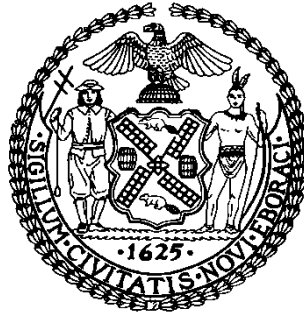


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THE COUNCIL

BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION

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COMMITTEE ON CONTRACTS

Council Member Helen Rosenthal, Chair

April 24, 2014

**Oversight – Considering Local Law 18 of 2012 and Ways the City Might Better
Contain Cost Overruns**

Introduction

On April 24, 2014, the Committee on Contracts (the Committee), chaired by Council Member Helen Rosenthal, will hold an oversight hearing to explore the City's implementation of Local Law 18 of 2012 and the ways in which the City limits contract cost overruns. Representatives from the Mayor's Office of Contract Services (MOCS), the New York City Comptroller, advocates, and interested members of the community are invited to testify.

Background

In recent years, the City embarked on a number of large projects where costs vastly exceeded initial budget projections. Notable over-budget projects include: CityTime, which began with a budget of \$63 million,¹ and ultimately cost well over \$700 million;² the Emergency Communications Transformation Program (ECTP), a still to be completed project where construction costs ballooned by over \$600 million and maintenance costs by \$8 million per year, to ultimately exceed \$2 billion;³ and the New York City Automated Payroll System (NYCAPS), which saw its costs soar from \$66 million to significantly over \$300 million.⁴ Taken together, the overruns on these

¹ See Testimony of Joel Bondy, Transcript, *Oversight - Examining the New York City Office of Payroll Administration's Procurement and Application of the City Time Contract*, May 8, 2008, Committees on Contracts and Civil Service and Labor, at 36.

² David Chen, Serge Kovalski, and John Eligon, *Behind Troubled City Payroll Project, Lax Oversight and One Powerful Insider*, New York Times, Mar. 27, 2011.

³ See Committee Report, *Hearing on the Mayor's Fiscal Year 2012 Preliminary Budget & the Fiscal Year 2011 Preliminary Mayor's Management Report, Department of Information Technology and Telecommunications*, March 16, 2011, Committees on Land Use and Technology; Committee Report, *Oversight: Managing New York City Government IT Contracts*, Oct. 31, 2011, Committees on Contracts and Technology, at 26.

⁴ David Halbfinger, *For Bloomberg, Waste Mars Another Digital Project*, New York Times, Sept. 23, 2011.

projects suggested that a larger problem might exist in the City’s management of its contracts.

In October 2011, the Committee on Contracts, jointly with the Committee on Technology, held an oversight hearing (the 2011 hearing) to examine the structure of the City’s information technology contract management in order to identify systemic shortcomings that fostered ballooning costs.⁵ The 2011 hearing sought to pinpoint the institutional factors allowing overruns to flourish and prevent such overruns in the future. During the hearing, the Administration acknowledged deficiencies in its contract management and proposed a six point plan to improve management of contracts on all capital projects, “whether bricks and mortar or fiber and code.”⁶ The Administration also acknowledged the oversight role to be played by the Council in monitoring the progress of projects according to indicators including cost overruns.⁷

Historically, the Council’s ability to scrutinize expenditures for projects was hindered by the limited information provided by City agencies—opaque project data⁸ obscured problems until projects veered significantly off-course and agencies expended vast resources. This made it difficult for the Council to intervene in a timely fashion. The Council passed Local Law 18 of 2012 (Local Law 18) in order to provide it with a mechanism to timely and effectively perform its oversight functions on large capital projects.

⁵ See Committee Report, *Oversight: Managing New York City Government IT Contracts*, Oct. 31, 2011, Committees on Contracts and Technology.

⁶ Testimony of Deputy Mayor for Operations Caswell Holloway, *Oversight: Managing New York City Government IT Contracts*, Oct. 31, 2011, Committees on Contracts and Technology, at 8.

⁷ See *id.* at 7.

⁸ Project descriptions in budget documentation are often vague and the funding diffuse. For example, in Fiscal Year 2011, the expense funding for NYCAPS spanned the budgets of at least four different agencies.

Local Law 18 of 2012

Local Law 18 requires the City to disclose certain cost increases in construction and service contracts with a value of \$10 million or more that are associated with projects in the capital budget. Specifically, the law requires the Mayor to notify the Council about such project cost increases at two points in time. First, the Council is notified whenever such a contract is extended or modified in a manner that increases the cost of the contract by 20 percent or more. Second, once such an extension or modification has taken place, the Council is notified regarding any additional contract extensions or modifications that result in a 10 percent cost increase above the revised contract value. These notifications are required to include explanations about the basis and anticipated scope of the cost increase, and are submitted, sorted by project, in the quarter following contract registration with the Comptroller. The Administration's most recent Local Law 18 report is attached.

Containing Cost Overruns

The reports submitted pursuant to Local Law 18, specifically the explanations provided regarding the cost increases, raise questions regarding the City's management of its largest contracts. In some instances, agencies cite changes to the scope and/or design of projects as the basis for cost increases; however, there is often no indication of why such changes could not have been anticipated and planned for from the outset.⁹ In other cases, requirements contracts – contracts where vendors agree to supply the City's entire

⁹ See Local Law 18 reports, on file with Committee staff.

requirement for a particular good or standardized service¹⁰ – are repeatedly extended to cover new projects in the name of expediency, but cost savings might be realized by fresh competitive bidding.¹¹

While the reports were envisioned as a way to help the Council monitor cost increases (and, in theory, prevent another CityTime), the reports also provide the City with a tool that might assist with contract planning and management across agencies. The reports thus provide means to help combat contract cost overruns before they exist. The Committee hopes to explore the extent to which the Administration uses the Local Law 18 reports to inform and develop best practices, and what other steps it takes to contain cost overruns.

¹⁰ See Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2013*, at 122, available at http://www.nyc.gov/html/mocs/downloads/pdf/Fiscal%202013%20Procurement%20Indicators%20complete%20text%2010%2021_for%20web.pdf.

¹¹ *Supra* note 9.