

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONTRACTS

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June 27, 2011
Start: 1:10 pm
Recess: 3:10 pm

HELD AT: Committee Room - 16th Floor
250 Broadway

B E F O R E:

DARLENE MEALY
Chairperson

COUNCIL MEMBERS:

Robert Jackson
Letitia James
Melissa Mark-Viverito
Michael C. Nelson

A P P E A R A N C E S

Marla Simpson
Director
Mayor's Office of Contract Services

Alan Klinger
Partner
Stroock & Stroock & Levan

Henry Garrido
Associate Director
DC 37

Arthur Cheliotas
President
Local 1180 Communications Workers of America

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2 CHAIRPERSON MEALY: Good morning,
3 my name is Council Member Darlene Mealy, I serve
4 as the Chair of the City Council Committee on
5 Contracts, it is my pleasure to welcome you today
6 on the hearing on proposed legislation to amend
7 local law 35 of 1994. Before we begin, I would
8 like to recognize Council Member Letitia James who
9 is with us today, I would also like to thank the
10 staff of the Committee for putting this hearing
11 together, and I thank you all for coming. In
12 April, this Committee held its third oversight
13 hearing in six years on local law 35 of 1994. The
14 law was intended to protect city workers by
15 creating a system of checks to make sure that
16 contracts were in the best fiscal interest of New
17 Yorkers. During the April hearing we discussed
18 the ways that the city has applied the law, and we
19 explored specific ways that we might improve the
20 law. Today's legislation is the result of years
21 of discussion about the benefits and shortcomings
22 of local law 35. Earlier this year, Deputy Mayor
23 Goldsmith acknowledged that it is sometimes better
24 for the city to have its employees perform
25 services, rather than outsource such work to

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2 vendors. With our provisional local law 35
3 hearing and Deputy Mayor Goldsmith's statements in
4 mind, I have sponsored today's legislation with
5 two goals: one, I hope that it will help insure
6 that the city regularly weighs cost efficiencies
7 when making contract decisions. I hope that it
8 will increase transparency of the city's use of
9 service contracts, as well ... as we all know, and
10 it is very clear at this time of the year, the
11 city is stretched financially. Given the size and
12 scope of the city's spending on contracts, it is
13 essential that the contracting process be
14 transparent, and that we review that process to
15 insure that the city's limited resources are used
16 efficiently. We hope that this legislation will
17 help us do just that today. We look forward to
18 this discussion. And just to say, we have Ms.
19 Marla Simpson again, I haven't seen you in a
20 while, we thank you for coming out today. And she
21 has a prepared statement, and I will turn it over
22 to you, and thank you for coming.

23 MS. SIMPSON: Thank you. Good
24 afternoon, Chair Mealy, member of the Committee,
25 I'm Marla Simpson, I'm here to present the

1 administration's testimony on the proposed bill.
2 I'm joined today in the audience by David Ross,
3 the Executive Director for Contracts and
4 Purchasing at the Department of Education, also
5 Joe Quinones and John Jurenko, respectively the
6 Assistant Vice President for Contract
7 Administration and Senior Assistant Vice President
8 for Intergovernmental Relations at HHC, also
9 Natalie Rivers, First Deputy General Manager at
10 NYCHA, Josh Nachowitz, the Assistant Vice
11 President for Government and Community Relations
12 at EDC. In these tough economic times we
13 continually assess how services are delivered to
14 the public, paying close attention to the bottom.
15 Throughout city government, our commissioners
16 carefully examine how our costs are affected by
17 the decisions that we make regarding who delivers
18 the services. We know that, as you mentioned, the
19 Deputy Mayor has spoken recently. We certainly
20 that often the most cost-effective way to deliver
21 high-quality services that New Yorkers need, is to
22 have city employees perform those services. DEP
23 recently awarded a contract to a bid that was put
24 in by employees from Local 1320 of the Sewage
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2 Treatment Workers and Local 3 IBEW, and that came
3 in 12% below the cost of the lowest outside bid.
4 The pilot program at DEP has allowed unions to
5 compete against private contractors for certain
6 kinds of repair work at sewage treatment plants
7 and pumping stations. This past year, my office
8 also let a citywide contract cost-containment
9 initiative seeking voluntary price cuts from our
10 large vendors. Agencies have worked diligently
11 and so far we've achieved about \$18 million of
12 annual savings and \$8 million of new revenue. The
13 one success has been the negotiation of freezes in
14 the COLA increases that some vendors would have
15 earned. In IT, for example, COLA freezes were
16 negotiated with Gartner, Camelot and Motorola. So
17 the Bloomberg administration shares many of the
18 Council's aims for this legislation. We too want
19 a robust public dialogue on service delivery, and
20 we agree that data analysis can advance that
21 dialogue. We'll work with you to clarify the
22 bill, so that information can be made publicly and
23 timely available. In my testimony I'll share some
24 concerns and suggestions. I'll focus first on the
25 provisions that apply to Mayoral agencies, the

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2 ones that are governed by the charter and the PPB
3 rules. This bill would require public notice to
4 initiate contracts. We want to target such a
5 mandate so as not to worsen what is already a
6 cumbersome process. Our process is long and
7 costly, and it discourages small vendors and
8 MWBE's from bidding. Competitive solicitations
9 already take one to three months on the street.
10 All of our contracts, including renewals, undergo
11 agency responsibility reviews, which take about 45
12 days. Many require oversight approvals, such as
13 from my office and other parts of city government.
14 Many are already requiring public hearings, and
15 all of them go through a 30-day period for
16 comptroller registration. Thus the existing
17 procurement cycle does allow plenty of time for
18 comment on contracting out decisions, as long as
19 the public knows that the decisions are occurring.
20 So we share the goal of shining more light on the
21 beginning of this key process. In 2004, we joined
22 with you in legislation to improve the non-profit
23 human service contracting process. Local law 24
24 mandated an annual human services plan, this web-
25 posted publication details all of the contracts

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2 that agencies plan to process in the coming year,
3 either to continue existing programs, or to
4 initiate new ones. We hold a hearing on the plan
5 to invite comments on the individual contracts
6 and/or on the contracted programs generally. More
7 significantly, since the plan is regularly
8 updated, it provides information to vendors who
9 have current contracts, so that they can track the
10 status, and new vendors can learn about upcoming
11 solicitations. My office has developed similar
12 plans for contracting ... I'm sorry, contracting
13 actions in the construction arena, which is posted
14 as the construction pipeline, as well as an annual
15 plan for the issuance and renewal of concessions.
16 For mayoral agencies that are governed by the PPB
17 rules, we believe that the potential for
18 meaningful dialogue is greater with a
19 comprehensive annual contract services plan. In
20 that plan, agencies would list their upcoming
21 contracts, including renewals and extensions.
22 This would provide the Council with ample notice
23 of those actions, and it would also be noticed in
24 the City Record, so that vendors as well as unions
25 and other members of the public could learn about

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2 planned contracts. The City Record is becoming
3 the city's one-stop shopping site for contract
4 opportunity information. We recently instructed
5 our agencies to put the full text of their bid
6 solicitations available for downloading from the
7 City Record online, as they have done now for
8 several years with RFP's. Some procurements,
9 however, should not be subject to advance notice.
10 Emergency contracts, obviously, must proceed on an
11 expedited basis, and those contracts I would note
12 do require advance approval from the comptroller.
13 Similarly, contracts that the city sometimes
14 enters into with other government entities, which
15 are used to provide unique services and are often
16 highly time-sensitive, should not be subject to
17 additional notice. These generate public hearings
18 and public notices at award. And last, small
19 purchases for which we currently use the informal
20 five-plus-five process, to encourage MWBE
21 participation, should not be subject to advance
22 public notice. This bill would also expand the
23 analysis that mayoral agencies perform under the
24 charter's section 312. That's the cost-benefit
25 analysis to which you referred, and currently it

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2 is limited to contracts for technical, consulting
3 and personal services. We do not object to this
4 bill's goal of extending that cost-benefit mandate
5 to address all direct displacement of city
6 workers, regardless of the type of services. We
7 are confident that our agencies and OMB already do
8 rigorous cost comparisons before they choose
9 outside vendors in those circumstances. We are
10 concerned, however, that in picking up indirect
11 displacement, which isn't very well or clearly
12 defined, that could require agencies to compile
13 hundreds or potentially thousands of detailed
14 analyses at a large cost, which can only come from
15 the same budget that supports public services.
16 Therefore, we would recommend that we target areas
17 where head-to-head comparison of outside vs. in-
18 sourcing costs are more likely to advance ... or to
19 yield opportunities for savings. One key factor
20 in looking at that is industry type. Some
21 construction-related services are treated as
22 standardized services in that they involve
23 maintenance rather than large-scale renovation.
24 These include contracts for building or plant
25 maintenance, landscaping and street light

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2 maintenance. All of those contracts are covered
3 by prevailing wage requirements, most are covered
4 by apprenticeship, and some by project labor
5 agreements, and they typically go to union firms.
6 The city has contracted out large-scale repair
7 work for decades, as this often requires major
8 expenditures and outlays for equipment and
9 materials, so it's unlikely that agencies have in-
10 house capacity, or that an in-sourcing opportunity
11 would be identified there. This is also likely to
12 be the case for large-scale architecture and
13 engineering work, that is also an area where our
14 MWBE program has been successful in creating
15 opportunities through the imposition of goals.
16 Agencies do some contracts in specialty areas that
17 are also unlikely to yield opportunities with
18 head-to-head cost comparisons. For example,
19 agencies contract with advertising agencies for
20 advertising services, and also with outside
21 experts for litigation support. Comparative cost
22 analysis for those types of contracts would either
23 be fruitless or inappropriate. One area where we
24 are closely examining cost comparison is IT
25 contracting. We're shifting work to city

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2 employees, as we discussed in the prior hearing,
3 as we strengthen in-house project management in
4 particular. But even for some IT contracts, a
5 cost-benefit analysis would be an empty exercise.
6 These include contracts that package the IT
7 support services with software purchases, where
8 basically we're purchasing the underlying product.
9 Similarly, there are some types of equipment
10 contracts, including some large-scale IT hardware
11 as well as heavy industrial equipment, where the
12 city is required on some occasions to purchase
13 maintenance services from authorized vendors or
14 from the manufacturer in order to obtain the
15 warranty for the equipment. For other agencies
16 that are represented here today, beyond the ones
17 that I referred to initially as the agencies that
18 are governed by the PPB rules, the administration
19 believes that the current reporting provisions in
20 the bill are likewise over-broad and potentially
21 too burdensome. By law these are independent
22 agencies, and they are not subject to the charter,
23 or to PPB rules, for their procurement. But
24 overall we look forward to working with you to
25 achieve the Council's goal for the bill in a

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2 strategic and cost-effective manner, while
3 enhancing information on contracting by all of our
4 agencies, and I'm available to answer questions
5 that you may have at this time.

6 CHAIRPERSON MEALY: I thank you.

7 So I'm glad some parts you agreed with the law and
8 some you don't. But just what got me quickly ...
9 let me introduce, we've been joined by Robert
10 Jackson and Mark-Viverito. You said that in your
11 testimony for the non-PPB rule agencies, the
12 administration is concerned that the reporting
13 provisions are likewise over-broad and potentially
14 too burdensome on the agencies.

15 MS. SIMPSON: Yes.

16 CHAIRPERSON MEALY: So you feel
17 that it's too burdensome for them to find out if,
18 before they lay off people, to see if they can get
19 it in-house? You say that's too much work for
20 them to do?

21 MS. SIMPSON: No, what I said- -

22 CHAIRPERSON MEALY: (Interposing)

23 Or the agencies are not sure?

24 MS. SIMPSON: We will sit down with
25 the Council separately from this hearing, and

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2 we'll go through various provisions. Some of them
3 we think are just a question of how something is
4 worded and whether or not it's actually clear. In
5 some cases we think that, in order to do the type
6 of reporting that is asked for, it would require,
7 in effect, the Council would be making a change in
8 the procurement practice of those agencies, which
9 the Council is not entitled to do, because their
10 procurements are governed by state law. However,
11 we do believe that there is a way to achieve the
12 Council's goal for the bill in reporting
13 requirements that we would be able to work with.
14 We're not suggesting that all reporting
15 requirements are problematic, we simply would like
16 to sit down with the Council and go over that in a
17 more detailed fashion, in order to work out
18 something that does not interfere with the
19 underlying procurement independence of those
20 organizations.

21 CHAIRPERSON MEALY: Okay, that will
22 happen. Do you feel ... do agencies seek input from
23 the unions before they issue requests for
24 proposals for individual bids?

25 MS. SIMPSON: It's not really

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2 appropriate to seek input from individual
3 stakeholders prior to the release of an actual bid
4 document on the text of that exact bid document.
5 However, agencies do, and I gave the example of
6 the DEP program, we're very much interested in
7 union input on what becomes the decision that
8 would lead to a contracting-out process, and we
9 are looking increasingly not only with DEP, but
10 with other agencies, at a sort of managed
11 competition where you'll have a competition on the
12 street for outside vendors, but then you will also
13 compare and offer the unions an opportunity to
14 come forward to compare costs of an in-sourcing
15 solution. The only part of your question that was
16 of concern is that we, because of confidentiality
17 rules, we don't actually share a text of a bid
18 before it becomes public. But the underlying
19 concepts, yes, can be discussed.

20 CHAIRPERSON MEALY: Okay, so you
21 know in this legislation we have it to require
22 city agencies to provide public notice of their
23 intent to solicit bids for standard and
24 professional services 60 days before they issue
25 requests for proposals, invitations for bids and

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2 other solicitations for service contracts. So do
3 you think we need to tweak that?

4 MS. SIMPSON: Yes, that was the
5 purpose of my testimony concerning an annual plan.
6 I think an annual plan requirement would achieve
7 that in a more comprehensive way and a way that
8 would be more manageable and less overall burden
9 to everybody concerned. But it would still get
10 you all the information that the unions or anybody
11 else would need to know, in order to ascertain
12 what the nature of the decisions would be. Now,
13 the one thing that, you know, we are talking,
14 again in my testimony, we'd like to have
15 discussions on is where you go beyond that, and
16 mandate a specific cost-benefit analysis. We
17 think that should be targeted to areas where it's
18 likely to be more fruitful. And I gave some
19 examples of areas that we thought would not be
20 fruitful.

21 CHAIRPERSON MEALY: Okay then. So
22 do you think this legislation is kind of on the
23 mark?

24 MS. SIMPSON: It's not- -

25 CHAIRPERSON MEALY: (Interposing)

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It's trying to get to where- -

MS. SIMPSON: (Interposing) It's not on the mark yet, but we certainly believe that it is legislation that, if we sit down, we can come to an agreement on with the Council, because we do share many of the same goals.

CHAIRPERSON MEALY: Okay, thank you. I know my colleagues have some questions, and I have further questions also. Robert Jackson.

COUNCIL MEMBER JACKSON: Thank you, and thank you, Madam Chair. Welcome again, Director, first let me, I just want to make a statement and then I'll ask questions. I am concerned, like I guess all New Yorkers are concerned, about the fact that it seems as though the City of New York is being ripped off, and I use those words literally, being ripped off to the tune of probably hundreds of millions of dollars by outside contractors, of not specific to one agency, but in many agencies. And as, you know, the Mayor's Office of Contracts, I guess the question that I have is, what is your role in trying to monitor these contracts and trying to

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2 stop these outside contractors from ripping off
3 the various agencies, and then in total ripping
4 off the City of New York? What is being done by
5 the Mayor's Office of Contract Services to stop
6 this ripping-off process?

7 MS. SIMPSON: Well, first of all I
8 guess I wouldn't agree with your characterization
9 that the majority of our contractors are engaged
10 in any such practice, but our office does engage
11 in a great deal of what we call responsibility
12 investigation, responsibility review. We are very
13 vigorous in identifying problems that various
14 organizations, private sector organizations, have
15 had. We work very carefully with agencies, we do
16 training throughout the year at the Procurement
17 Training Institute, to make sure that agency staff
18 understand that they are expected to do in
19 contract administration. We have a certain number
20 ... or certain types of training that is actually
21 targeted at our vendor community, and we are in
22 the process of working with a number of agencies,
23 including the Department of Investigation, to
24 expand training on ethical issues specifically for
25 vendors. Those are issues that we've spent a

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2 great deal of time on and we do very vigorously
3 monitor our contractors' compliance.

4 COUNCIL MEMBER JACKSON: Well,
5 while I appreciate your response, it seems as
6 though obviously that is not enough, because we
7 are constantly being ripped off, and I mean
8 literally, we're being robbed. And I mentioned
9 about this, Tish James, the former Chair of the
10 Contracts Committee, has mentioned about it in so
11 many ... and even, as you know, the Federal, I
12 guess, attorney general had indicted several
13 people. It's just to me kind of crazy to know
14 that this administration, under this
15 administration, that we've been ... that vendors
16 have stolen, at least that we know of, over \$100
17 million, and we don't even know the untold
18 stealing that has happened to us under all of
19 these contracts. And obviously, the Mayor's
20 Office of Contracts, I guess you review all of the
21 contracts that the agencies want to put out. I do
22 know recently, under City Comptroller John Liu, he
23 has been scrutinizing many of them, and I read in
24 the paper where he had rejected a proposed
25 contract, and the City of New York is saying that

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2 they are recognizing the contract. As a lay
3 person not directly involved in your office,
4 Marla, or the Comptroller's office, I think it's
5 unacceptable at the direction that we're ... the
6 status that we're in, and maybe the direction that
7 we're going in is good, to be tighter and to
8 screen more, and to reject vendors, but overall I
9 say to you on behalf of the people that I
10 represent, and probably all of the people in New
11 York City, we're not pleased and we're not happy.
12 And that's a statement that I'm making on behalf
13 of myself, as a representative, as a member of
14 this Contracts Committee, as the former Chair,
15 prior to Tish James, it's not good. And then I
16 look at, you know, the Department of Education,
17 and as much as they're contracting out, and Dennis
18 Walcott was in front of us at the Executive Budget
19 hearing that we had, and they indicated they were
20 eliminating one IT contract, they were going to
21 hire some employees to do the job of the IT
22 contract, and it was going to save \$5 to \$6
23 million as a result of that. I look at last
24 year's Executive Budget hearing, the Department of
25 Finance Commissioner came in front of us and said

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2 that he was going to eliminate one IT contract,
3 and he was going to hire city employees to do that
4 job. And as a result of that, he was going to
5 save \$11 million in one year. And my ... I guess my
6 question to you is, if the heads of these agencies
7 can look at one contract and save millions of
8 dollars, then why are we ... why are you, as the
9 director, allowing all of these contracts to go
10 forward, knowing that we can probably hire city
11 employees at much less an expense, and save
12 millions and millions of dollars, and we're just
13 looking at two contracts I just cited from the
14 testimonies of the Commissioner of Finance and
15 Dennis Walcott, and as you know, the City of New
16 York has thousands of contracts, and DC37 has been
17 hammering for years about, you know, contracts and
18 how much we can save. And I raise that question
19 to you in the whole context of knowing that we're
20 ... that based on a handshake that we had Friday
21 night, that approximately 1,000 to 1,500 employees
22 are going to lose their jobs this coming year, and
23 that doesn't even include the community-based
24 organizations, in which their reductions are going
25 to take place, and as a result of that, employees

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2 that are hired by CBO's, many of those individuals
3 that live in the communities that we represent,
4 and do not earn a whole lot of money
5 comparatively, are going to lose their jobs also.
6 So I ask you that question in the context of all
7 of that.

8 MS. SIMPSON: Well, I'll answer
9 that question, but I will correct some of the
10 context, just because I want to make it clear
11 where I'm coming from in response to your
12 question. You referred to indictment being
13 announced of a particular contractor, I believe
14 that has to do with the City Time contract.
15 Obviously we're well aware of it, but as I think
16 you know, as the Chairman, that contract is not
17 under my jurisdiction, and cannot be, because the
18 contracts that are administered by FISA are
19 independent.

20 COUNCIL MEMBER JACKSON: I'm sorry,
21 I don't know what FISA stands for.

22 MS. SIMPSON: It's the Financial
23 Information Services Administration. It is an
24 agency jointly administered with the Comptroller,
25 and because the Comptroller has a controlling role

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2 in that agency, its contracts do not come to my
3 office for review, and are not subject to comment
4 or review by me, at all. And so nothing on the
5 City Time project went through the Mayor's Office
6 of Contract Services. Secondly- -

7 COUNCIL MEMBER JACKSON:

8 (Interposing) Well ... go ahead. And let me just
9 comment on that, if it's the Mayor's Office of
10 Contracts, the Mayor should be reviewing
11 everything, because the bottom line is- -

12 MS. SIMPSON: (Interposing) I don't
13 have the legal jurisdiction to do it.

14 COUNCIL MEMBER JACKSON: The buck
15 stops with the Mayor.

16 MS. SIMPSON: I don't have the
17 legal jurisdiction to, I'm not permitted to.

18 COUNCIL MEMBER JACKSON: And I hear
19 you loud and clear, I hear you loud and clear on
20 that point.

21 MS. SIMPSON: That's under the
22 charter, I'm not permitted to do that.

23 COUNCIL MEMBER JACKSON: But the
24 Mayor has responsibility, though.

25 MS. SIMPSON: Not to review the

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contract in that way.

COUNCIL MEMBER JACKSON: Not the Mayor's Office of Contracts, the Mayor does, the Mayor, Mike Bloomberg, as the executive of the City of New York.

MS. SIMPSON: The Mayor has accepted responsibility, and obviously it's undergoing a lot of corrective actions for the City Time project, but if you ask how that defines the way our office reviews contracts, which is the context that you asked.

COUNCIL MEMBER JACKSON: That's true, that's correct.

MS. SIMPSON: It does not define that, because in fact nothing about that contract was reviewed by our office.

COUNCIL MEMBER JACKSON: Okay. I'm glad to hear that, go ahead, continue.

MS. SIMPSON: Secondly, you refer to a contract where the city is in a dispute with Comptroller Liu about the effectiveness of a particular contract rejection. That contract, I believe, if you're referring to the news articles recently.

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COUNCIL MEMBER JACKSON: Right.

MS. SIMPSON: Is a Department of Education contract, and again, their procurements are governed specifically by a state law that differentiates in terms of how Department of Education is governed, and indeed the city does not believe that the Comptroller's action is lawful, and we took that position in a letter by the city Law Department, which I believe was referred to in the same article. Now, to go back to your question about where- -

COUNCIL MEMBER JACKSON:

(Interposing) Well then maybe your office should be involved. Maybe if your office was involved, then certain situations such as that, because, you know, the Department of Education has been ripped off by some of their contractors too. So maybe your office should be involved, and maybe we won't get ripped off as the City of New York.

MS. SIMPSON: There is a rigorous review process, it's just different.

COUNCIL MEMBER JACKSON: Then obviously, I'm sorry, and obviously it's not rigorous enough. When we're being ripped off,

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it's not rigorous enough.

MS. SIMPSON: The city does not agree with the Comptroller that the contract in question is a problem. The city supports the Department of Education's registration of that contract, and intends to support that legally going forward. From time to time - it's very rare - but from time to time we do get into situations with the Comptroller where we discuss a contract and we come to substantive different conclusions. That is one such case. You referred specifically to a number of contracts that various testimony has raised about contracts that are being cut back now in order to return work to city employees and to save money. Both of the examples that you gave are in the same area that I highlighted in my testimony, which is technology. I think we have indicated, we have determined that, if the city is willing to, which we are now doing, beef up the project management resources that we have in-house, and there's a certain amount of investment that it takes to do that, but if we are willing to beef up the management in-house, the sophisticated project management in-house, we are able to do

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2 more work with city employees in the technology
3 arena and not just those two commissioners, but
4 pretty much every commissioner of the city, along
5 with my office, is engaged in that activity.
6 Similarly, and again, we don't think that our
7 technology vendors as a whole have been ripping us
8 off, but we did go back, as we said in the
9 testimony, in light of the economic situation that
10 we face this year, we went back to all of our
11 vendors that have existing contracts, and we asked
12 them for voluntary price cuts in that area, and it
13 is an area where we have gotten some success.

14 COUNCIL MEMBER JACKSON: I'm happy
15 to hear that. That's very good, because
16 obviously, you know, when you look at the amount
17 of money that the City of New York contracts out,
18 and considering that we're in bad financial shape
19 where we're looking to lay off thousands of
20 employees, to go to contractors and say that we're
21 in bad shape, and, you know, we're asking you to
22 cut back your contracts by 10% or 5%, it's not
23 unreasonable. And, you know, obviously if someone
24 is adamant to say no, then maybe you should find
25 another contractor to do business with, if

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2 possible. And I would ... I think that people don't
3 want their ... if I was them, I would not want you
4 to get rid of a contract because I'm sure that
5 each contract clause has, I guess, a 30- or a 60-
6 day notice, where you can bow out, and I'm almost
7 sure of that. Would you agree with that or
8 disagree?

9 MS. SIMPSON: Most city contracts
10 do have termination provisions, but in order to
11 exercise those termination provisions we need to
12 be pretty sure that if we went back out on the
13 open market we would get a better price.

14 COUNCIL MEMBER JACKSON: Sure, I
15 believe that.

16 MS. SIMPSON: We would have to be
17 pretty sure of that.

18 COUNCIL MEMBER JACKSON: Yes, well,
19 I mean, my statements and my questions to you, I
20 guess, is out of frustration overall from what I
21 know and what I'm reading in the papers and what
22 I'm hearing from officials of ... law enforcement
23 officials and from various officials of the City
24 of New York. And I just say overall that the
25 people of New York, considering we are in tough

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2 times, we need to tighten up our belt and make
3 sure that we're not being ripped off by
4 contractors doing business with the City of New
5 York.

6 MS. SIMPSON: We believe we do
7 that.

8 COUNCIL MEMBER JACKSON: Not very
9 well.

10 MS. SIMPSON: We agree to disagree.

11 COUNCIL MEMBER JACKSON: Wait a
12 minute, you think you're doing well when somebody
13 ... when really we know that we have been ripped off
14 by at least \$100 million? I mean, obviously as
15 you indicated, your ... the Mayor's Office of
16 Contracts had nothing to do with the City Time
17 contract, but you know, when you're talking to the
18 general public- -

19 MS. SIMPSON: (Interposing)
20 Obviously- -

21 COUNCIL MEMBER JACKSON:
22 (Interposing) ... they're not going to distinguish-
23 -

24 MS. SIMPSON: (Interposing) Of
25 course.

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2 COUNCIL MEMBER JACKSON: ... the
3 Mayor's Office of Contracts versus the Department
4 of Finance. What the general public knows is that
5 we are being ripped off.

6 MS. SIMPSON: Yes, there was a
7 circumstance, a large contract that is extremely
8 regrettable, where it appears that a substantial
9 amount of thievery occurred. And the city is
10 joining with the law enforcement authorities to
11 try and seek justice for that. It is always ... it
12 is sometimes the case that despite one's best
13 efforts, one ends up being ripped off by a crook.
14 That occurs, again, you referred to ... and again, I
15 would be the last person to imagine that it is
16 prevalent in any business sector, but the reality
17 is that we do know that even in our non-profit
18 contracting, some crooks have ripped us off. That
19 does not mean that the vast majority of our non-
20 profit human services contracts are anything but
21 dedicated public servants trying to perform
22 community service. But there are crooks, and
23 actions are then taken to address the problem with
24 the crooks. That's what's going on now in the
25 technology area, or in any other area that we do

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2 business. The fact that there is a crook does not
3 mean that we aren't vigilant and that we don't
4 care, and it does not mean that in large part
5 we're not successful at getting our services
6 delivered in a proper and cost-effective way.

7 COUNCIL MEMBER JACKSON: Director
8 Marla Simpson, let me first say that in my
9 dealings with you, you have always, I guess, been
10 a straight shooter, with respect to information
11 and responses, and I appreciate that. And I'm
12 glad to hear, because I didn't know, because I
13 don't consider myself a contract expert or
14 specialist, I'm glad to hear that your office had
15 no oversight or no direct involvement in the City
16 Time contract, and as I said to you, maybe, you
17 know, your office should be involved if in fact
18 there's more ... there could be more scrutiny, but I
19 express to you, as I said to you, I express to you
20 the frustration from, as an elected public
21 official representing northern Manhattan, and you
22 know, with the same type of frustration that the
23 people of the City of New York feel when they're
24 reading, they're hearing, they're seeing, all of
25 this stuff that's happening, especially with

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thousands of layoffs on, you know, the horizon.
So I thank you and knowing that I'm expressing the
frustration overall of myself and many of the
people that I represent. Thank you very much.
Thank you, Madam Chair.

CHAIRPERSON MEALY: Thank you. I
just want to let it be known that we are all upset
about what transpired, but that's why we had all
those ... we had about six hearings in regards to
this contract, and I believe this legislation is a
good legislation, that we are now trying to make
sure that we put stops in place, that unions and
even other city agencies will be held accountable.
And this legislation so far we ... some of the
things we said we're going to sit behind the
scenes and tweak, and I feel we can't neglect that
we're here now and we're doing something about it.
My colleague was remiss in saying anything about
this legislation. So just thinking about how this
local law, why we had the meetings before, they
said it was not working, local law 35 was not
working. And now we sat down, had hearings, and
now we feel that we're putting things in place
that now the unions had indicated that they had

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2 not been excluded from the earlier phases of the
3 solicitation process, which has hindered their
4 ability to provide the city with competitive
5 alternatives to bids and proposals from vendors.
6 So now we have ... we can say now we have something
7 put in place, this legislation will almost put
8 checks and balance in where if an agency is about
9 to displace union employees, they have to show us
10 analysis that's saying no one will be displaced,
11 and they will have to say no or yes. And if they
12 say no, and then find out yes, it was, we have now
13 someone that we can be held responsible, that
14 agency, because they lied. So I feel this
15 legislation is really doing something that is
16 positive, and it's maybe the first step, but I
17 believe it's a good step, and so far you have not
18 said that it's so bad. But we do have to tweak it
19 a little bit, I see you're smiling, but it's okay.
20 but we're going to continue on with this.

21 MS. SIMPSON: We will continue.

22 CHAIRPERSON MEALY: Thank you, and
23 I have to acknowledge Mike Nelson from Brooklyn
24 and Council Member Letitia James.

25 COUNCIL MEMBER JAMES: So first I

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2 think it's important that we put this bill into
3 context, as to where we came from and how we
4 arrived at this point. And unfortunately, that
5 was not provided, so allow me to do that. And I
6 first want to thank the staff for putting together
7 this history. First, you know, the reason why we
8 are here is primarily related to three main
9 points. The city explained that it seldom reached
10 the cost-benefit analysis stage of local law 35,
11 based on its interpretation of the law, in the
12 overwhelming majority of cases contracts fell
13 outside of the universe of contracts defined in
14 the law. Two, several of our friends in the labor
15 movement indicated that they have been excluded
16 from the earliest phases of the solicitation
17 process, which has hindered their ability to
18 provide the city with competitive alternatives to
19 bids and proposals from vendors. Three, the city
20 has noted that it does not provide records that
21 would demonstrate the analysis supporting
22 agencies' non-displacement determinations. It's
23 based upon those primary reasons that we have
24 reached this bill. And the bill basically
25 attempts to re-define the universe of contracts

1 covered by local law 312A, it replaces and re-
2 defines terms, including but not limited to,
3 technical, consultant, personnel, standard or
4 professional. The bill would also add a paragraph
5 which would require city agencies to provide
6 public notice of their intent to solicit bids for
7 standard or professional services. Three, the
8 bill would modify the ways in which agencies
9 determine displacement under the law. Four, the
10 bill would revise the certification of procedures
11 set forth in the law. Five, the legislation would
12 add a new paragraph to require all city agencies,
13 including those entities that receive funds from
14 the city treasury but are exempt from the other
15 procedural aspects of local law 5, such as
16 Department of Education, HHC, EDC, NYCHA, etc.
17 And that primarily, in summary, explains the
18 proposed bill, which is before you here today,
19 which I understand that you obviously would like
20 further negotiation, and I appreciate that. Let
21 me go on to say that, as we negotiate this budget
22 that we anticipate voting on tomorrow, the city's
23 financial condition is dire and we have had to
24 make some difficult choices, some Hobson's
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2 choices, and in the face of cuts to the safety net
3 in the City of New York, it is imperative that the
4 city do everything that it can to insure that we
5 provide ... we continue to hire municipal workers
6 and maintain municipal workers, promote municipal
7 workers, not lay off municipal workers, and limit
8 the amount of outsourcing that we do in the City
9 of New York. And as was mentioned earlier by my
10 colleagues, Council Member Jackson and the Chair,
11 this was as a result of a major fraud that was
12 committed in the City of New York, it was an
13 historic amount of fraud that was committed, I
14 believe the largest amount in the history of the
15 City of New York, and that is City Time, which as
16 you know, though my name has come up time and time
17 again, which as a result of my conversations with
18 Lillian Roberts DC37, who was the one who first,
19 and it's important that everyone understand this,
20 she first informed me, with guidance from the
21 Executive Director, Henry Garrido, who's in the
22 audience today, and they should get all the
23 credit. I was just the voice to bring it to light
24 as Chair of this Committee. Last year we had two
25 hearings in it, and we hopefully will have more,

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2 because the fraud is deep, there is an ongoing
3 investigation, there has been a number of
4 indictments, a lot of discovery. We need to
5 recover some of those funds, particularly during
6 these challenging times, when city services have
7 been cut. And although you, it was not under your
8 jurisdiction, it was clearly brought up at budget
9 hearings by me and others, to Deputy ... to the head
10 of the OMB, Mr. Mark Page, who defended it
11 vigorously. And we knew ... I knew he was wrong,
12 others knew he was wrong. Unfortunately, it fell
13 on deaf ears, and we could have saved the city
14 funds if only the administration recognized that
15 they are not the only ... they are not the smartest
16 people in the room, and that there are individuals
17 in the City Council who have an obligation and a
18 duty to reveal corruption in the City of New York,
19 and the Mayor of the City of New York, who I have
20 great respect for, and my sympathy goes out to
21 him, obviously needs to work with members of the
22 City Council who can offer something to the
23 dialogue and discussions with regards to how this
24 city is run, including members of the labor
25 movement, including, but not limited to, Ms.

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2 Lillian Roberts. So that being said, I want to
3 sum up your testimony, I want to take issue with
4 some of your comments. And your comments, one,
5 and let me just sum it up, one, you basically said
6 that there are some services in the City of New
7 York which are so unique that no one else can
8 perform them, and that our friends from the labor
9 movement cannot perform them. I take issue with
10 you ... let me finish before you respond.

11 MS. SIMPSON: That's not what I
12 said, but okay.

13 COUNCIL MEMBER JAMES: Let me
14 finish and I'll read it to you, and I'll tell you
15 exactly what you said. You said as follows, and
16 I'm reading from your testimony, these are your
17 words and not mine. And it says, "Procurement
18 contracts with other government entities which are
19 mainly used to provide unique services that are
20 often of a highly time-sensitive nature should not
21 be subject to additional notice requirements.
22 These contracts already generate public hearings
23 and publication notices at the time of award. And
24 lastly, small purchases ...", blah, blah, blah,
25 blah, blah. So there's ... so let me go on to ... so

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2 again you mentioned the fact that there's a unique
3 ... there's unique services that are highly
4 sensitive (sic) and therefore should be ... not be
5 subject to notice requirements. I disagree with
6 you. I think they should be subject to notice
7 requirements. And two, I believe that those
8 services can be provided by municipal workers.
9 Two, you mentioned in your testimony, and I'm
10 really offended by this, you mentioned at least
11 three or four times, MWBE's somehow should be,
12 because of the great work which this
13 administration is doing in promoting MWBE's and
14 trying to encourage MWBE participation, that any
15 efforts to curb outsourcing would somehow harm
16 that, and that is a farce.

17 MS. SIMPSON: That's not what I
18 said either.

19 COUNCIL MEMBER JAMES: Okay, I'll
20 read that to you. It said- -

21 MS. SIMPSON: (Interposing) I
22 referred to WMBE's, but I did not say any effort
23 to curb insourcing would damage MWBE's, I simply
24 made a couple of examples in areas where we don't
25 think there are insourcing opportunities, and in

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2 fact we have been emphasizing opportunities for
3 smaller businesses, that's all that I said. Not
4 that there are no opportunities for insourcing,
5 but that there are some places where it's likely
6 not to be productive.

7 COUNCIL MEMBER JAMES: You said it
8 would lead to additional delays and discourage
9 vendors from participating, particularly small and
10 women and minority business enterprises, that's
11 one reference to WMBE's. The second reference to
12 WMBE's is on page three, where you go on to say
13 that ... excuse me, page four.

14 MS. SIMPSON: It has to do with our
15 (crosstalk)

16 COUNCIL MEMBER JAMES: ... small
17 purchases for which the PPB rules currently
18 require five-to-five targeted solicitation process
19 to encourage WMBE participation should not be
20 subject to advance notice of procurement. And
21 then at the end of page four, "Large-scale
22 architectural and engineering work, and that is
23 also an area where the MWBE program has been
24 successful in creating opportunities through the
25 imposition of goals ...", blah, blah, blah, blah.

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2 First of all, you haven't been successful with
3 regards to WMBE's, and to somehow use WMBE's as an
4 excuse to move this legislation forward is
5 offensive to me and a complete farce, and to me
6 challenges ... and to me is a challenge to my
7 intellectual capacity.

8 MS. SIMPSON: Council Member, we
9 were not ... I did not say that we did not want this
10 legislation to move forward, I ... we said that we
11 are interested in working with the Council, in
12 fact, toward this legislation. We never said
13 we're not interested in moving it forward. I gave
14 three particular examples, which if you want me to
15 explain, I will give explanations of why those
16 particular examples are appropriate.

17 COUNCIL MEMBER JAMES: Then you go
18 on to say that you are confident that agencies are
19 doing cost analysis, cost analysis. Confidence is
20 one thing, the reality is something different. I
21 don't want you to be confident, I want them to
22 actually do it and I would like for you to
23 supervise that work. Just being confident that
24 they are doing it, as opposed to demonstrating to
25 this body that in fact they are engaging in cost-

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2 benefit analysis is something of a different
3 matter. Then you go on to say that it is too
4 burdensome to engage in reporting, and then you
5 talk about that you are doing something, and I
6 want to thank you on this, with respect to
7 information technology, software, and industrial
8 contracts. That's good, but we obviously need to
9 pass some legislation, because the amount of
10 outsourcing, which did result in, again, City
11 Time, the City Time debacle, and fraud to
12 taxpayers in the City of New York, really needs to
13 be analyzed, particularly in light of the fact
14 that a significant number of municipal workers are
15 being laid off as a result of the amount of
16 technology contracts in DOE, in DOITT, in FISA,
17 FISA, in DDC, in DHS, and in EDC, which I know is
18 not under your jurisdiction, but obviously with
19 this legislation would be. So, and then you go on
20 to talk about the construction pipelines, and
21 again EDC not being under your jurisdiction is not
22 covering, most of the construction contracts are
23 in EDC. And obviously they need to do- -

24 MS. SIMPSON: (Interposing) That's
25 not true. That is definitely not true.

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COUNCIL MEMBER JAMES: Okay, so in what agency is most of our construction contracts?

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MS. SIMPSON: DDC, DEP and DOT are the largest three.

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COUNCIL MEMBER JAMES: So are you-

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MS. SIMPSON: (Interposing) There are six large agencies and several ... about six or ten smaller ones.

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COUNCIL MEMBER JAMES: So are they under your jurisdiction?

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MS. SIMPSON: Yes.

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COUNCIL MEMBER JAMES: That's ... so how many consultant contracts are in there?

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MS. SIMPSON: I don't know how many there are, but as I said in our testimony, the majority of our design contracts are done as outside contracts, and many of these are very large-scale contracts, I mean, where you have architects and engineering firms.

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COUNCIL MEMBER JAMES: And you're confident that they're doing cost-benefit analysis?

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MS. SIMPSON: Yes.

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COUNCIL MEMBER JAMES: But you don't have the documentation to back that up, correct?

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MS. SIMPSON: I haven't brought it with me here.

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COUNCIL MEMBER JAMES: Well, obviously that was an excuse that you've used at our last hearing.

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MS. SIMPSON: No, that's not an excuse, your last hearing was governed ... was a question of whether local law 35 by its terms applied, and we indicated it did not. So obviously I did not bring local law 35 analyses for situations that we said were not applicable. Today we are talking about a different law, in effect an amendment to the law. I came here with testimony that says very clearly, we are interested in working with you in coming up with language that everybody can live with.

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COUNCIL MEMBER JAMES: And I thank you for working with us. My question, can you provide this body, this Chair, backup information with respect to all the cost-benefit analysis in the agency that you just outlined? On every

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2 single contract that was outsourced? Do you have
3 that information, and can you provide it to this
4 body?

5 MS. SIMPSON: We don't do local law
6 35 cost-benefit analysis in cases that don't
7 require a local law 35 analysis, so no, I can't
8 provide that. We are offering to do that in cases
9 where displacement is at issue, and we made that
10 clear in the testimony. When I refer to the type
11 of rigorous cost analysis that typically goes on,
12 that is really what happens during what is the co-
13 called PEG process, or the program to eliminate
14 the gap. There is a significant amount, and I'm
15 sure you have heard about these analyses, in
16 various budget hearings over the years. Every
17 agency that is confronted with ... and you, I think,
18 may have referred to this as a Hobson's choice, we
19 always have to choose in that budget-cutting
20 situation, between difficult alternatives. And no
21 commissioner faces that task lightly, and no
22 commissioner does it by, you know, throwing darts
23 at the wall. You do it by looking at the cost of
24 what you're ... the services that you're trying to
25 deliver to the public, and trying to figure out

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2 how to do that better with less money. And that's
3 what I mean by rigorous cost analysis, and it
4 happens every day. Now, if you're talking about
5 an analysis that is focused particularly on the
6 outsourcing decisions, then we agree it makes
7 sense to come up with language that is really
8 clearly defined, so that we don't have
9 misunderstandings going forward, so that we know
10 when the Council expects that analysis and when it
11 is being provided, and that's what we want to do
12 going forward rather than rehash history of what
13 people did or didn't do in the past when the law
14 was written differently.

15 COUNCIL MEMBER JAMES: But, Ms.
16 Simpson, I have to rehash all of that, because at
17 this point in time, as we go forward in the
18 budget, municipal workers are being laid off.
19 They're being laid off, obviously, because we are
20 out-sourcing and because there has not been a
21 cost-benefit analysis done.

22 MS. SIMPSON: No, that is not, that
23 is not the reason.

24 COUNCIL MEMBER JAMES: Let me just
25 finish, let me just finish, yes that is. And I do

1 ... and we know, particularly members of this City
2 Council, that there is a significant amount of
3 technology contracts and consultant contracts that
4 are still within this budget that should be cut,
5 to save the jobs of municipal workers. To me that
6 is a primary goal here today and moving forward.
7 That being said, Ms. Simpson, the reason why we
8 are moving this legislation, I thank you, Madam
9 Chair, is because seldom have you reached that
10 cost-benefit analysis, because there is an out in
11 the law that ... and we're filling that void, we're
12 filling that gap, we're filling that
13 misinterpretation of the law. And so for that
14 purpose, and in addition to that, we are including
15 in the law other areas, other agencies that
16 unfortunately do not fall under your jurisdiction.

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18 MS. SIMPSON: Or yours.

19 COUNCIL MEMBER JAMES: That is what
20 we are doing - or ours, correct - and that's what
21 we are doing here today going forward. And so as
22 the Chair mentioned, I am glad that you agree with
23 part of it, but hopefully you will negotiate with
24 this Chair and with the staff and with the members
25 of the City Council, so that we can avoid future

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2 outsourcing and displacement of municipal workers,
3 because your reference to non-direct displacement
4 to me again is a misinterpretation of the law.

5 Your ... my understanding is that it is an
6 unintended consequence that municipal workers are
7 being laid, because it's not a direct ... it's not
8 direct displacement, and it wasn't our intent.

9 Well, it may not be your intent- -

10 MS. SIMPSON: (Interposing) That
11 isn't at all what the legal interpretation is.

12 COUNCIL MEMBER JAMES: It may not
13 be your intent, but that is what is happening,
14 each and every agency, and so Ms. Simpson, who I
15 greatly respect, the reality is that we have to do
16 all that we can do to, again, save municipal
17 services and save municipal workers. I don't want
18 to argue further, I want to negotiate with you so
19 that we have a strong bill moving forward, and we
20 avoid the displacement of municipal workers, the
21 vast majority happen to live in central Brooklyn
22 and in communities, unfortunately, that are
23 suffering from high rates of unemployment. Thank
24 you, Madam Chair.

25 CHAIRPERSON MEALY: Thank you. And

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2 that's what this bill is really about. But during
3 your April hearing, you testified that there are
4 many services that the city has outsourced for
5 decades, and that the decision to continue an
6 existing contract does not in any way impact the
7 current city work force. Could you please
8 describe the displacement analysis for the
9 extension of such a contract under this proposed
10 legislation?

11 MS. SIMPSON: I actually can't
12 describe it under the current draft of this bill,
13 in part because we don't think the language that's
14 in the bill is clear. We don't actually know what
15 you mean in some of it, so that's why ... part of
16 why we want to sit and negotiate. I will give you
17 an example- -

18 CHAIRPERSON MEALY: (Interposing)
19 Well, just to make it clear, to make an example
20 with you, you said in that April hearing that some
21 contracts just come up, and they just
22 automatically go through. They do not go through
23 the whole process. So then- -

24 MS. SIMPSON: (Interposing) Many
25 contracts under the current law, because local law

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2 35 has very limited application, many contracts
3 don't trigger local law 35, but we're not talking
4 about that today, because you're talking about
5 changing the underlying requirement.

6 CHAIRPERSON MEALY: Okay, we will
7 talk about that later then. Okay, you can explain
8 what you were saying.

9 MS. SIMPSON: When ... again, I don't
10 know exactly what the Council intends to reach in
11 the way of indirect displacement, but in April,
12 when I testified about contracts that have been
13 outsourced for decades, what I was referring to
14 are situations where it's hard to imagine a
15 rational argument about displacement, because
16 there have not been any city workers doing that
17 work for 30 or 40 years, and I don't mean not
18 doing the exact work of that contract, I mean any
19 work of that type, and that there are categories
20 of our current portfolio that fit in that arena.
21 We have some contracts, for example, if you talk
22 about standardized services, we have some
23 contracts in the, you know, in the repair arena
24 that involve such heavy equipment and such ... that
25 the city doesn't own, that we don't bring onsite

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except for certain types of tasks, and that we typically get from heavy construction companies. They're out there, it's not the sort of thing ... again, we've been doing it that way for probably 30 or 40 years.

CHAIRPERSON MEALY: Have we tried anything different?

MS. SIMPSON: We'd have to buy all this stuff, is my point, before we could even handle the- -

CHAIRPERSON MEALY: (Interposing)
No other agency, no other city agency has this equipment?

MS. SIMPSON: No, no. So that's what I'm saying, that's the ... I'm not saying it's the majority of all of the work that's out there, what I said in my testimony is that, I used the word targeting. We want to take, we want to go, we want to sit down with you and walk you through, show you what exactly the city buys in these categories. We don't buy a lot of services that are foursquare on point with exactly ... with, you know, the type of work that we have city workers doing. There are certainly some categories of

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2 service contracts that do overlap with the skill
3 sets and types of work that city workers do, and
4 those are easy, you know, to talk about. There
5 are other ... I mean, I gave an example in my
6 testimony, ad agencies, we hire ad agencies to do
7 marketing campaigns and to ... as part of what they
8 do, they actually place, they do media buying. We
9 don't have city workers who do media buying, and
10 we haven't had that, and we don't have a need for
11 that on any kind of ongoing basis, it's a
12 relatively rare thing, it comes up on occasion, it
13 doesn't make sense for us to have a whole
14 advertising agency component when we only need it
15 every now and then, on occasion. So we usually
16 use private companies for that service. There are
17 examples, again, the city uses contracts when we
18 need expert witnesses and investigators and
19 various types of scientific and technical
20 consultants to defend the city in litigation.
21 Again, we can't use in-house resources for that,
22 because by the nature of the litigation support,
23 we need an independent, some entity that the city
24 goes to contract with, to serve as that expert.
25 I'm not saying that this is every category of

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2 contract, I'm simply saying there are some
3 contracts that technically fall within the
4 universe that you have identified in the bill,
5 where we would not normally think of any way of
6 having a city worker do that job.

7 CHAIRPERSON MEALY: Well, I will
8 come back to you. Does Tish James have a
9 question?

10 COUNCIL MEMBER JAMES: Yes. So I
11 just want to ... I apologize for running out,
12 there's a hearing next door and noise, and I've
13 got some questions- -

14 MS. SIMPSON: (Interposing) It was
15 noisy, so you went- -

16 COUNCIL MEMBER JAMES:
17 (Interposing) No, I've got ... anyway, there's noise
18 in my district, and I need to deal with that. On
19 advertising, for instance, just as an example that
20 comes to my mind, the lien sale, I see it in the
21 Post and the Daily News, but I don't see it, at
22 some point can your staff provide me a list of
23 "ethnic media" where the lien sale is posted?
24 Because obviously a significant number of these
25 liens affect communities of color, and it's really

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2 critically important that we engage in outreach in
3 "ethnic media", so that we have all of our bases
4 covered? That's just as an aside. But I want to
5 get back to your response earlier with respect to
6 you weren't responsible for City Time or any other
7 scandals. And I just want to note- -

8 MS. SIMPSON: (Interposing) I
9 didn't say any other.

10 COUNCIL MEMBER JAMES: Well, are
11 there some scandals you want to tell us about
12 you're involved in? We're all listening.

13 MS. SIMPSON: Not today.

14 COUNCIL MEMBER JAMES: Not today?
15 Okay. But you are responsible for Vendex?

16 MS. SIMPSON: We administer the
17 Vendex system, it's done under local law and that
18 local law has policy-making authority shared by
19 the Mayor and the comptroller.

20 COUNCIL MEMBER JAMES: So but ... so
21 City Time was registered with Vendex, right, CSAI
22 and Technodyne?

23 MS. SIMPSON: Vendex is a database.
24 What happens when you put something in Vendex is
25 that the agency awarding the contract has to look

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2 at the database and draw conclusions about the
3 responsibility of that vendor. My office oversees
4 ... that's called the responsibility process, when
5 you actually look at Vendex, and then you write a
6 narrative for why a contractor is responsible. My
7 office oversees that responsibility process, but
8 only for Mayoral agencies. When FISA undertook
9 that contract, FISA did a responsibility
10 determination for itself, and that determination
11 was not reviewable by my office.

12 COUNCIL MEMBER JAMES: So to the
13 extent that I, the staff, would draft legislation
14 giving you responsibility over all Vendex
15 responsibility tests, would that be something that
16 would run afoul of the charter?

17 MS. SIMPSON: Probably.

18 COUNCIL MEMBER JAMES: Okay, so
19 that's something that I'm hoping that the staff
20 could look to, and perhaps we can review at some
21 point in time. But it seems that it's sort of
22 haphazard, the fact that you are responsible for
23 some Vendex review, and then others not. I guess
24 only with respect to Mayoral agencies and FISA is
25 not a Mayoral agency.

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MS. SIMPSON: Correct.

COUNCIL MEMBER JAMES: Even though the Mayor and the Comptroller of the City of New York have dual roles?

MS. SIMPSON: Anything that an independent elected official touches falls outside my jurisdiction. The Council's own procurements fall outside my jurisdiction.

COUNCIL MEMBER JAMES: And so whenever there is an independent agency involved in any area that you would have jurisdiction over otherwise, you handle?

MS. SIMPSON: By law, yes.

COUNCIL MEMBER JAMES: By law? Okay, so I'm asking the staff to see what we can do in this particular area. Obviously we want to make sure that we have our T's crossed and our I's dotted. We want to avoid, again, any major thievery of precious public dollars at this time. Thank you, Ms. Simpson.

CHAIRPERSON MEALY: Okay, could you tell me, where do you think this bill will have the most impact? Within which agency and types of work? Since you said different agencies with

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different work.

MS. SIMPSON: Well, I think we did ... we have identified already, and we began to have that discussion back in April, I think we've all identified technology as an area that- -

CHAIRPERSON MEALY: (Interposing)
Just technology?

MS. SIMPSON: ... cuts across ... I didn't say just, but that's certainly an area that we've prioritized, and that we're looking at closely, that affects more than one agency, basically it affects most city agencies.

CHAIRPERSON MEALY: Not consulting, just ... well, yeah.

MS. SIMPSON: Well, consulting is a big word. Consulting encompasses so many things that it's like saying, you know, do you like vegetables. Well, I like some of them and not all of them, so there are ... consulting doesn't have one meaning. There are types of contracts. For example, we treat medical screening as consulting. And when the city goes and hires medical personnel to do screening, in some cases screening of employees, we typically hire outside doctors.

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2 Those are contracts for consulting services, but
3 those are likely to remain outside contracts.

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CHAIRPERSON MEALY: So with this
5 legislation, we are now trying ... we are putting in
6 Department of Education, Health & Hospitals
7 Corporation, Economic Development, and the New
8 York Housing Authority. So we now would not have
9 to get a consulting for the Department of
10 Education.

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MS. SIMPSON: No, I- -

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CHAIRPERSON MEALY: (Interposing)

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Or not, get a preview of it?

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MS. SIMPSON: No. The structure of
15 the bill is designed to address substantive
16 requirements on the Mayoral agencies, the agencies
17 that are currently governed by local law 35, and
18 those are substantive requirements. The
19 requirements that are in the draft bill that
20 pertain to those independent agencies- -

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CHAIRPERSON MEALY: (Interposing)

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Agencies.

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MS. SIMPSON: ... are reporting

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requirements only.

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CHAIRPERSON MEALY: Only?

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MS. SIMPSON: And that's again a function of the fact that legally their procurement systems are independent of Council regulation in that way.

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CHAIRPERSON MEALY: So at least we can get an analysis of it?

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MS. SIMPSON: You'll get a report of certain things, and again, we'd need to work out how that would work.

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CHAIRPERSON MEALY: I still say that's a plus, where we never had ... they had no jurisdiction whatsoever, to let anyone know who, what, when and where, with their bidding process. So at least we would have something that we can look at and analyze.

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MS. SIMPSON: Legally we can do that, yes.

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CHAIRPERSON MEALY: Okay then, thank you. Any other questions? Well, I want to thank you, and next time I would love to talk to New York City Housing, but we're going to get this a little tighter.

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MS. SIMPSON: Okay, thank you.

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CHAIRPERSON MEALY: Thank you so

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2 much. Okay. We have three panels? One panel
3 with three people. Alan Klingler? Esquire, okay.
4 Henry Garrido, Arthur Chillos? Cheliotos. Love
5 your hand raising. I wonder, did she leave
6 anyone? Okay, the Mayor's Office, okay. thank
7 you. Yes, she did. Good afternoon. Happy to see
8 us. Can we have some tissues please? Napkins?
9 Thanks. Anyone can start first. Thank you.

10 MR. KLINGER: My name is Alan
11 Klinger.

12 CHAIRPERSON MEALY: Thank you.

13 MR. KLINGER: Thank you. From the
14 law firm of Stroock & Stroock & Levan, here in the
15 city, and I've been asked to introduce the
16 testimony that you have before you now of Harry
17 Nesfoli who is Chair of the Municipal Labor
18 Committee and President of the Uniformed
19 Sanitationmen's Association. We have worked with
20 the MLC, as well as the people that are testifying
21 here today, in connection with this process, and
22 Mr. Nesfoli is out of town on union business, and
23 he asked if I would just highlight on his behalf
24 some of the elements of why the MLC supports the
25 proposed amendments, and the other speakers here

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2 today, as well as I understand there's going to be
3 a written submission made by Michael Mulgrew of
4 UFT, will go into some more concretely, some of
5 the other parts. But what I wanted to address and
6 really start with goes to some of the questions
7 that were asked of Ms. Simpson and the responses,
8 because I think that there's a fundamental
9 misunderstanding by the city, which emphasizes why
10 these amendments are so needed, because Ms.
11 Simpson, if you will recall, kept saying how this
12 was a new law and this was changing the law. And
13 I think what this really is doing is correcting
14 the unduly narrow interpretation that the city
15 gave to the law. And while the City Council
16 certainly doesn't need the MLC to explain how to
17 negotiate things, one of the things that we would
18 caution is that, when you start hearing terms like
19 you have to exempt from unique and unique things,
20 and things like that, that's just going to open
21 the loopholes that were being corrected here. And
22 I thought that would be of some value for the
23 Committee on behalf of Mr. Nesfoli and the MLC if
24 we went through this, because what you kept
25 hearing, everything said in response to the

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2 question, can you show us the cost-benefit
3 analyses that were done and submitted and
4 reviewed, they can't show that, they didn't do
5 that, because they interpreted everything to fall
6 outside the scope of local law 35. And that's
7 what the amendments here, you know, are designed
8 to correct. Because the Council's initial purpose
9 was to have a process that agencies would have to
10 assess the costs and benefits of providing a
11 service in-house with public employees, versus
12 providing the service through outside bids. Local
13 law 35 was never intended, and the MLC well
14 understands this, to outlaw outsourcing. What
15 local law 35, what the Council plainly intended
16 was that there had to be a process to go through
17 to assess whether it was worth it or not. And
18 there were certain criteria set out which really
19 weren't followed. It seems that there have been
20 ideological reasons that they preferred not to do
21 it. But I don't think this Committee should for a
22 moment think that what the Council had done before
23 was somehow negligent in this regard. The ... so
24 what these amendments seek to do, and the MLC
25 agrees with the briefing paper submitted by the

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2 Government Affairs Division here of the Council,
3 which we looked at, you know, we believe that it's
4 right on the mark. The first way that the city,
5 the agencies sought to exclude was by unduly
6 interpreting the definition of the type of
7 contract that falls within it to begin with. The
8 fact that it will apply to standards and
9 professional services, I think, makes it clear in
10 the industry what follows you and what falls by
11 it. I mean, Ms. Simpson spoke about, well, if
12 something is so unique it can't go in. I think
13 this Committee will remember from the April
14 hearing that an example was made and a submission
15 was made by some of the MLC unions that they had
16 interpreted requirements for the painting that
17 somehow because you aren't contracting for
18 Michelangelo, but it was general painting
19 services, they said that doesn't fall within. I
20 mean, that defeats one of the primary purposes
21 here, and the definition that has been sought here
22 that apply to standard and professional services
23 will include general labor, and I think ... and the
24 MLC submits makes a lot of sense. Also heard in
25 response to questions towards the end is that we

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2 believe that the City Council law had required
3 that just because you had a long-term contract and
4 that you extended it, that it wasn't immune from
5 the local law 35 analysis, is that you do it ... you
6 know, you're going to re-contract, re-let, you do
7 it again. You know, the ultimate decision may not
8 change, but you have to do it, and all that's
9 being done here by the Council, we believe and
10 support, makes it clear that they can't have that
11 loophole, that it says it applies to extended
12 contracts. The question of notice, where the city
13 said, you know, that this might be too burdensome,
14 it's so hard to believe, that they seem to have to
15 know what it is that they're going to be seeking
16 to contract out, and once you have that
17 information, that's the notice that the MLC
18 supports, it asks for and supports, is to be made
19 public. Because if this is notice and it's not
20 done under the cover of darkness, then some of the
21 things that could happen, is what the Council and
22 others have the opportunity to look at it. But
23 frankly, and the MLC believes that this would be a
24 win-win situation, is that it also gives the
25 municipal workforce the opportunity to make

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2 adjustments, so that maybe they can do something a
3 little bit differently, or that what they can do
4 is, you know, be more efficient in the process,
5 which gets to the goal that everyone here has been
6 talking about, is delivering city services in the
7 most economical way. The MLC does not understand,
8 Mr. Nesfoli doesn't understand, why they would
9 object to having this information out there, so
10 that people can evaluate and see. Similarly, with
11 this notion of displacement, right now the way
12 they've interpreted it, it's self-certifying, they
13 just check a box and they don't have to do
14 anything else. What the Council has now asking
15 for, which the MLC supports, is that if they're
16 going to say 'no displacement', they have to
17 provide some explanation of why their intended
18 actions would not lead to displacement. They have
19 to have given this some thought before they
20 decided, you know, what type of services they
21 want. All that we're asking, and this is exactly
22 right, so that people can be held ... not only can
23 they be held accountable for it, as you said, but
24 also gives someone the opportunity upfront to say
25 'hogwash, it will lead to this'. And similarly,

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2 they were defining direct displacement, and you
3 heard this from Ms. Simpson at the April testimony
4 here, it had to lead to immediate termination
5 right then and there. The fact that it would
6 become obvious that if you contracted out these
7 services, that in the matter of the duration of
8 the contract it was going to lead to attrition
9 tied to that decision, what the Council is doing
10 now is just asking them to be upfront and sort of
11 tell the truth about what they intend. And so
12 that's why we think that both they should have to
13 explain, you know, why they think there's no
14 displacement, and show us the analysis of what
15 they're relying on, and in this time when jobs are
16 so scarce, don't think the MLC does not believe
17 that the city agencies should be so cavalier about
18 the fact that attrition is not that big a deal. I
19 mean, that is something that again falls within
20 the purview, and they should have to be able to be
21 transparent. You look at the Council's original
22 remarks about why they wanted ... why it wanted this
23 local law 35 in the mid-90's, was so that it would
24 be transparent and people could evaluate what, you
25 know, what could happen. The last point I have,

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2 unless any questions, before turning it over to my
3 colleagues, is that I also do think that Ms.
4 Simpson was sort of painting too broadly with this
5 notion of what the Council can and cannot do with
6 regard to non-Mayoral agencies. The MLC fully
7 understands that it can't do, you know, the
8 Council is not empowered to do everything with
9 non-Mayoral agencies that it can with Mayoral.
10 However, we think that the examples abound of
11 local laws being passed that deal with procedural
12 issues having to do with the non-Mayoral agencies.
13 We know that the Council, for example, has a law
14 that has to do with reporting on class size. If
15 you were to listen to what the city here said
16 today, you would think that, you know, the Council
17 can't do that. But there are scores, literally,
18 of times, because the MLC checked, where there are
19 local laws having to do with the DOE, with HHC,
20 you know, with NYCHA and the others. So again,
21 the MLC supports the section 9 here, as to what is
22 the scope that has been done, because there have
23 been so many articles and you're going to hear
24 about some of it today and in the further
25 testimony, about issues, particularly at DOE,

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2 where the outsourcing has been rampant, and where
3 they've had all these problems. You know,
4 frankly, all the things the city is saying now
5 about how you don't really need this because they
6 on their own have recognized that the IT
7 technology ought to come back within the city, if
8 they had applied local law 35 like they
9 interpreted it the way they should have the first
10 time, many of these probably would have been
11 caught or identified right then and there, and you
12 wouldn't have to deal with the lost money. Thank
13 you.

14 CHAIRPERSON MEALY: Thank you.

15 MR. GARRIDO: Good afternoon,
16 Council Member Mealy and distinguished members of
17 this Committee. I want to thank you for the
18 opportunity to testify today on the proposed
19 amendment of local law 35. District Council 37
20 represents about 125,000 municipal employees in
21 city agencies, as well as 50,000 retirees. The
22 great majority of our members live within the five
23 boroughs, therefore the manner in which the city
24 conducts business affects our members, both as
25 part of the work force- -

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CHAIRPERSON MEALY: (Interposing)

Excuse me, could you state your name?

MR. KLINGER: Pardon me, I'm Henry Garrido, I'm Associate Director of District Council 37. As I was saying before, our members are most concerned about how the city conducts its business, both as part of the work force, but also as taxpayers. Over the past decade, District Council 37 has been documenting the waste in the city's privatization of public service. As we have seen over and over again, the city has failed to achieve any real savings by contracting out services for work that city workers could do cheaper and more efficiently. The prime example of this waste is the fraud of the recent City Time scandal. Nearly \$800 million of taxpayer's dollars have been squandered in this boondoggle. Local law 35 was initially passed to protect taxpayers by requiring a comparative cost analysis if the contract would result in displacement of a city worker. We know now, from previous testimony, that during the current administration, no finding ... no true finding of displacement has ever taken place. Time and time again this Mayor

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2 has continued to fight us in our efforts to save
3 taxpayers' dollars and contracting more of the
4 work and eliminate out-of-state and foreign
5 contractors. Amending local law 35 addresses some
6 of those issues by allowing the union more time to
7 review requests for proposals, and it also better
8 defines some of the important issues that would
9 allow the union to make counter-proposals, which
10 one would think this administration would be
11 interested in, in this climate of managed
12 competition that Ms. Simpson referred to. The
13 interim modifications allow for a 60-day period
14 for the union to review the RFP's, and to make
15 counter-proposals, as I said. It also requires
16 the agency to detail more of the nature or reason
17 for the contract, and just as important, it will
18 require more detailed certification for the
19 agency, that existing public employees are not
20 going to be displaced without a cost analysis
21 justifying the action. In the past, the city
22 entered into many contracts without properly
23 justifying those actions as being cost-effective
24 to the taxpayers. This is how we ended up with
25 the consultants getting paid more than \$400,000

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2 per year for work that could have been done at a
3 fraction of the cost. We are also happy to see
4 that the City Council included measures to require
5 the Department of Education to report the contract
6 activity to the City Council. The Department of
7 Education is the largest single agency in the city
8 contracting for billions of dollars of services
9 every year. While the union has always felt that
10 giving the Mayor more control of DOE should come
11 with more oversight, somehow the procurement
12 policy and the purchasing of DOE never had any
13 proper oversight from the Council. The amendment
14 of the local law 35 attempts to address some of
15 those issues that have plagued DOE, when it came
16 to purchases and procurement. The bill's
17 requirement of the city to report to the Council
18 on a quarterly basis, the impact of professional
19 and standard services contracts of existing DOE,
20 would lead to greater transparency and
21 accountability in the contract process. Our union
22 has always fought for our members, but we also
23 fight for responsible partners ... to be responsible
24 partners with the city to ensure taxpayers' money
25 is properly spent. This Intro helps to bring more

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2 sunlight and accountability to the procurement
3 process that would only yield savings for
4 everyone. We hope that the success of this
5 measure will not only illustrate to the City
6 Council how the union can help bring about
7 savings, but also that the current work force is
8 up to the task of providing the best means of
9 serving the needs of the city. We look forward to
10 working with the Council to ensure every dollar
11 that is spent on services is spent wisely and
12 effectively. If I could just take a moment to
13 address one issue which was raised in the
14 testimony of Ms. Simpson. The fact is that of
15 those IT information technology contracts that we
16 have been talking about, she indicated that there
17 has been rigorous review of those contracts. The
18 fact of the matter, of those IT contracts that
19 you've been hearing about, 90% of them have not
20 gone through any procurement process other than a
21 pre-qualified process, where the city agencies
22 have, in effect, taken contracts from the state
23 and pre-qualified contracts on the basis that the
24 state has already done so. So even when the city
25 agencies have, and wanted to, go through a

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2 process, they haven't been allowed to, because
3 this administration has in effect set a pre-
4 qualified process, where the agencies can contract
5 individually. And that is a flagrant violation of
6 local law 35, is not on the application of the
7 principle that this law was supposed to do, which
8 is to save taxpayer's money, not to save city
9 workers. So why would this administration be
10 afraid to actually do a cost analysis? That's
11 beyond me. What has happened, basically, is they
12 have turned a good piece of legislation that was
13 intended to save taxpayers into an exercise in
14 semantics, and as a result of it, have cheapened
15 local law 35 to the point where that check box has
16 become indicative of what a government review
17 process is supposed to be about. I'll remind
18 people that it wasn't just the City Time contract
19 that was problematic, we have had multiple
20 contracts well under the jurisdiction of this
21 Mayor and the Mayor's Office of Contract Services,
22 where that rigorous process has not taken place
23 either. The 911 contract with Hewlett Packard,
24 for instance, which started at \$300 million, it is
25 now up to close to \$700 million, and it was

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2 intended to do the upgrade of both 911 facilities
3 in Brooklyn and the Bronx. We have just finished
4 one facility, and we have doubled the cost. And
5 still, you know, under this jurisdiction, no local
6 law 35 finding of displacement took place, even
7 when city workers could, and should, have been
8 doing that work from the beginning. I also remind
9 this Council that in the Department of Education
10 not too long ago, the termination of that contract
11 which Council Member Jackson referred to with
12 Future Technology Associates was reported in the
13 press as one of the bad contracts, but I also
14 remind the Council that there were in that two
15 weeks before there was a similar finding by the
16 Department of Investigation, where former
17 consultants from Bear Stearns were coming into
18 DOE, using taxpayer's money to bill companies
19 outside of the jurisdiction of DOE, and because
20 they had already resigned, and obviously didn't
21 get the kind of attention that we were talking
22 about. But I think it's sad that as this Council
23 was considering a difficult budget during a
24 difficult process that would have taken over
25 almost 5,000 teachers out of the school system,

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2 the Department of Education was increasing the
3 contract budget by about \$500 million, including
4 an increase in the very same IT contracts that
5 we're talking about right now. And I think that
6 this local law, the amendment of this local law
7 will allow the Council to have a greater sense on
8 the understanding of what it is supposed to cover,
9 a sense of transparency and accountability for its
10 taxpayers, and a sense of fairness for those city
11 workers whose morale is at an all-time low as a
12 result of what this administration has done with
13 the process. With that I'll thank you and I'll
14 take any questions you may have later.

15 CHAIRPERSON MEALY: Thank you.

16 MR. CHELIOTES: Good afternoon,
17 Madam Chair, my name is Arthur Cheliotas, I am
18 President of the Communications Workers of
19 America, Local 1180 and as Councilman Jackson
20 pointed out regarding City Time, I think that
21 there are numerous scandals, as Henry pointed to.
22 And I would like to put the testimony that you've
23 heard from labor in a broader context of really a
24 web that has been woven here, that deals not only
25 with contracts. It deals with funding of the

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2 government, it deals with democracy, it deals with
3 how city workers are treated, and how the public
4 has access to city jobs. And certainly we all
5 know about City Time and the pending investigation
6 of the 911 cost overruns. We believe this
7 mushrooming of these contracts during the
8 Bloomberg administration is part of a larger
9 ideological agenda driven by rich elites in our
10 nation, committed to destroying democratic
11 government and making profit centers out of
12 essential services government provides to
13 everyone. They have great power because they
14 control our financial institutions and the mass
15 media, but they want it all. They have
16 effectively gained control of the Federal
17 judiciary, which has legalized their intrusion
18 into the political process, and made our Federal
19 government a profit center for their greed, at the
20 Federal level. Today more than half of the
21 Federal civilian payroll goes to private
22 contractors. The other parts of their agenda
23 include shifting the tax burden from rich elites
24 to the middle class and poor, and eviscerating the
25 public's regulation for the public interest. They

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2 create a budget crisis by starving government of
3 the resources needed to provide essential public
4 services, they replace career civil servants with
5 appointees who jump from the private sector to the
6 public sector, and back again to the private
7 sector. These appointees have sabotaged the
8 effectiveness of regulatory agencies, such as
9 minerals management and the Securities and
10 Exchange Commission. In addition, the lagging
11 wages, benefits and pensions for educated and
12 experienced civil servants has forced the Federal
13 government to use one set of contractors to
14 monitor contract compliance and performance of
15 other contractors. All of this has increased the
16 cost of government and is crippling government's
17 ability to serve all our citizens and protect them
18 from the exploitation of the elite rich. The same
19 is true for our city, the city has a long sad
20 history of not investing in developing skills and
21 expertise within the ranks of career civil
22 servants. The city's failure to offer competitive
23 compensation for expertise within the career
24 workforce allows managers to claim the need for
25 outside contractors. The contractors resist

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2 training city personnel to run the new systems for
3 the obvious reason that it would put them out of
4 business. The city does not require contractors
5 to train city staff on these new systems. The
6 result is service contracts in perpetuity
7 following installation of these new systems. The
8 dependency on private contractors that pay higher
9 wages and offer bonuses is very costly to
10 taxpayers, while very profitable to contractors.
11 The last three-year term mayor, Ed Koch, faced a
12 major scandal in his last term when it was
13 revealed that his administration ran a patronage
14 mill out of the basement of City Hall. The New
15 York State Commission on Government Integrity,
16 headed by John D. Feerick, the Dean of the Fordham
17 Law School, confirmed the violations of civil
18 service law contribute to the corruption scandals
19 of the Koch administration. In its reports issued
20 August of 1989, called 'Playing Ball with City
21 Hall - A Case Study of Political Patronage in New
22 York City', the commission found that mid- and
23 high-level patronage appointments in the
24 Department of Transportation led to corruption.
25 It allowed the appointees to undermine the bidding

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2 process, violate the public trust, and engage in
3 other illegal activities that cost the city
4 millions of dollars, and resulted in felony
5 convictions of many individuals and the suicide of
6 an elected official. The commission report
7 stated, "As a perception of patronage spread, it
8 reduced the attractiveness of city government
9 service as a career, and had a negative long-term
10 impact on the quality of public service that
11 cannot be measured. The existence of patronage
12 saps incentive for meritorious service, and
13 diminishes penalties for sub-standard performance.
14 Career employees can become demoralized and
15 cynical about their work. When they are committed
16 to the mission of the agency, they see the mission
17 frustrated by political considerations. The
18 cynicism may be accompanied by resentment or
19 resignation. In either case the employee's sense
20 of professionalism is demeaned, because it
21 receives limited reward or recognition. Worse,
22 employees see themselves compromised because they
23 are required to participate in the patronage
24 practices they find offensive. And inevitably
25 their motivation to oppose corruption is

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2 lessened." The third term of the Bloomberg
3 administration appears to be headed down the same
4 path. It has been described as 'pinstripe
5 patronage'. There are many examples of the
6 failure of contracting out to reduce costs and
7 provide a workforce committed to the needs of
8 government. At the Federal level, the one that is
9 a concern for all Americans, especially New
10 Yorkers, began with the tragic events of September
11 11th. It required an immediate build-up of our
12 inadequate intelligence infrastructure by an
13 administration committed to pinstripe patronage,
14 the Bush administration. An article in the July
15 28th issue of the Washington Post by Dana Priest
16 and William Arkin, entitled "National Security
17 Incorporated", confirms that using these private
18 contractors is too expensive and presents
19 conflicts of interest that pose serious security
20 risks to our nation. Their report, what started
21 as a temporary fix in response to the terrorists
22 attacks has turned into a dependency that calls
23 into question whether further workforce includes
24 too many people obligated to shareholders rather
25 than the public interest, and whether the

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2 government is still in control of its most
3 sensitive activities. In interviews, both Defense
4 Secretary Robert M. Gates and CIA Director Leon
5 Panetta said they agreed with such concerns. A
6 concern with Panetta, contracting with
7 corporations whose responsibility is to their
8 shareholders and does not present ... and does
9 present an inherent conflict. And as Gates
10 pointed out, who has been in and out of government
11 his entire life, he said, "You want somebody who
12 really is in it for a career, because they're
13 passionate about it, and because they care about
14 the country", or our city, in this case, "and not
15 just about the money." Hiring contractors was
16 supposed to save the government money. However,
17 that has not turned out to be the case. A 2008
18 study published by the Office of the Director of
19 National Intelligence, they found that contractors
20 made up 29% of the workforce in the intelligence
21 agencies, but cost the equivalent of 49% of their
22 personnel budgets. Gates said the Federal workers
23 cost the government 25% less than contractors.
24 The same claims that the private sector can do it
25 cheaper than government at the state and city

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2 levels are also false. The recently-published
3 book, "Pinstripe Patronage", by a veteran New York
4 Times reporter, Martin Tolchin and his wife Susan
5 Tolchin, a political scientist, describes the
6 corruption privatization creates. This new form
7 of patronage has replaced patronage jobs by loyal
8 political club members with lucrative contracts
9 for political supporters and contributors. The
10 corruption revealed in the third term of the Koch
11 administration has morphed during the third term
12 of the Bloomberg administration from the political
13 clubhouse to the country club. That is why it
14 requires stricter regulation by this City Council.
15 Research in "Pinstripe Patronage" sent me to of
16 all people the current Deputy Mayor, Stephen
17 Goldsmith, who was formerly mayor of Indianapolis.
18 In an article written in City Limits by Neil
19 DeMause on June 30th, 2010, entitled "New Deputy
20 Mayor's Privatization Push Still Has Critics".
21 The reporter writes, "Goldsmith was elected mayor
22 of Indianapolis in '91 on a platform of
23 privatizing city services, and immediately set out
24 to put his plan in action. Goldsmith appointed a
25 commission led by private business leaders to

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2 examine every facet of city government for
3 possible privatization. The core of his
4 philosophy is what is in his 1997 book, 'The 21st
5 Century City'." Goldsmith called it the 'yellow-
6 page test', if the phone book lists three
7 companies that provide a certain service, he
8 wrote, the city probably should not be in that
9 business. Despite declaring that 'my goal is not
10 to lay off city workers', Goldsmith immediately
11 announced a series of layoffs, as part of a
12 massive reorganization of city departments,
13 particularly those overseeing construction and
14 public works. Agencies involved in regulatory
15 oversight were Goldsmith's favorite target, much
16 like, again, the Federal government mismanagement
17 of the FCC. His predecessor as mayor, William
18 Hudnut, later reported that Goldsmith's deputy
19 mayor declared the new administration's motto as,
20 "If it isn't broke, break it, and then fix it".
21 In my mind, his handling of this winter's
22 disastrous snowstorm reflects that thinking. In
23 Indianapolis, when Goldsmith moved from layoffs to
24 actually privatizing services, his initiatives
25 featured a common theme: city service must be

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2 farmed out to private firms. Private firms would
3 then increase their profits by hiking fees. For
4 example, Goldsmith privatized the city's golf
5 courses, and with a no-bid contract to turn them
6 over to golf pros who had previously run them for
7 a flat fee, on the argument that they could raise
8 more revenue. According to the Indiana Alliance
9 for Democracy's president, Jack Miller, writing a
10 2001 anthology "Market to Market-Reinventing
11 Indianapolis", revenues indeed went up, but only
12 for the private partners, since the new contracts
13 provided that all capital improvements would be
14 paid for by the city, while virtually all revenues
15 would go to the new private managers. The pros
16 simply hiked up the fees and kept the windfall
17 profits for themselves. A recent report by DC37
18 on the city's failure to assess fees and taxes and
19 collect revenues, explains why sabotaging
20 regulatory agencies is part of the larger
21 ideological agenda of starving government by and
22 for the people, and rendering it ineffective in
23 its goal of providing services. That is the goal
24 of these saboteurs. Goldsmith's approach to
25 contracting out government services at any cost to

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2 the taxpayer or the proper delivery of public
3 service is the path that this administration has
4 chosen. By the end of his first term in office,
5 Goldsmith could brag that he had successfully
6 reduced the city workforce in Indianapolis by some
7 40%, at least in the civilian areas. The result,
8 he claimed, was \$190 million in savings, but
9 according to, again, Miller, there were no
10 independent audits about those claims. His own
11 research of city fiscal records found that there
12 was also nearly a \$300 million increase in
13 spending for private services since the public
14 services had been cut, that more than offset any
15 savings. In an article entitled "Selling Out to
16 City Hall", Jack Miller in the Progressive
17 Populist in 1999 wrote, "He was elected on a
18 platform of privatizing city services, and
19 privatize he did. By the end of his tenure,
20 Goldsmith had eliminated 40% of the city's
21 workforce as well. And the result, he claims,
22 were \$230 million in savings, but the
23 comprehensive annual fiscal report of the city of
24 Indianapolis shows that the city's expenditures
25 rose from \$1.9 billion in the previous

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2 administration to more than \$3.1 billion by the
3 end of Goldsmith's term, and the long-term bond
4 debt rose from \$542 million to \$901 million."

5 Again, starving government, putting it in debt,
6 making it hard to deliver services. If Mayor
7 Bloomberg hired Goldsmith to improve services to
8 the public and reduce costs, he hired the wrong
9 man. Moreover, he is following the wrong agenda.

10 Contracting out may reinvent government, but not
11 government by and for the people. Contracting out
12 does increase profits to a few, to a select few,
13 but does not lower the cost of government
14 services. Contracting out does undermine the
15 public's confidence in our government's ability to
16 provide essential public services. Contracting
17 out allows pinstripe patronage to run rampant and
18 enrich the country club set at the expense of the
19 public. We strongly believe investing in training
20 and developing the skills and knowledge of our
21 city's career employees will enhance the delivery
22 of essential services to the public, providing
23 transparent and equitable career paths will draw
24 the best and the brightest to public service.

25 Honoring the rights of workers to organize and

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2 negotiate with public employers as equals must be
3 acknowledged as a pillar of a true democracy. The
4 public workers of our city provide the essential
5 government services needed for commerce, industry
6 and a civil society to exist. Those who will not
7 pay according to their means to fund government
8 properly, while they prosper from the services it
9 provides, pose a threat to the foundations of our
10 democracy. They are a threat to government by and
11 for the people. I urge you to strengthen the law
12 and restrict contracting-out of public services,
13 rather than contracting-out, demand that the
14 administration invest in the workforce by
15 developing expertise from within, use the vast
16 resources of the City University to train staff
17 and meet the needs of government to provide for
18 the needs of all New Yorkers. Thank you very much
19 for listening patiently.

20 CHAIRPERSON MEALY: Wow. Thank
21 you. It was almost self-explanatory of what's
22 going on. I just have one question for all three
23 of you. How might you further improve local law,
24 this amendment? What, right now it's okay, or we
25 should do a little bit more?

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MR. KLINGER: On behalf of the MLC, there were one or two other areas that we had proposed that had been looked at, and I'm sure the Council can discuss with you. But it's been one of the things that we had thought would work, would be if, in connection with, let's assume they actually are going to have to do now some comparative cost-benefit analysis, because they can't just say it's not covered, check displacement and the like. If that information can be, you know, could be shared with the unions, that also could perhaps trigger ways that the unions can see that they could better compete, and again lead to a win-win situation. So that was one item that had been sort of on the MLC's list.

CHAIRPERSON MEALY: Thank you.

MR. GARRIDO: Oh, can I ... I'd like to add something to that, because no law is going to prevent ... no law is going to be perfect, first of all. The intent is to try to get the law to be as reasonable as it can, under the processes that you have. But one thing that we feel very strongly is that no matter what enhancements you make to this law, the agencies have to be held

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2 accountable for implementing whatever those
3 changes are going to be. Otherwise, again, we're
4 just reducing the process to basically a
5 checkmark, right? So we are very pleased to see
6 the Council is taking the initiative on something
7 that this administration has refused to even
8 acknowledge, as we saw today. But I do think that
9 we will continue to rely on this body to be that
10 force to hold these agencies accountable, as the
11 law changes, hopefully changes, because otherwise
12 it just becomes a process in the charter
13 somewhere, but it doesn't have any true meaning to
14 the workers or the taxpayers of the City of New
15 York.

16 CHAIRPERSON MEALY: Thank you. You
17 have enough, right? You said everything, right?
18 Thank you, but you gave us a whirlwind of
19 everything. So I'm definitely going to go over it
20 again, and recheck. Any of my colleagues have
21 anything? Letitia James?

22 COUNCIL MEMBER JAMES: Thank you.
23 First, with regards to the recommendations, do any
24 of the ... our allies have any recommendations with
25 respect to Vendex reform? And whether or not the

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2 pre-qualification ... whether or not their efforts
3 should be put forth to expand the first
4 qualification of non-Mayoral agencies?

5 MR. GARRIDO: Yeah, we have some
6 ideas, I'm not sure you have all the time today to
7 be able to come up with all of them. But I think,
8 very broadly, I think that Vendex right now has
9 become exactly what Ms. Simpson described, which
10 is basically a reporting ... a data capturing
11 analysis file, which exists within the contract
12 process. The intention, as we saw Vendex, was to
13 prevent the city from hiring bad actors.

14 COUNCIL MEMBER JAMES: Right.

15 MR. GARRIDO: From documented when
16 a contractor has had problems before, and for
17 using that data to evaluate that moving forward in
18 future relationships with the city, would want to
19 do procurement with similar services with similar
20 vendors. What has happened now, what is happening
21 right now is that, because there are so many
22 different processes in the procurement, which this
23 administration has chosen to follow, that ... many
24 of the problems that you see reported in the
25 papers, never make it to Vendex. We have obtained

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2 through a Freedom-of-Information request, the
3 entire universe of what's in the Vendex report,
4 both the debarred list of contractors and that of
5 the caution list, which has a list of vendors who
6 have had problems, but maybe they didn't rise to
7 the level of being debarred. What we found was
8 that on the debarred list, the vast majority of
9 the vendors that are there, with very few
10 exceptions, are put there either by the New York
11 City Comptroller for violations of prevailing
12 wages, or by the State of New York on violations
13 of state procurements. The agencies do not go
14 through the process of debarring or requesting a
15 debarment under the rules, and we think that that
16 should be changed and strengthened.

17 COUNCIL MEMBER JAMES: Right.

18 MR. GARRIDO: So that Vendex
19 doesn't become just a file out there that you look
20 as an afterthought, but that it has meaningful
21 information, so that the agencies can access and
22 make an evaluation prior to entering into a
23 contract.

24 COUNCIL MEMBER JAMES: Any other
25 comments? So again, if staff ... there is a number

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2 of LS requests that I have asked for here today,
3 and Madam Chair, if you don't mind, I would like
4 to work with your staff to sort of formulate these
5 LS requests, particularly as it relates to the
6 Vendex reform. I've noticed that a significant
7 number of vendors who have either marks against
8 them and/or have been debarred, appear in other
9 agencies, and we really need to correct that, and
10 to the pre-qualification of non-Mayoral agencies.
11 And let me just say that, Mr. Cheliotas, your
12 testimony was compelling and thoughtful and
13 covered a wide range of areas, but I want to join
14 with you and your other ... and our allies, again,
15 to indicate that in fact this administration has
16 in fact turned over government to private
17 entities, and I specifically have focused my
18 attention as part of my career, as it relates to
19 child care. And under this administration, a
20 significant number of childcare centers are no
21 longer in existence, because this administration
22 has deemed fit to privatize childcare. And now
23 we're moving in the direction of senior centers.
24 I also would like to, Madam Chair, to have a
25 hearing with respect to the golf courses, and last

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2 but not least, there was an article over the
3 weekend where I intentionally did not attend a
4 groundbreaking in my district for the Theater for
5 a New Audience, which is a cultural organization
6 focused on Shakespeare, where this administration
7 had never consulted me, provided 70% of the funds
8 to a private entity for an organization, which
9 unfortunately my district, we appreciate
10 Shakespeare, we like Shakespeare, we love
11 Shakespeare, but obviously there's cultural
12 organizations that exist today where public funds,
13 where public employees work, and they have capital
14 needs, they include BAM, they include the museum,
15 they include Children's Museum, etc., etc., have
16 pressing capital needs, and this administration
17 saw fit to bond out over \$34 million for this
18 entity whose budget is only \$3 million, this
19 agency, this organization, whose budget last year
20 was only \$3 million and had a difficult time
21 raising funds to make this project a reality. The
22 administration stepped forward and provided 70% of
23 their budget to this private entity, for an
24 organization which was not asked by my district,
25 they never consulted us, and I did not think it

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2 was necessary at that time to add that cultural
3 organization to a "cultural district" which does
4 not reflect the diversity of my district. There
5 are organizations, cultural organizations in my
6 district, primarily run by people of color, that
7 have not received one dollar, and whose roofs have
8 fallen in. One example is Paul Robeson Theater,
9 which unfortunately has closed its doors. They
10 now cannot operate in the theater, but in fact
11 operate in the basement as a result of funds
12 provided by the City Council through the
13 initiative for cultural organizations of color.
14 Unconscionable, unacceptable. And other
15 organizations, unfortunately, have not received
16 money, Theater Hispanica, which I would love have
17 come to my district, no interest. And other
18 organizations, MOCADA, Museum of Contemporary
19 African Diaspora Art, no interest. But yet,
20 Theater for New Audience, controlled by, again,
21 organizations which have the ear of the Mayor of
22 the City of New York, where employees that will
23 not be unionized, again get 70% of their budget
24 funded by the Mayor of the City of New York. It's
25 just really unacceptable, and the list goes on and

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2 on and on. Again, it is pinstripe patronage, I
3 love the term, I will use it often. I hope you
4 will allow me to co-opt it, but I will use it as I
5 go forward. But it's apropos and right on point.

6 MR. GARRIDO: Can I just ... I think
7 this is a critical point, because the civil
8 service system was ... provides an opportunity for
9 our people of color and minorities in the City of
10 New York. The contract system we're following now
11 does not, and I don't think it's a mistake that
12 the majority, the vast majority of the workforce
13 that's coming out of that contract does not
14 reflect the diversity of our city nor our
15 communities. And I think that's one of the strong
16 parts of amending this law, that allows a more
17 clear path for people to be able to better define
18 what the law was intended to do, which is
19 precisely do that, is to be able to protect the
20 taxpayers, but also to be able to protect the
21 workforce that is reflective of that community and
22 the civil service. And I think there are two kind
23 of repeating myths that you hear of this whole
24 issue of privatization. Number one is that the
25 private contractors are bringing in expertise that

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2 we don't have in-house. The fact is that the
3 Department of Citywide Administrative Services
4 provides training for city workers every year, but
5 they also provide training for consultants. So if
6 they're coming in and bringing with them this so-
7 called expertise, why do we need to train them, at
8 the taxpayers' expense? Secondly is this myth
9 that somehow, by creating these innovations and
10 bringing in all these ideas, that it's not just an
11 issue of cost, but an issue of quality. I think
12 that Arthur mentioned 9/11 and what happened after
13 the disaster, that was a tragedy. I think people
14 woke up and saw the value of workers, of municipal
15 workers, the city workers, who sacrificed their
16 lives in 9/11 on behalf of the public. And I
17 think there's something to be said about not just
18 costs, but about value and quality that is
19 provided by not only the members we represent, but
20 by city workers as a whole. So when we ask our
21 question about what is government supposed to do,
22 and what it's supposed to provide, I think what
23 you know all along is key to this is that we have
24 allowed this mayor and this administration to take
25 taxpayers' dollars to create a system of patronage

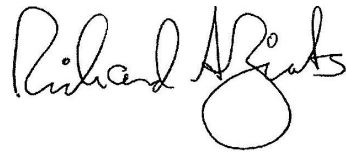
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2 for those who are well-connected, when in fact
3 neglecting the very laws that are supposed to
4 protect the people in our communities that we
5 represent. So I think your comment was very
6 appropriate, thank you.

7 CHAIRPERSON MEALY: Thank you. I
8 hope this amendment to local law 35 of 1994, to
9 insure that contracting agencies consider the
10 costs and benefits to the city whenever proposed
11 to enter into a service contract that would
12 displace city employees, specifically the law
13 mandates that the city weigh cost efficiencies
14 before outsourcing service contracts by performing
15 comparative analysis between the costs and
16 benefits of providing the services in-house and
17 outside before entering into any such contract.
18 By this process, the law is meant to safeguard
19 city employees from agencies' contracting
20 decisions that would displace union workers, when
21 such a decision would not be in the best fiscal
22 interests of New Yorkers. So I just want to say
23 thank you for this hearing, and I think we're
24 going to critique it a little tighter, and we're
25 going to try to hold people accountable. That

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2 little box, that's where I was so upset with that
3 little box, if they don't check that box, anything
4 goes. So now at least we can hold them
5 accountable and keep it going from there. And
6 thank you, and this meeting is adjourned.

C E R T I F I C A T E

I, Richard A. Ziats, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature _____

Date July 7, 2011