, I don't know that. And lastly your current list of contractors under enhanced review is 26 total. Could you give me a sense of perspective? Is that a big number? Is that a little number? What's your total number of contractors and subcontractors that are used? I mean...

VICKI BEEN: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: ...anyone under enhanced review we have to do our work with them but is this one percent of the total, 10 percent, half?

VICKI BEEN: So, so, so in any given year we do about 400 jobs.

CO-CHAIRPERSON ROSENTHAL: Okay thank you.

VICKI BEEN: Now that's not 400... [cross-talk]

CO-CHAIRPERSON ROSENTHAL: ...jobs versus contract? How do you... [cross-talk]

VICKI BEEN: 400...

CO-CHAIRPERSON ROSENTHAL: Is a job... [cross-talk]

VICKI BEEN: 400... [cross-talk] deals that we're financing. So 400 sponsors, there's, there's obviously going to be overlap because a sponsor may have more than one deal going on.

CO-CHAIRPERSON ROSENTHAL: Yeah. And then...

VICKI BEEN: Right.

CO-CHAIRPERSON ROSENTHAL: ...you don't know... I, I'm wondering as a proportion of the companies that are used what proportion is the 26. So maybe you can get back to me on that. I don't...

VICKI BEEN: Okay of all contractors and... [cross-talk]

CO-CHAIRPERSON ROSENTHAL: ...400... yeah.

VICKI BEEN: ...of all contractors. I'm not even sure we could even compile for subcontractors because we... yeah.

CO-CHAIRPERSON ROSENTHAL: I mean there should be some list of...

VICKI BEEN: Yeah.

CO-CHAIRPERSON ROSENTHAL: ...contract.

VICKI BEEN: Okay. So we'll get that to you.

CO-CHAIRPERSON ROSENTHAL: Do you keep a list of contractors and subcontractors that the sponsor is working with?

VICKI BEEN: Well...

CO-CHAIRPERSON ROSENTHAL: If... [cross-talk]

VICKI BEEN: Certainly the contractor. Do we know every subcontractor that a, that a

1 sponsor is working with? Right. We don't, I mean if
2 it were a prevailing wage job because we're
3 reviewing the payroll records we would have that
4 information. But if, if it's not a prevailing wage
5 job we would not necessarily know all the
6 subcontractors.
7

8 CO-CHAIRPERSON ROSENTHAL: Of the 400
9 jobs how many are prevailing wage?

10 VICKI BEEN: About 10 percent.

11 CO-CHAIRPERSON ROSENTHAL: Thank you.

12 VICKI BEEN: Thank you.

13 CHAIRPERSON WILLIAMS: Before I go to my
14 colleague... going to Council Members Crowley and
15 Miller and put five minutes on the clock I mean,
16 I'm trying to contain irritation on this issue and
17 trying to really figure out what's the blame and
18 who's the blame on why I don't feel there's enough
19 being done on this issue. Because in my community
20 people's lives are ruined and they have records for
21 the rest of their life for things like open
22 containers, things like riding a bicycle on the
23 sidewalk...

24 VICKI BEEN: Mm-hmm.
25

CHAIRPERSON WILLIAMS: And then we have people who are stealing wages, lots of wages, and also people who are providing unsafe conditions for some of those same people in my district to work in.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: And it seems like they get put on a time out and they can get put right back in, into the game. That is a, I, I can't, I'm trying to wrap my head around that because it seems like nothing happens to them. And then when we try to decriminalize some of these lesser offenses the paper puts on blast as if we're mentioning something that's crazy.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: But nobody's talking about these folks I think in the same way who are just robbing and stealing and destroying peoples' lives and putting people in danger. And we have to find a way to punish them, to prevent them from doing it again and from other people doing it again. And I'm not sure that that's what's happening here in the way that we have it set up. So one of the reasons it sounded like that we do

1 this I guess is a time out and then you come back
2 is that they do good work and I guess have a
3 competency that some folks may, may not have. Is
4 that in fact what it is? Is it some of these folks
5 that have been proven to steal wages have a... that,
6 competency level that other contractors and
7 subcontractors don't have and thus we're forced to
8 work with them?
9

10 VICKI BEEN: So, so I want to be clear.
11 I mean what, what you call a time out is a
12 punishment. If they're not being given jobs which
13 is their livelihood they are losing money. And
14 people who have been on our enhanced review list
15 and have not lived up to their commitments and we
16 have refused to do business with them have lost
17 millions, tens of millions of dollars. So that is a
18 punishment. And those records do remain right. So,
19 and that's what we're checking when we check for
20 example sponsor review and that kind of thing. So
21 but, but to your question of well why do we ever do
22 business with them it's really a function of I
23 think three things. One is a belief that I, that I
24 would certainly share about many issues of
25 wrongdoing is that you know we're not willing to

say once you've made a mistake you can never be rehabilitated right. So that's one thing. A second thing is we do not have you know so many firms doing affordable housing work that we don't have a surplus of, of firms. We are trying very hard to attract additional talent into the area, to train additional talent. That's as I said the, the MWBE course and things like that. We're trying to attract developers and contractors from outside of the city to come in. So we are trying to expand the range of people who will work on our jobs. The third thing is that yes there are people who we believe made a mistake, we believe that they can correct those mistakes and avoid mistakes in the future and who do a good job on the affordable housing. We have had people on the enhanced review list who have shown that they have completely gotten their act together, they've put in internal systems, that kind of thing and eventually have gotten, have even gotten off of the enhanced review list because they have you know shown that they've gotten it back together.

CHAIRPERSON WILLIAMS: So, so one it does seem like the pool of competent contractors is an issue and I'd like to...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...not now but I want to actually dig that a little deeper...

VICKI BEEN: Uh-huh.

CHAIRPERSON WILLIAMS: ...with my housing staff.

VICKI BEEN: Absolutely.

CHAIRPERSON WILLIAMS: Two... But in theory I can steal money until I get caught, pay it back, get on the enhanced review list, get some jobs, do everything right then steal again, pay it back, get on the...

VICKI BEEN: No.

CHAIRPERSON WILLIAMS: ...enhanced review list.

VICKI BEEN: No you absolutely cannot do that.

CHAIRPERSON WILLIAMS: Okay. So what happens?

VICKI BEEN: If you're on my enhanced, if you're on the enhanced review list and you steal

money again as you say then on a project by project basis I will say you are on my enhanced review list, you are on notice that we were all watching very carefully to make sure that you had gotten your act back together and we could trust you. You have shown yourself not to be worthy of that trust. We're not doing any more deals with you. We're not, on a project by project basis we say that, and we have said that.

CHAIRPERSON WILLIAMS: Is that the same after I'm off the enhanced review list? I've done my time out. I'm back. There's no more enhanced review?

VICKI BEEN: No if you goof up again it's not a, it's, it's not a time out. It's you've goofed up, we may give you another chance, you goof up again then we're not giving you other chances.

CHAIRPERSON WILLIAMS: So... And I also believe that everyone could be rehabilitated. I wish the same ease was afforded some other people...

VICKI BEEN: I agree.

CHAIRPERSON WILLIAMS: ...but would you give, provided that the city council has the authority to do this would you support legislation

that says that you can't do business for a defined amount of time or defined amount of projects as a form of punishing them for the action they did whether it's five years...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...few years, seven projects, something like that? Would you support something like that? So that they can rehabilitated in that time but in the time period they would not be able to...

VICKI BEEN: So I, I think the difference between the approach that you're proposing and the approach that we have goes back to your, your time out example. My, my kids are older so they don't get time outs although they sometimes still need them but, but I think that's a good analogy. We don't give time outs. We say show us that you've fixed whatever it was, whatever the problem was that led to this happening. You know you didn't pay your wage, you didn't pay your workers the wages that they were due. Show us why that happened. Show us that you've figured out why it happens so that you're aware of it and you know what went wrong. And show us that you're going to

fix that. It is a, I would call it a performance based system rather than a time system right. So it's not like you can, you know you can, you can surf or you can skim along for five years or three years or whatever but not clean up your act right. You have to clean up your act. You have to show us that you've got the internal controls, that you're doing all of the things that you need to do to make sure that this doesn't happen again. So I prefer that to a straight time out basis. So I would prefer that the kind of system that we have in enhanced review where we're looking very carefully and we're making you show what are you going to do differently to make sure that this never happens again as opposed to just you go on a, on a, on a list for five years and then you can come back.

CHAIRPERSON WILLIAMS: It sounds like a restorative justice model that I wish was applied other places.

VICKI BEEN: Yep. Yep.

CHAIRPERSON WILLIAMS: But it, it seems to me if someone from my community gets caught hopping the train they're not allowed to then pay the fair without something happen to them,

something punitive happens. They get a summons.
They can get arrested.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: So I just want to
repeat the question and know if you would support
the legislation the way I framed it or you would
not support the legislation the way I framed it?

VICKI BEEN: I would want to talk with
you about making sure that the legislation focused
on showing that you... The, the difference between
the person jumping the turn style or jumping on
the, not paying the fair and the situation here is
that it's often a question because remember I'm
primarily dealing with the sponsor and the general
contractor and they are dealing with the
subcontractor. So what I need to see from them is
do you have appropriate management, do you have
appropriate record keeping, do you have appropriate
enforcement of your subcontractors right. And
that's what I'm trying to do through enhanced
review is to make sure. Show me that you've got the
internal controls in place, that you've got, you
know that you're monitoring your subcontractors to
make sure that they are paying the wages that they,

that they pay. So I'd want to work with you to make sure that we were focusing on have we put the, has whoever has a problem in the past, have they put procedures, monitoring, etcetera in place so that it doesn't happen again with, with their contractors or their subcontractors.

CHAIRPERSON WILLIAMS: I, I have no problem with enhanced review. But I'm just saying you should ask those questions after the punishment has been meaded [phonetic] out. So I wouldn't mind asking those questions after a few years that they have not been allowed to participate and then go ahead with that enhanced review. Maybe like a halfway house type thing where you can help them get back into society properly. So I'm just wondering, so yes you would support it or no you wouldn't?

VICKI BEEN: I would support it with amendments.

CHAIRPERSON WILLIAMS: I see. Thank you. I just want to know if you have heard of any of these companies that were brought up by the workers that worked, I mean that testified earlier. There was, Auringer family, A U R I N G E R, Thomas David

and Mike, and they had a few companies. See if you've recognize any of them; Super Structure, NY, New York Plan, New York Pre-Cast, Urban Erectors, US Crane and Rigging, New York Steel, and New York Hoist.

VICKI BEEN: Okay so when, when the workers testified earlier my, my team again texted back and we ran through our records. And, and here's the information that we were told; that those, all of those companies are owned by the Auringer family, that on November 25th of 2014 five workers came in with a representative of Ironworkers Local 46...

CHAIRPERSON WILLIAMS: What day was that? I'm sorry.

VICKI BEEN: November 25th, 2014.

CHAIRPERSON WILLIAMS: Is that what they...

VICKI BEEN: That's what our records show.

CHAIRPERSON WILLIAMS: Did they meet with David Rosenthal?

VICKI BEEN: We don't have, we don't show in our records... was David there? We don't show

in our, I don't have the information about who they met with.

CHAIRPERSON WILLIAMS: Okay.

VICKI BEEN: Okay. We can, we can see if we can figure that out. They did not file complaints. They took forms with us and they took forms with them and informed us that they were going to return with the documents and the paystubs that would, you know that would show us what they were talking about. They did not return. The, the compliance officer reached, reached out to them but at least two of them... I'm sorry... on two separate occasions and at least, at least two of the workers stated that they were still on strike against the companies, that they were, but that they had been paid correctly on HPD projects as opposed to other projects although they did complain of excessive hours on the, I'm not sure whether that was on the HPD project or on other projects. So that is our, that has been our record with, with that company. It goes, again it goes back to what I was mentioning in my testimony is that you know we, we are stein mead in many cases by the workers' quite, quite obviously understandable reluctance in some

cases to bring forward pay stubs, etcetera. And that's a problem that we continue to work, again to try to build trust, to try to find ways, and I'm all ears for suggestions about how to do that better.

CHAIRPERSON WILLIAMS: So I have one more question and I'll go to my colleagues. I'm definitely going to follow-up. We're, we're going to meet with them.

VICKI BEEN: Okay.

CHAIRPERSON WILLIAMS: And it's probably things that HPD and DOB...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...has to follow-up with. What process, what process made you believe that someone like Lettire would no longer commit wage theft? What is it that they said or put in place to make you believe that that would not happen again?

VICKI BEEN: So again this goes back to the issue about... So Lettire is a general contractor and their, have, they need to be monitoring their subcontractors right? And so with for example since you raised Lettire we met with them extensively.

They showed us the kinds of internal controls that they were putting into place. They showed us the, the measures that they were going to take to make sure that subcontractors that they used paid the appropriate wages. I don't recall all the details of the internal controls although we're happy to you know go back and review the records and, and discuss that with you. But, and, and also I'm reminded that they have a external third party monitor on all of their jobs to make sure that, that that takes place.

CHAIRPERSON WILLIAMS: Who chooses that third party monitor?

VICKI BEEN: We do. Although they pay for them. That is part of the punishment as opposed to the time out.

CHAIRPERSON WILLIAMS: Alright it just, oh, oh we've been joined by Council Member Torres. It's, I mean I, most of the times when this, things happen I don't think it's simple mistakes. I think it's planned criminal behavior. And we're not treating these people as criminals. And so that's what irritates me a little bit. But I have some additional questions. I'm going to go to my

colleagues for a five minute clock. Council Member Crowley followed by Council Member Miller followed by Council Member Torres.

COUNCIL MEMBER CROWLEY: Thank you to both our co-chairs. Commissioner I'm very sensitive to the need of affordable housing. I have far too many constituents living in apartments unable to pay their rent or falling victim to homelessness.

VICKI BEEN: Mm-hmm.

COUNCIL MEMBER CROWLEY: I do not believe that letting contractors run wild padding their pockets by exploiting workers is the answer to more housing development.

VICKI BEEN: Couldn't agree more.

COUNCIL MEMBER CROWLEY: I see time and time again this corruption that's happening not just under your leadership but has happened continuously since I've been in the council. We've had contractors that have been accused of exploiting workers. The HPD says we'll let you prove yourself so you know that's strike one. If you're found two then we let you redeem yourself. That's strike two. If you're found guilty then you are put on enhanced review. That's strike three.

1 And how many strikes are we going to allow
2 contractors, I mean this is not a ball game, these
3 are peoples' lives, before we debar contractors?
4 How could we be accomplice to this substandard
5 development or the exploitation of workers not
6 getting paid prevailing wages, certainly not
7 prevailing wages. They're not getting paid living
8 wages. They're not getting paid in some cases the
9 basic minimum wage. No employment insurance is paid
10 on some of these job sites. And so often they're on
11 sites that are very dangerous. Last year I asked
12 you about a law that we passed in the council, not
13 one but, but twice we passed a law. It's a basic
14 transparency to help you identify these contractors
15 that are running amuck and running wild in our
16 city. And you as an agency and this city does not
17 want the transparency that this council is asking
18 for in Local Law 44. It's basic. It will help you
19 not have to wait for the federal government and the
20 state to tell you who bad contractors are. And
21 earlier I didn't hear an answer to a question and I
22 want to know with certainty can you say that none
23 of the contractors that are getting new
24 contractors, that are getting new contracts from
25

HPD, none of them owe back wages? With certainty can you say that? Because... Can you say that? Yes or no. You're, you're under oath right now.

VICKI BEEN: So I, so remember we do not contract directly with the contractors. So I just want to be clear that it is not our...

COUNCIL MEMBER CROWLEY: You give, right you give financial assistance, playing party to...

VICKI BEEN: To the sponsor.

COUNCIL MEMBER CROWLEY: ...low interest loans, tax abatements. You are, we are giving them the ability to build and develop. Without our assistance they would not be able to do that. The vast majority of your 400 contracts. Basically we have the right to know... we've been asking time and time again are these contractors that are getting new awards, that, that are getting new loans and some type of financial assistance from our city, do they owe back wages? Do companies like Mountco or Lettire Construction, do they owe money right now in back wages.

VICKI BEEN: So we're happy to run through the list and, and provide you with that information.

COUNCIL MEMBER CROWLEY: Well I have information saying they do. And that even though you have found them, HPD, in enhanced review has found that Mountco owed 600 thousand.

VICKI BEEN: Mm-hmm.

COUNCIL MEMBER CROWLEY: And you gave them an independent contractor, an independent monitor to make sure that they were adhering to paying the wages they were supposed to. And then when they had that independent monitor it was found that they had another 800 thousand in wage theft. So after being found guilty of stealing 600 thousand with the independent monitor they found that they were getting 800 thousand stolen, that's just Mountco. Lettire, they were found to owe 960, 960 thousand dollars in wage theft. And they just got a recent contract.

VICKI BEEN: Mm-hmm.

COUNCIL MEMBER CROWLEY: From HPD. And they still haven't finished paying off what they owe. And all we're looking for is basic quarterly wage reports. That's the law that we passed in the council not once but twice. And we have a new administration. We understand the bad practices of

the previous administration but we thought with a, a new mayor that that supports living wage and prevailing wage that we could expect that workers were not going to get exploited on HPD contracts and that basically we have the right to know what wages, employers, contractors and subcontractors, were paying. It's just basic transparency. Why don't you support quarterly wage reports for employers?

VICKI BEEN: So as we have discussed before the, the corp council is the lawyer for the city that decides whether to go forward with litigation. The corp council has filed a notice of appeal, not the appeal itself but a notice of appeal... [cross-talk]

COUNCIL MEMBER CROWLEY: Right.

VICKI BEEN: ...on...

COUNCIL MEMBER CROWLEY: So...

VICKI BEEN: ...that portion...

COUNCIL MEMBER CROWLEY: ...an independent judge said that we could have a law like this in the city. The previous mayor sued and said through the corporate council we don't want to disclose that information. We don't want contractors to tell

us what they're paying their employees, employees right. So we don't want contractors or subcontractors telling us what they're paying that the previous mayor thought and lost. Now this mayor is doing much of the same. Is that true that this mayor doesn't want these contractors and subcontractors telling the council and the public what employees, what workers, laborers are making on these job sites?

VICKI BEEN: Council Member I am the housing commissioner. I am not the corp council so I, you know, you'll have to ask that question of the corp council.

COUNCIL MEMBER CROWLEY: We have a law that requires the disclosure, the name, address, principal owners of developers, contractors, subcontractors the manner in which the developers were selected including whether they were prequalified or disqualified from lists in the process, information about the project size, location, number of units. It's basic information. We're not asking too much. We want to know also what wages are, are getting paid. I just don't understand why a progressive administration would

continue to go forward with projects like this and not get basic information as to what workers are getting paid on these projects. That we are... a party to. And when we have to listen to workers after workers come before us brave as they are and tell us how they're getting exploited, sexually harassed, not getting paid basic wages... We, we did what we needed to do. We passed a law. And that was upheld in the law. It was upheld by a judge.

CHAIRPERSON WILLIAMS: Council Member you actually got some extra time because we forgot to...

COUNCIL MEMBER CROWLEY: I know...

CHAIRPERSON WILLIAMS: Yeah. But so...

COUNCIL MEMBER CROWLEY: Chair all due respect I've been waiting three hours to talk to the commissioner.

CHAIRPERSON WILLIAMS: Yes, and she answered...

COUNCIL MEMBER CROWLEY: I still don't have the answer about whether we're certain the new contracts that are given are not given to contractors that still owe back wages because my information is telling me differently.

VICKI BEEN: Mm-hmm. So... [cross-talk]

COUNCIL MEMBER CROWLEY: And I still don't have information as to why a progressive administration wouldn't want transparency in these contracts... awarding contracts.

CHAIRPERSON WILLIAMS: Oh wait so see that's, that's a question, the other question I think even though we don't like the answer she answered it so it's a...

COUNCIL MEMBER CROWLEY: ...answered. She said it's in the hands...

CHAIRPERSON WILLIAMS: Wait a second... talking about the question...

COUNCIL MEMBER CROWLEY: ...of the corp council.

CHAIRPERSON WILLIAMS: ...about... Yes, but it doesn't make sense to repeat those questions if she's responded to that question. And that's a very fair point. Your last question if you would please give a answer to...

VICKI BEEN: So as I understand it the question was are we sure that there are no contractors hired by our sponsors who have existing outstanding...

COUNCIL MEMBER CROWLEY: But like specifically when your independent monitor was working with Mountco, Mountco? Construction...

VICKI BEEN: Right. Mm-hmm.

COUNCIL MEMBER CROWLEY: ...after they were found to steal...

CHAIRPERSON WILLIAMS: Council Member we got...

COUNCIL MEMBER CROWLEY: ...had stolen 600...

CHAIRPERSON WILLIAMS: ...you, your...

COUNCIL MEMBER CROWLEY: ...your independent monitor said 800...

CHAIRPERSON WILLIAMS: ...a lot past time so...

COUNCIL MEMBER CROWLEY: ...thousand, is that true?

VICKI BEEN: So, so that...

COUNCIL MEMBER CROWLEY: Did that happen?

VICKI BEEN: Let me... yep, well I don't know about the exact number of the 800 thousand but when we had, when we received complaints about the sugar hill, you're talking about the Sugar Hill

project right? When we received complaints about the Sugar Hill project we immediately turned it over to the DOI. The Department of Investigation then said we are going to investigate this. We are in the middle of criminal, of a criminal investigation and you need to back off. And that is what we did. As you know the DOI recently filed criminal charges against...

COUNCIL MEMBER CROWLEY: But just, just...

VICKI BEEN: ...the subcontractor involved.

COUNCIL MEMBER CROWLEY: ...for the record was that strike one, strike two, or strike three?

CHAIRPERSON WILLIAMS: You don't have to answer any more commissioner. Thank you Council Member. I did want to follow-up on one thing that Council Member Crowley mentioned. That Lettire hasn't paid back what they owed. So have they or have they not paid back what they owed?

VICKI BEEN: We will double check that. It is our policy that if they owe something we will you know not do business until that is cleared up. But we will double check that. And any information

that you have that can be helpful for us please,
please let us know.

CHAIRPERSON WILLIAMS: And Council
Member Crowley if you have any information about
money that they owe I would, I would love to still
see it.

CO-CHAIRPERSON ROSENTHAL: Commissioner
but from what we talked about a minute ago you
wouldn't know because a sponsor could hire one of
the subcontractors on your enhanced list... the only
way you would know is if your sponsors had to give
you all the time the name of their contractors and
their subcontractors. So I don't know how you could
answer Councilwoman Crowley's question if you're
not currently getting a list from your sponsors of
the contractors and subcontractors.

VICKI BEEN: I know the contractors. And
I thought her question was about Lettire the
contractor. Did I...

CO-CHAIRPERSON ROSENTHAL: Well yes but...

VICKI BEEN: But your point, your point
is well taken that if we are not informed of all of
the subcontractors then yes I do not know them, I

would not know them. Mm-hmm. Can I just, I just want to correct one thing on, on the record...

CHAIRPERSON WILLIAMS: Before, before... I want to stay on that point. Just for...

VICKI BEEN: Okay sorry.

CHAIRPERSON WILLIAMS: ...for clarity...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: So you don't know who the sponsors are contracted, subcontractors are? Is that what...

VICKI BEEN: I do not necessarily know all of the subcontractors.

CHAIRPERSON WILLIAMS: So they in theory could be people...

VICKI BEEN: Only on... I'm sorry I know them for prevailing wage jobs but I do not necessarily know them for all other jobs.

CHAIRPERSON WILLIAMS: So they could be in fact people who have criminally stolen wages in the past?

VICKI BEEN: Yes.

CHAIRPERSON WILLIAMS: That's... Yeah I don't even know what to say to that. That's... That's exhausting. I don't know what to say about that.

This, what we have to deal with wage theft I do not think is appropriate for the criminality that is occurring which probably daily in our construction in the city. And we, this is not enough. So we got to figure out how to make it better and actually have some teeth to it. But I have another question but you did have something you wanted to say.

VICKI BEEN: So I, I wanted to, to say it on Council Member Crowley's discussion about Local Law 44. We are, we have published the mandated Local Law 44 information since January 2014. We published the city financial assistance, the building data such as the stories, the square footage, the commercial square footage that she mentioned, the rents income affordability by unit, the development team information including all owners and officers, the developer selection method, and any construction quality complaints. The issue in the notice of appeal is only with the wage reporting requirement.

CHAIRPERSON WILLIAMS: With, with M, with MDG...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: So I got it forward in one of the news releases from June 2014. So they were busted by the feds in June for wage theft of about five million dollars. And then I believe we gave them a contract I guess in April of 2015. Do you know if they've paid back the five million dollars?

VICKI BEEN: Just one second. So again the reason why there's confusion is the difference between the contractor and the subcontractor. So my understanding is that a subcontractor of MDG owes that money. And so that, you know that goes back to the basic question. Our relationship is with the sponsor, the sponsor's relationship is with the general contractor, and how do we ensure all up that chain that the subcontractors of which there are many are behaving as they should be behaving. And so what we have tried on, we monitor the contractors very carefully and try to make sure that they have the internal controls in place that they're monitoring the subcontractors but..

CHAIRPERSON WILLIAMS: I mean I would say Council Member's, Crowley's insistence on the legislation we passed...

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: I would say I share it. I don't know why the administration keeps appealing it. And I think it might help illuminate some of things that we're, we're asking here. And maybe it would prevent some people from stealing if we can have more transparency. It just seems that there are amazing gaps here.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: ...of people stealing money and can just, just nothing happens. Council Member Miller.

COUNCIL MEMBER MILLER: Thank you Mr. Chair. So... digress and there's been a lot covered here.

VICKI BEEN: Mm-hmm.

COUNCIL MEMBER MILLER: So you say that there are 400 projects currently being financed by HPD?

VICKI BEEN: Well generally in it, in the last few years we've financed about 400. It, it is going up because as you know our production is going up.

COUNCIL MEMBER MILLER: Right. So let me ask you about your LMU and, and, and what that division staffing looks like.

VICKI BEEN: Mm-hmm. So the LMU has both inspectors who go out into the field and then also let me get you the exact breakdown. So we, we have 15 employees in LMU. The annual budget is 928 million, 928... sorry, 928 thousand dollars and that is, we've increased by 50 percent the number of employees devoted to labor monitoring since 2010. So we now have 15.

COUNCIL MEMBER MILLER: So was 15 specifically devoted to these 400 or so projects?

VICKI BEEN: So labor monitoring focuses on prevailing wage jobs. Prevailing wage are about 10 percent of our jobs so about four, well it's not even 40 jobs but in any given jobs there are about 40 jobs because there are year, there are you know rarely is a job finished in one year so we have about 12 prevailing wage jobs each year but in any given time there are about 40 being monitored.

COUNCIL MEMBER MILLER: So who is responsible for the other jobs that the other 90 percent of the jobs that we want to make sure that,

that they are actually doing what they say they are doing and doing it properly?

VICKI BEEN: So our labor monitoring and our BLDS unit is, our, our BLDS unit is checking those other jobs for compliance with construction quality and compliance with the terms of the financing etcetera. They're not prevailing wage jobs so there's no issue of enforcement of prevailing wage.

COUNCIL MEMBER MILLER: Are there other labor laws and standards that, that, that is applicable here other than prevailing wage?

VICKI BEEN: There are and, but they are not... pardon... minimum wage yeah. So and then of course there are OCEA [phonetic] and other things but that, those are not...

COUNCIL MEMBER MILLER: Outside your purview.

VICKI BEEN: Right the, I don't have jurisdiction over those.

COUNCIL MEMBER MILLER: Mm-hmm. Okay so I kind of want to... It seems like that they, that they, the sponsor, developer, contractor is is, we're kind of letting them off the hook here. And

that if I own a business and I, whomever I contract with obviously I, I assume those liabilities across the board whether it's a, it's a general, it's a subcontractor, or whatever and it appears here that, that sponsors are given somewhat of a free ride in this process. And I understand that some of this stuff is inherited and there's been a lot of discussion about past legislation and what we can do in the future. How do we kind of wrap ourselves around a process that ensures that we protect the rights and the integrity of workers but also of what we're trying to do here? From the... how do we quantify that, that sponsors can legitimately do what they say they're going to do if in fact we don't know who they're hiring, what their record is, what their ability to perform is in advance?

VICKI BEEN: So we do know that, we do know that about the contractors that sponsors hire right. Where we don't know on non-prevailing wage jobs is the subcontractors that the contractor hires right. So it, it, so is your question should sponsors have legal liability for the misdeeds of the subcontractor?

COUNCIL MEMBER MILLER: Absolutely.

VICKI BEEN: That's a huge issue and a huge change in the law right.

COUNCIL MEMBER MILLER: Yeah absolutely because it appears that there is no, you know I could say that... how do we know that, so that a sponsor has not hired multiple bad players? So for instance you caught one and do we record that, that, that... [cross-talk] Because it, it's... the contractor or the subcontractor but if this person has, or this group has a history of being involved with bad actors does that then reflect upon the, the sponsor?

VICKI BEEN: Yes.

COUNCIL MEMBER MILLER: And how does that happen?

VICKI BEEN: That happens in the, in the sponsor review process. If we, you know when we try to determine their past performance on jobs. And so if we know that a sponsor is you know constantly being you know or has multiple instances where they've hired a contractor who has done something wrong or they've hired a contractor who has subcontractors who have done something wrong then we would not, you know that, that's something that

we would consider in deciding whether or not to go forward with that sponsor.

COUNCIL MEMBER MILLER: Okay so... Now 500 thousand dollars, is that the opening threshold for violations of money owed in terms of wage theft or could they be investigated and violated for...

VICKI BEEN: Jobs for amounts...

COUNCIL MEMBER MILLER: ...for lesser...

VICKI BEEN: ...under that?

COUNCIL MEMBER MILLER: ...amounts.

VICKI BEEN: Yes. Especially if the amounts under that are, you know if there's a repeat, if, if there's any multiple violations right.

COUNCIL MEMBER MILLER: And then the 500 thousand kicks in at what point?

VICKI BEEN: If, if they had one that was 500 thousand that would trigger it.

COUNCIL MEMBER MILLER: Okay so that would trigger. So let me ask you this, and I'm kind of... so I'm, I'm come from labor and we have something and it's an interesting term but call progressive discipline.

VICKI BEEN: Mm-hmm.

COUNCIL MEMBER MILLER: Right. So you, you may be reinstructed as you mention here on a job you can come in and show us how you'll do it better next time you receive a fine and then maybe a suspension and... Is there such a, a process in place here or is that something that you would consider if it's not?

VICKI BEEN: Yes it is in place in the sense that for example if you end up on the enhanced review list right and then that's let's say step one of the discipline. And then you still don't perform you have another lapse. The progressive discipline at that point is we would not be doing business with you on a case by case basis. Right. If you, if, if you're on our enhanced review list and you... the purpose of putting you on enhanced review is for you to show that you've gotten your act together. If you don't have your act together then we're done.

COUNCIL MEMBER MILLER: And... [cross-talk]

CHAIRPERSON WILLIAMS: Council Member. Council Member.

COUNCIL MEMBER MILLER: What, I'm sorry?

CHAIRPERSON WILLIAMS: One more question?

COUNCIL MEMBER MILLER: At what point do you enter into the enhanced review? Is it the first violation?

VICKI BEEN: So the first 500 thousand dollar violation, multiple violations, construction quality problems, etcetera would, would trigger enhanced review.

COUNCIL MEMBER MILLER: But it's, it's not one specific incident that would trigger that?

VICKI BEEN: I'm sorry I'm not understanding. It could be like if you've been debarred in a federal or state process that would trigger it. If you've got a outstanding... if you've been fined, not fined but what's the word I'm looking for, have past violations totaling 500 thousand or if you have multiple violations or if you have multiple construction quality violations. So any of those things would trigger.

COUNCIL MEMBER MILLER: Okay. No I get it. So I, I was just kind of getting to I think that's a process that, that probably should be refined a little bit because it's, it's a little

vague and, and opportunity for it to repeat itself
and we want to kind of nip it in the bud as soon as
possible.

VICKI BEEN: Okay I'm delighted to hear
any, any ideas that you have.

COUNCIL MEMBER MILLER: Oh absolutely.

VICKI BEEN: Thank you.

COUNCIL MEMBER MILLER: Thank you. Thank
you Chair.

CHAIRPERSON WILLIAMS: Thank you. So I
just wanted to be clear. What is, what, what you
can do on a prevailing wage job but you can't do in
the other jobs. There was something...

VICKI BEEN: So prevailing wage we, we
get the weekly payroll reports and we monitor those
payroll reports. So we're checking them against the
prevailing wage schedules. So for example if we see
on the, on the payroll report that you are paying
an engineer at X number of dollars and we see that
the prevailing wage is X plus 10 then we see there
seems to be a violation here right. If it's not a
prevailing wage job then we're not comparing it
back to a prevailing wage schedule. We're only
comparing it to minimum wage.

CHAIRPERSON WILLIAMS: Are you legally prevented from doing that with all the non-prevailing wage jobs, doing just doing labor monitoring in general?

VICKI BEEN: No no we're not legally prevented but...

CHAIRPERSON WILLIAMS: Mm-hmm.

VICKI BEEN: ...but we don't, there's no requirement that they pay a prevailing wage so I...

CHAIRPERSON WILLIAMS: Okay I just wanted to know.

VICKI BEEN: Yeah.

CHAIRPERSON WILLIAMS: Would you support legislation that would bring some of the subcontractors into some of the same reviews you're doing with the contractors and sponsors so that you have the same information on those subcontractors?

VICKI BEEN: So if a subcontractor, if one of those triggers has occurred for a subcontractor they go on the enhanced review list. We do not do the extensive sponsor review what we do for the sponsors for subcontractors. Were we to, that would be a huge undertaking because any particular job can have dozens and dozens of

subcontractors. So we could in theory do an intense, that intense sponsor review process for every subcontractor that, to go back to your earlier question about resources that would be a game changer.

CHAIRPERSON WILLIAMS: But you could just do a basic review to see if any of the subcontractors are one of the bad actors that you already know about?

VICKI BEEN: Yes. Mm-hmm.

CHAIRPERSON WILLIAMS: Okay that doesn't sound like it's done now.

VICKI BEEN: I'm not sure that that's... Do we know the... Got it. Okay so the reason why I'm, I'm confused about the answer to your question is in our contracts with the contractor... the, I'm sorry, in our contracts with the sponsor we require them to check the enhanced review list and make sure that they are not using anybody on that enhanced review list without informing us right. So that is one check on it. We do not as I said earlier have a list of everybody who they're using that we are checking against it. We require them to

check the list and make sure that they don't hire one of those people without informing us.

CHAIRPERSON WILLIAMS: So they're self-certifying for lack of a better word.

VICKI BEEN: Yes that's appropriate word.

CHAIRPERSON WILLIAMS: That's, that's also concerning.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: I have several more questions and my co-chair may have some questions and that'll be it. On average how long does a contractor or developer remain under enhanced review?

VICKI BEEN: In, until they have, so let me back up. This has been in effect since 2012 so you know we've had two years, two and a half years of experience. So and in that time there have been I think three, three people who we took off of the enhanced review list because we thought that they had shown us that they had put internal controls etcetera into place that were satisfactory, they had performed satisfactorily on, you know on additional jobs.

CHAIRPERSON WILLIAMS: How many people are on the list?

VICKI BEEN: 26. And so... I'm sorry? So three have come off. There are 26 approximately on it right now. And those people have been on for varying periods of time and they will stay on until we are convinced that they have shown us that we don't have any more worry about them then we have about any contractor or any sponsor, any contractor for enhanced review.

CHAIRPERSON WILLIAMS: What are the most common violations found amongst the 26?

VICKI BEEN: I mean of those four triggers I think we'd need to go back and divide it up that way. So we can get you that information, what triggered which of those four triggers triggered enhanced review in what number of cases. Is that... Okay.

CHAIRPERSON WILLIAMS: Just so I'm clear also... [cross-talk]

VICKI BEEN: The vast majority are, are labor violations that have been found by the... [cross-talk]

CHAIRPERSON WILLIAMS: Labor meaning a wage or labor dangerous conditions?

VICKI BEEN: Wage. Wage withholdings.

CHAIRPERSON WILLIAMS: But they can also go in for dangerous conditions?

VICKI BEEN: Yes.

CHAIRPERSON WILLIAMS: Although this is a wage theft hearing I mean that, that also concerns me. That they may be putting people's lives in danger and then they go on to the time out. And then they fix it. And then they come out again where people could have been hurt. So ...understand... [cross-talk] Yes.

VICKI BEEN: Time out with disciplinary consequences.

CHAIRPERSON WILLIAMS: Do you know if anyone is on the enhanced review for dangerous conditions where an employee was hurt?

VICKI BEEN: No.

CHAIRPERSON WILLIAMS: No there isn't or you don't know?

VICKI BEEN: No there is not.

CHAIRPERSON WILLIAMS: Does there, does department maintain any demographic information on complainants?

VICKI BEEN: Demographic information on complainants?

CHAIRPERSON WILLIAMS: Yeah people complaining about issues.

VICKI BEEN: No I... Is that, would that be legal for us to ask that? I'm not, I'd have to check with my lawyers but we do not collect that information.

CHAIRPERSON WILLIAMS: And just walk me through really quick if I'm on a job...

VICKI BEEN: Uh-huh.

CHAIRPERSON WILLIAMS: ...and I make a complaint...

VICKI BEEN: Uh-huh.

CHAIRPERSON WILLIAMS: ...what happens?

VICKI BEEN: So if you are on a job and you make a complaint then our labor monitoring unit would investigate that complaint. And you know depending on what the complaint was would depend on how they would do the investigation. So it would

come straight to the labor monitoring unit and they would make that investigation.

CHAIRPERSON WILLIAMS: Are any efforts made to inform the employers of their rights and where they can make complaints?

VICKI BEEN: Yes. We post on jobs the confidential hotline or whatever, hotline number. And... [cross-talk]

CHAIRPERSON WILLIAMS: Does that legally have to be posted by a contractor or subcontractor?

VICKI BEEN: Yes.

CHAIRPERSON WILLIAMS: It legally must be posted?

VICKI BEEN: Mm-hmm. And then we also as I said when we make announced, unannounced and announced visits to a job site we tell the workers you know if you'd rather contact us after hours, if you'd rather come to our office, if you'd rather meet off site please call the confidential line, whatever. So we also do it personally in that sense. And then remember that we also, so we're, on prevailing wage jobs we are getting the payroll records. And we then will send randomly we will send letters to people saying we show that you got

paid X amount of dollars, is that accurate. If not, let us know.

CHAIRPERSON WILLIAMS: Thank you. My co-chair has anything...

CO-CHAIRPERSON ROSENTHAL: Thank you very much Commissioner Been. I just want to reiterate that it seem, it strikes me that there are a lot of, there's lots of good information that you guys have that I think a broader group of agencies could benefit from. And I'm disappointed that MOCS is not here today to testify on how they capture the information that you have besides it just being posted publically on your website. So to the extent that DDC is contracting, DOT is contracting, you know they have to... and I, I'm sure they, the... there are excellent but they have to proactively look on your list, your enhanced review list to identify whether or not there's a contractor or subcontractor that's under review. And I think it would benefit the city to have that information stored centrally at MOCS so...

VICKI BEEN: That's a, an excellent suggestion. I will talk with MOCS about putting our enhanced review list into vendex. I will also make

sure that I'm not committing any legal violations by doing that but I will... so it's a great suggestion.

CO-CHAIRPERSON ROSENTHAL: Thank you.

VICKI BEEN: I, I mean there's a lot of information exchanged between us and NYCHA, us and SCA etcetera but I take your point it should be in Vendex.

CO-CHAIRPERSON ROSENTHAL: Thank you.

VICKI BEEN: Mm-hmm.

CHAIRPERSON WILLIAMS: Oh thank you Commissioner for your testimony. I think there was a lot brought to light here so I'm glad that we had this hearing. I'm glad that there are some things being done but it seems apparently that there's a lot more that we should be doing and hopefully we can either legislatively or by policy make some changes so we can hold people more accountable then I think we're holding them now. But thank you for your testimony and I really appreciate it.

VICKI BEEN: Thank you. And again my apologies for the disruption of my coming late and it is something that we take very seriously. We're very proud of the enhanced review and the

procedures that we put into place but we are always looking to do better and we look forward to working with you on that so thank you.

CHAIRPERSON WILLIAMS: Thank you. We are going to have a 10 minute recess so we'll come in at 4:30 and then we'll have Parris Simmons, Xavier Givens, Nicole Vecchione, and Melissa Shetler. Actually hold one second. Okay so we'll have a 10 minute recess and those folks will be up. Thank you.

[pause]

UNKNOWN MALE: Alright let's start taking the chairs... they're about to start again. Find chairs. Quiet please.

CHAIRPERSON WILLIAMS: Parris Simmons, Xavier Givens from Local 79, Nicole Vecchione Laborers Union, and Melissa Shetler Laborers Union. Then after that we'll have a last panel which is Johnny Zada [sp?] from Local 79 and Glenn Hatcher [sp?] from Carpenters. They'll be up after this panel. That's all that we have signed up right now. If anyone else would like to testify please go to Sergeant of Arms fill out a form. Can you all raise your right hand please? Do you affirm to tell the

truth, the whole truth, and nothing but the truth in your testimony before the committee and to respond honestly to council member questions? Thank you. Each have three minutes. You can start at your leisure.

PARRIS SIMMONS: Good afternoon. Thank you for granting me the opportunity to share my experiences and my concerns with you here today. My name is Parris Simmons. I stand before you today as a very happy man. I have been given an amazing opportunity, the opportunity to get up each day and do something I love. The opportunity to trust the men and women I work with to have my back on or off the job and an opportunity to have a good career and with a real paycheck and benefits. I am a laborers local 79 union construction worker and it has changed my life for real. When I got out of prison, yeah that's right I was incarcerated for nine years. When I got home I went to a reentry program but I had trouble finding work that paid a basic wage. I eventually found work on my own doing non-union construction work. I eventually, one day, excuse me, one day while getting coffee at that job I ended up speaking to some people engaged in a

union protest at the site. One thing led to another and I soon found myself in a program run with the corporation of Local 79 that helps people coming home from periods of incarceration get into the laborers union. I started the Local 79 apprenticeship program on June 9th, 2014, 14th and my life has totally changed since then. So now I have a concern. It is no secret that work carried out under the HPD has a problem; illegal off the books payrolls, wage thefts, and unsafe shoddy constructions. These problems affect people like me from a reentry background a vary, varied ways. Many are locked out of work with contractors who pay off the books because they must verify employment with their parole officers. And even when clients are hired legally they are often discriminated against because of their criminal justice histories. Also workers on these jobs do not receive the training and other work opportunities that they need to create careers in the construction industry. I am an apprentice. That means I go to school to learn my trade. We learn to work safe first and foremost. But also my training is free. Our school provide hundreds of hours in training from... and

1 fireproofing to CPR and financial literacy. I am
2 excited that the city is looking to build more
3 affordable housing. We certainly need it. But I
4 like to be able to build it and so would my
5 friends, my union brothers and sisters, and my
6 neighbors. Please consider how we get the most from
7 our public dollar by having good contractors
8 provide career paths open to all people in our
9 neighborhoods while building quality homes.

11 XAVIER GIVENS: Good afternoon

12 Committee. My name is Xavier Givens. I just want to
13 first thank my union Local 79, a few other people,
14 Temier Rosenbloom [sp?] Lim, Lynn Goodman [sp?],
15 Kajime Hill [sp?], Alvin Banks, Antoine Kennet
16 [sp?]. I only bring these people up because the
17 growth of my life would have been completely
18 impossible without these people and without our
19 union. Thank you all for hearing me today and
20 taking the time to look at a very important issue.
21 I believe we all want to see affordable housing
22 built but some of us want to see it built
23 correctly, see it built right. HPD is broken. I
24 hope that you will work hard to fix it so that we
25 can create career opportunities for people like

myself. And who am I? I'm originally from Queens New York but life has taken me down a lot of paths and not all so good. I once was a promising student until I made a terrible decision at 19 years to get myself involved in a crime. At 21 I was sentenced to 10 years of incarceration. My actions disappointed all of those close to me that had great hopes for me. The thing is after serving a decade I came home with a great desire to succeed, to be an asset to my family, and to never return to prison. The reality is though when our, when I came home I was 30, 30 years old and I had a 10 year resume gap. I was, had no home. I was sleeping on my mother's couch and without any accredited qualifications or degree to my, to my name. I found initially low wage employment and committed to, and also joined some training programs like the Osborne Association to improve myself but I struggled to find fulfilling work that could also pay the rent in New York. And then a year and a half ago I was blessed with an opportunity to become a union construction apprentice. I now have a career I love and take pride in. I also have an apartment of my own. And I'm so blessed to say that next month I'm

getting married to the love of my life. My family is very proud of me and respects me and it's because of meaningful that, that's been the main contributor to take me to where I'm at right now. I share many concerns with my brother Parris but I'm also concerned that the building skills, HPD's answer to training and apprenticeship provides little to nothing in terms of long term career opportunities. And unbeknown to most that this is yet another opportunity that's really shut own to people coming from reentry like myself. It requires that you be on a NYCHA lease and the fact that NYCHA does not allow people with criminal background to be on a lease means another door that's closed. Those like me return to society are, are continually punished by a felony record, restrictions, parole restrictions, and program mandates. And this is another door that's... close. Just to be honest I don't want an opportunity with building skills. Why? Because our apprenticeship program, Local 79's program offers hundreds of classes, it lasts for years, and it's approved by the State Department of Labor. Our instructors, our curriculum are certified by outside experts. We're

not a fly by night job training program that puts you in a classroom for a few hours and then turns around and sends you out to the job site. I see my time is up so I'll just conclude but thank you for this opportunity... [cross-talk]

CHAIRPERSON WILLIAMS: You can make your closing, if you have a, if you have a last sentence you can say...

XAVIER GIVENS: Yes. It's funny. I just want to close that once again May 23rd I'm walking down the aisle with my lovely wife and we're going to be surrounded by friends and family from all over the country. And what makes us most proud is that her friends and family are ecstatic to see her happy but more importantly with a loving man and a working man. And this brings pride to both of our families and I don't know it's just an accomplishment for me to be here at this moment. So just thank you once again and consider with both Parris and I...

CHAIRPERSON WILLIAMS: Congratulations. Thank you.

NICOLE VECCHIONE: Hi, my name is Nicole Vecchione and I'm a researcher with the Laborers

Union where I've worked on our campaign to bring accountability and transparency to HPD for the last five years. I thank the city council and you for holding this hearing and giving me the opportunity to speak. Compared to the previous administration we expect that this administration will have a deeper commitment to transparency, equality, and worker's rights and look forward to continuing to work with them to those ends. Change is needed because corruption and exploitation are cultural mainstays of HPD. These patterns will persist until HPD is forced to reform practices that currently allow exploitation. Furthermore HPD must be mandated to execute its authority over developer and contractor selection and transparency mandates. And to do this for the public benefit and not for the prosperity of preferred developers. The procurement process implemented by HPD is not subject to competitive bidding which is the preferred method of the New York City procurement policy board and the New York state general municipal law. Frequently HPD developers are selected from prequalified lists or through RFPs where in no rational explanation for this selection

is required. In practice this type of procurement has consolidates power into a small group of decision makers without any checks and balances. This has bred corruption. Not even five years ago former HPD Assistant Commissioner Wendell Walters pled guilty to accepting 2.5 million dollars in bribes in exchange for securing HPD projects for specific developers. This was possible because the development programs Walters oversaw were not transparent and the rewards were open to his discretion. This type of corruption continues at HPD. Just two months ago the Manhattan DA found HPD inspectors involved in a pay to play scheme. Even those HPD development officials not directly involved in corruption schemes are complicit in the employment of a largely off the books work labor force costing millions of dollars in lost tax revenue and exploiting a vulnerable workforce. Since 2010 the USDOL and attorney generals have found over 14 million dollars in wages were stolen from workers. Instead of exercising their power to refuse to work with these contractors HPD created the enhanced contractor review list. This process is simply a slap on the wrist for contractors who

1 have been found in violation of labor laws. We've
2 heard about the Mountco Construction example.
3 Mountco is already subject to enhanced contractor
4 review, was under increased inspection and still
5 800 thousand dollars in work, in wages were stolen
6 from workers. I work with the organizer who first
7 found this exploitation and brought the workers to
8 HPD. Part of the problem that happened when they
9 sat down with the labor management unit is the
10 labor management unit did not look past the
11 certified payroll that the contractor submitted to
12 HPD. If you are knowingly violating labor laws do
13 you think that you're going to put that information
14 into a public document that you're submitting? Even
15 though... Okay. Even though those workers were only
16 getting paid \$15 an hour the labor management unit
17 would not consider them as getting paid less than
18 \$72 dollars an hour. I thank you for your time and
19 just close with a thought without the total
20 overhaul of procurement process honest developers
21 and contractors cannot compete in the affordable
22 housing market. Only legislating, legislation
23 reforming HPD's contracting practices and mandating
24 compliance to labor procurement and transparency
25

laws that this city council pass and that requires every subcontractor on every HPD finance project to be open to public review.

CHAIRPERSON WILLIAMS: Going to have to ask you to...

NICOLE VECCHIONE: Sorry.

CHAIRPERSON WILLIAMS: ...to just...

NICOLE VECCHIONE: Thank you.

CHAIRPERSON WILLIAMS: Thank you.

MELISSA SHETLER: Good afternoon. My name is Melissa Shetler and I'm community organizer who spent the last four years working with homeowners and tenants who are struggling to live comfortably in the far too many shoddy homes that were constructed by HPD over the last 10 years. When we talk about this tale of two cities we need to be honest with ourselves about how to address the true roots of inequality. And it is in our policies where we can decide to either bravely step up and declare who was our priority or not; the vulnerable citizens or the bully profiteers. As a public agency HPD does not act in the interest of the public nor protect the public dollars they a lot. And they especially do not protect the workers

who build the affordable homes. The system is broken. Their so called solution to wage theft is to merely allow contractors who've stolen from workers to continue working and allows them to win new contracts as they hire a quote unquote monitor. But even after they do so the wages are still, still stolen as we have been hearing all day today. Additionally there is no quality oversight. Contractors hire unskilled workers and skimp on vital materials; insulation, proper electrical wiring. The result is a mounting plague of leaking cold and downright dangerous construction. When quality issues are made known to HPD they have no mechanisms, not surprising they have no wage theft mechanisms, they have no mechanisms in place to hold the contractors responsible for the repair. In fact HPD applies to the city for more public funds to clean up the mess. In an email from Vicki Been Commissioner in August of last year to a homeowner she said; last month we requested funding for the program to repair homes from the Office in Management and Budget. We're optimistic that we will finally get a green light from OMB soon and look forward to actually getting repairs done. I

hope to have definitive news for all the homeowners in the near future. I understand it's been a long time coming but I can't go back and fix that. A reply from the homeowner nine months later. Either you are at the best at a delay game or you've learned how the scam the homeowners better than the contractors you hire. The funding angle seems like a farce. We waited for the last two years since we sat down with HPD executives and their concerns about our, our situation just adds insults, insults to our homeowners. Although required by Local Law 44 HPD does not share the information with the public about the quality issues and in fact continues to grant these same contractors lucrative contracts. If we want to end this tale of two cities then we need to begin by reforming city policies that drive inequality. We need to be a model. We demand transparency and accountability now before it's too late. The new housing plan being introduced is ambitious but let's make it more than that and learn from our past mistakes to make it a successful one that protects the rights of the vulnerable workers and produces quality homes for our future. HPD procurement reform

legislation could easily jumpstart the city towards a more equitable future by providing real transparency, career opportunities, oversight, and advocacy for the very people that these social programs are meant to be helping.

CHAIRPERSON WILLIAMS: Thank you very much.

CO-CHAIRPERSON ROSENTHAL: First of all I want to thank everyone for coming and testifying. To the gentleman you know both of you very very impressive. And go you. So Melissa may I ask do you want to share the name of the organization that your community organizer for?

MELISSA SHETLER: So we created a, a group called Justice for Homeowners which is a coalition of transit workers, union, NAACP, the laborers, and anybody... RAFA has occasionally jumped in and helped, anybody interested in tenants' rights. But I personally work for the laborers.

CO-CHAIRPERSON ROSENTHAL: For the lawyer?

MELISSA SHETLER: For the laborers.

CO-CHAIRPERSON ROSENTHAL: Laborers.

MELISSA SHETLER: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: Okay. So of course I extend the invitation to Council Member Williams to join me but I'd love to follow up with you on some of these things that you're seeing and to learn more about them.

MELISSA SHETLER: Okay.

CO-CHAIRPERSON ROSENTHAL: And I'm sorry to the woman right next to you...

MELISSA SHETLER: Nicole.

NICOLE VECCHIONE: Nicole.

CO-CHAIRPERSON ROSENTHAL: ...did you submit testimony.

NICOLE VECCHIONE: I will as soon as I'm done using it.

CO-CHAIRPERSON ROSENTHAL: No problem. I'd love to go back and be able to read it.

NICOLE VECCHIONE: Mm-hmm.

CO-CHAIRPERSON ROSENTHAL: So when you submit it to the city council if everyone could make sure it gets shared among the committee members. Okay great. Thank you all very much.

NICOLE VECCHIONE: Thank you.

CO-CHAIRPERSON ROSENTHAL: Sorry.

CHAIRPERSON WILLIAMS: I had a, a couple of questions. First congratulations on you two and a double congratulations to you and your coming nuptials. Have you spoken to people who are married to make sure that you want to... Okay. You mentioned Mountco?

NICOLE VECCHIONE: Mountco.

CHAIRPERSON WILLIAMS: What is it?

NICOLE VECCHIONE: Mountco.

CHAIRPERSON WILLIAMS: Mount, oh Mountco. They're on enhanced review. Have they been confirmed that they stole money again or you're saying that what HPD wasn't enough to dig deep enough to find the theft?

NICOLE VECCHIONE: So Mountco originally had some labor law violations that resulted in a 610 thousand dollar withholding from HPD and that ended them up on the enhanced contractor review list. At that point they continued to get work and were, and the thing the enhanced contractor status required was a third party monitor. Despite having the third party monitor at the additional project another 800 thousand... sorry, at the second project while they were already under enhanced review they

1
2 did steal another 800 thousand dollar, they, their
3 subcontractor stole another 800 thousand dollars
4 and they are responsible for the behaviors of their
5 subcontractors. That was recently released within
6 the last month, the Department of Investigation and
7 the Attorney General jointly released information
8 about that and arrested the subcontractors.

9 CHAIRPERSON WILLIAMS: And so the
10 contractors are legally responsible for the
11 subcontractors?

12 NICOLE VECCHIONE: So starting in about
13 2010, about the time the stimulus was released the
14 depart, the US Department of Labor changed their
15 enforcement mechanism to hold general contractors
16 more responsible for the action of their
17 subcontractors on projects on, on federally funded
18 projects and publically funded projects. And that
19 was in direct reaction to Lettire Construction and
20 pervasive wage theft on their projects by both
21 their subcontractors and then later there was a
22 class action lawsuit by their foreman and the
23 employees directly hired by Lettire for overtime
24 pay that was, that was not provided.

CHAIRPERSON WILLIAMS: Okay. I just want to, just for the committee staff I think I want to get a letter trying find out why Mountco is still receiving funds if what they're saying is accurate and they are responsible for the subcontractors. Yeah. It seems to have... It seems to have failed. And you mentioned something about the, they don't do competitive bidding?

NICOLE VECCHIONE: No.

CHAIRPERSON WILLIAMS: So the RFP that they discussed are you talking about for city owned land or you're talking about non-city.

NICOLE VECCHIONE: For, for anything. When you do an RFP process HPD has the ability to choose among the respondents whoever they deem appropriate.

CHAIRPERSON WILLIAMS: Mm-hmm.

NICOLE VECCHIONE: And they're not required necessarily to say why they have chosen this person. And that was based on a finding, an article 78 finding for the Greenpoint Hospital redevelopment. If you look into that case you'll find more information about it.

CHAIRPERSON WILLIAMS: So I can think of a few more questions that I would have liked to have asked HPD. But I want to also ask... we're going to look at your testimony but I do want to ask, put that, we probably just need a letter in general as follow-up. I do want to follow up on what, what criteria that they use to choose their RFP and to choose the, the winner of the RFP and why don't they use competitive bidding.

NICOLE VECCHIONE: I...

CHAIRPERSON WILLIAMS: So they are not compelled to, to go to the lowest bidder?

NICOLE VECCHIONE: No. And in some cases they do prequalified lists and you heard about one positive example where they're doing that to increase minority and women owned businesses. But they use that process often times where they get a whole bunch of people to respond. And then HPD decides at its discretion we have this applicant and we have this land and we're going to match the and that's how it's going to happen. So it's totally at HPD's discretion who gets the project and what sort of financing goes into it.

CHAIRPERSON WILLIAMS: I hope HPD's listening too so we have, definitely have some more questions for them. Thank you so much for your testimony.

NICOLE VECCHIONE: Thank you.

CHAIRPERSON WILLIAMS: Congratulations again. I really appreciate it. Johnny Zada Laborers Local 79, Glenn Hatcher New York City Carpenters. Those are the last of the people that we have signed up today. If there's anyone else that would like to sign up for, to testify you can let the Sergeant of Arms know at this point. You'll be providing translation. When you do it also mention your name. But can everyone raise their right hands? Do you affirm to tell the truth, the whole truth, and nothing but the truth in your testimony before this committee and to respond honestly to council member questions? Either one of you can begin. You have each three minutes for your testimony.

JOHNNY ZEDA: [speaking Spanish]

TRANSLATOR: My name is Johnny Zeda and I've worked on construction here in New York City on New York City construction projects and in

affordable housing. Thank you for giving me the opportunity to speak today about something very important to me and my community and the future of our city.

JOHNNY ZEDA: [speaking Spanish]

TRANSLATOR: It's, HPD must change. It's not fair that companies that steal millions of dollars from me and other workers like me can continue doing work for the city.

JOHNNY ZEDA: [speaking Spanish]

TRANSLATOR: In 2011 I worked for MCNO Construction on a project in River way. It was a city project, an HPD project. They stole nearly a million dollars from this project and yet still HPD continues to allow the use of MCNO, why? They had already had problems for not prevailing, paying prevailing wages before this job and yet they continued to steal from us yet again.

JOHNNY ZEDA: [speaking Spanish]

TRANSLATOR: I'd like to see other people have the opportunity to be able to work for just companies, that they could work for companies that actually treat us with respect like human beings and not like the thieves who mistreat us and

take advantage of workers fear and necessity to feed their families.

JOHNNY ZEDA: [speaking Spanish]

TRANSLATOR: Please I ask that you work with HPD to stop that they continue to award the types of contractors who do this kind of work and instead work towards real careers with real benefits and actual protection for the workers and not with such a... [speaking Spanish] with thieves and corruption. Thank you.

GLENN HATCHER: Good afternoon. Thank you Chair Williams and Rosenthal for allowing me to speak today. My name is Glenn Hatcher and I'm here representing the New York City and Vicinity District Council of Carpenters; a representative body comprised of eight individualized locals and over 20 thousand members. Today I speak of an issue that is, the, of the utmost importance to the district council; the contracting policy of the city of New York. With respect to the construction of affordable housing as we look toward construction of 80 thousand new units of affordable housing under the mayor's plan the hurt, the workers who will be tasked of building those unit

must not be forgotten. In this chamber last November we discuss the insufficient manner in which the agency, the agency of housing preservation and development ensures prevailing wages compliance of their projects. Commissioner Been detail how HPD places contractors on an enhanced review list yet does not bar irresponsible contractors from bidding on future projects. Contractors that cheat, cheat workers out of thousands of dollars in wages and, is, are free to bid on city contracts. The New York daily news exposed this disgraceful practice citing a list of 10 contractors and one developer that owes workers 11.89 million dollars. Those, the problem is pervasive within HPD. Ad so far no solution have been offered by the agency. The article goes on to describe press conferences in which Mayor de Blasio... affordable housing development why workers on the project were being, were being cheated out of wages were told to hide upstairs. New York City should not be subsidizing workers, workers exploitation. New York City should not be celebrating projects that are built by exploited workforce. Agencies tasked with building affordable

housing must review and reform their contracting policy in order to better serve and protect workers. Workers are too often forgotten when discussing the mayor's affordable housing vision. Contractors with a history of wage theft and work exploitation should not benefit from the city subsidies. These contractors should not continue to be awarded city contracts. New York City should be demanding a higher standard. It is a city often labor progressive with many of our politicians priding themselves as such yet with workers exploitation rampant how can we, how can we call ourselves a progressive city? Thank you for your time.

CO-CHAIRPERSON ROSENTHAL: Again I want to thank you both for coming to testify. It takes a lot of courage. And by the same token though it informs us so we can be better legislators and I appreciate your taking the time. I know you sat through a long hearing but thank you for taking the time and thank you for your patience.

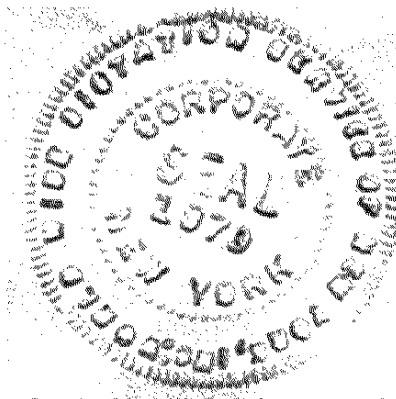
CHAIRPERSON WILLIAMS: Thank you very much. I concur with my co-chair. Thank you so much for sharing your story with us. We also have for

the record testimony from Mason Tenders District Counsel Political Action Committee, Mason Tenders of Greater New York on Long Island, and Mason Tenders Laborers Employees Corporation and Education Trust. I think this was a, a good hearing. I haven't, I'm kind of dismayed in some of the things that I heard and I think we have a long way to go before we deal with this wage theft issue. So it seems that it probably won't be the last time we have this type of conversation. I want to thank my co-chair, did a wonderful job co-chairing with me. And I thank everybody for sticking around for four hours, is that right? Oh four hours. Did we didn't start a late three and half, four and a half... Alright. Thank you everybody. This hearing is now adjourned.

[gavel]

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 that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 4, 2015