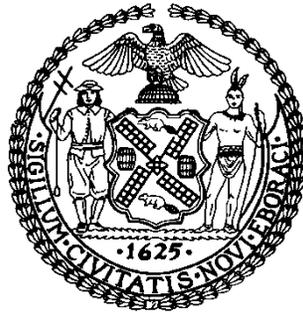


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December 15, 2014

**Oversight: Examining Lessons Learned and Recommendations for Improving New York City's Management of Large Information Technology Contracts.**

**INT. NO. 498:**

By Council Members Rosenthal, Kallos,  
Constantinides, and Wills

**TITLE:**

A Local Law to amend the Administrative Code of the City of New York, in relation to conflicts of interests in city contracts.

## I. **Introduction**

On December 15, 2014, the Committees on Contracts, chaired by Council Member Helen Rosenthal, Oversight & Investigations, chaired by Council Member Vincent J. Gentile, and Technology, chaired by Council Member James Vacca will hold a joint oversight hearing titled “Examining Lessons Learned and Recommendations for Improving New York City’s Management of Large Information Technology Contracts. The Committees will also consider Introductory Bill Number 498 (“Int. No. 498”), a Local Law to amend the administrative code of the city of New York, in relation to conflicts of interest in city contracts. Those invited to testify include the Mayor’s Office of Contract Services (“MOCS”), Department of Investigation (“DOI”), Department of Information Technology and Telecommunications (“DoITT”), representatives of the business and technology communities, and other interested parties.

## II. **Background**

### a. *The CityTime Program*

The Council has held several oversight hearings to address issues surrounding large-scale information technology contracts (large “IT” contracts). One of the most problematic contracts of this nature, which prompted much of the oversight, was related to the CityTime program. The CityTime program was an information technology system designed to provide an automated system of timekeeping and payroll for New York City employees.<sup>1</sup> Originally budgeted at \$63 million dollars, the project costs eventually

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<sup>1</sup> “Department of Investigation’s CityTime Investigation: Lessons Learned & Recommendations to Improve New York City’s Management of Large Information Technology Contracts,” The City of New York Department of Investigations, available at [http://www.nyc.gov/html/doi/downloads/pdf/2014/July-2014/pr13citytime\\_72514.pdf](http://www.nyc.gov/html/doi/downloads/pdf/2014/July-2014/pr13citytime_72514.pdf) (last visited December 9, 2014).

reached approximately \$700 million.<sup>2</sup> The CityTime program involved a number of consultants hired by the City who engaged in a massive fraudulent scheme that ultimately lead to these consultants stealing hundreds of millions of dollars for personal gain—all at the expense of substantial cost overruns that had a grossly negative impact on the City and its taxpayers.<sup>3</sup> The fraudulent CityTime scheme lasted approximately seven years, from 2003 to 2010.<sup>4</sup>

The CityTime scheme was led by Mark Mazer, the senior quality assurance contractor who fraudulently approved multiple contract amendments that resulted in hundreds of new consultants being hired and a dramatic increase in cost.<sup>5</sup> Not only were consultants hired through two staffing companies controlled by Mazer’s relatives and associates, but he also used his relationship with the Executive Director of the City’s Office of Payroll Administration to effectuate the scheme and hire consultants.<sup>6</sup> Mazer received millions of dollars in kickbacks from the staffing companies and fraudulently approved payment for hours to increase the revenue generated by subcontractors, which in turn also increased the amount of kickbacks to Mazer.<sup>7</sup> Gerard Denault was one of the program managers for the CityTime project who also received kickbacks by approving requests to the City for payments that exceeded the value of actual work performed.<sup>8</sup>

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<sup>2</sup> Department of Investigation, ‘CityTime Investigation: Lessons Learned & Recommendations to Improve New York City’s Management of Large Information Technology Contracts, July 2014, p. 1, (hereafter: ‘DOI CityTime Report’) available at [http://www.nyc.gov/html/doi/downloads/pdf/2014/July-2014/pr13citytime\\_72514.pdf](http://www.nyc.gov/html/doi/downloads/pdf/2014/July-2014/pr13citytime_72514.pdf) (last visited December 9, 2014).

<sup>3</sup> *Id.*

<sup>4</sup> United States District Court Southern District of New York Superseding Indictment, available at <http://www.justice.gov/usao/nys/pressconference/mazermarketals2indictment.pdf> (last visited December 11, 2014).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

DOI discovered this scheme after commencing a fraud investigation. Criminal charges were brought and many of the players were convicted, including Mazer and Denault who are currently serving 20 year prison sentences. Key players who are presently fugitives have forfeited over \$10 million in cash and property.<sup>9</sup>

b. *Prior Legislative Efforts*

The Council has made significant efforts to address issues stemming from CityTime and other large IT projects. In October 2011, the Committee on Contracts, jointly with the Committee on Technology, held an oversight hearing to examine the structure of the City's IT contract management in order to identify systemic shortcomings that foster ballooning costs. The goal of the hearing was to pinpoint the institutional factors that fail to prevent overruns in order to determine best practices in the future. During that 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."<sup>10</sup> The six point plan included:

- i. The use of Commercial Off-the-Shelf products, instead of developing a stand-alone solution, when such products can meet an agency's business needs at far less time and expense.<sup>11</sup>
- ii. Change the way the City negotiates significant IT contracts by (1) using modular contracting;<sup>12</sup> (2) shifting to fix-priced contracts for IT projects,

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<sup>9</sup> *Id.*

<sup>10</sup> 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.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> Modular contracting aims to ensure that the contract provides a deliverable at the end of each new phase so there can be necessary adjustments before the next phase begins.

instead of time and material contracts<sup>13</sup>; (3) having DoITT, MOCS, and the Law Department develop a set of standard contract clauses and terms and conditions for IT contracts to create uniformity among agencies<sup>14</sup>; and (4) employing a contract negotiation team that includes oversight from entities such as Office of Management and Budget (“OMB”) and MOCS to help get the City a better deal.<sup>15</sup>

- iii. Assess all IT projects over \$10 million to determine whether they should be value engineered<sup>16</sup> for scope and cost reductions.<sup>17</sup>
- iv. Evaluate the nature and scope of Project Management/Quality Assurance engagements to determine whether the Project Management/Quality Assurance vendor should report to an entity, or business unit, independent from the managing project.<sup>18</sup>
- v. Explore how IT projects are managed across the board to develop and implement best practices for IT project management across City agencies.<sup>19</sup>
- vi. Revisit E.O. 140<sup>20</sup> and the need for additional IT investment governance/accountability to determine whether there’s a need to develop

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<sup>13</sup> Under time and material contracts, the City pays vendors based on the amount of time and the cost of materials.

<sup>14</sup> Standard language would be “favorite nation,” pricing to allow all agencies to pay the same rate for the vendors’ services.

<sup>15</sup> Testimony of Deputy Mayor for Operations Caswell Holloway at 9-11.

<sup>16</sup> Value engineering can be defined as an organized effort to analyze designed building features, systems, equipment, and material selections for the purpose of achieving essential functions at the lowest life cycle cost. . . See U.S. General Services Administration, available at <http://www.gsa.gov/portal/category/21589> (last visited December 12, 2014).

<sup>17</sup> Testimony of Deputy Mayor for Operations Caswell Holloway at 11.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 11-12.

<sup>20</sup> City of New York Executive Order 140 (2010) authorizes the Department of Information and Technology and Telecommunications to consolidate the infrastructure of and establish coordinated

or re-invigorate a City Hall-led governance structure for significant IT projects.<sup>21</sup>

The Council looks forward to learning how the six-point plan has been implemented over the course of the last two years.

In 2011, 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.<sup>22</sup> Unfortunately, however, the Council's ability to scrutinize expenditures for projects was hindered by the limited information provided by City agencies' opaque project data<sup>23</sup>. This made it difficult for the Council to intervene in a timely fashion. To address this issue, on March 14, 2012, the Council passed Local Law 18.<sup>24</sup> Local Law 18 requires disclosure of 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.<sup>25</sup> Specifically, the law requires the Mayor to notify the Council about project cost increases at two stages.<sup>26</sup> First, the Council must be notified whenever a contract is extended or modified in a manner that increases the cost of the contract by 20% or more.<sup>27</sup> Second, once such an extension or modification occurs, the Council must be notified of any additional contract extensions or modifications that result in a 10% cost increase above the revised contract value.<sup>28</sup> Pursuant to Local Law 18, all notifications must include

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citywide policies for information technology and telecommunications for the City. E.O. 140 available at [http://www.nyc.gov/html/doitt/downloads/pdf/eo\\_140.pdf](http://www.nyc.gov/html/doitt/downloads/pdf/eo_140.pdf) (last visited December 12, 2014).

<sup>21</sup> *Id.* at 12.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> Project descriptions 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.

<sup>24</sup> Local Law 18. Mayor Bloomberg approved Local Law 18 on March 26, 2012.

<sup>25</sup> Local Law 18 §1(b).

<sup>26</sup> Local Law 18 §1(b)(c).

<sup>27</sup> Local Law 18 §1(b).

<sup>28</sup> Local Law 18 §1(c).

explanations about the basis and anticipated scope of the cost increase,<sup>29</sup> and be submitted, sorted by project, in the quarter following contract registration with the Comptroller.<sup>30</sup>

Although the Council has taken steps towards curing issues regarding large IT contracts, it continues to work to combat corruption in these projects.

*c. The DOI July 25, 2014 Report*

On July 25, 2014 the DOI issued a report on its investigation of the CityTime project. In addition to finding criminality, the DOI also “exposed that CityTime was flawed from the outset because of the City’s failure to implement proper [internal] controls and other management safeguards to prevent substantial cost overruns and delays and to detect the enormous fraud against the City and its taxpayers.”<sup>31</sup>

As a result of its findings, the DOI recommended six reforms, as follows:

- i. The first recommendation was to “establish an effective executive governance structure for the supervision and management of large technology projects from inception to completion.”<sup>32</sup> It further recommended that such a governance structure include an interagency working group to oversee projects and the assignment of an on-site City employee project manager with the requisite technical expertise.<sup>33</sup> When vetting contracts, the individual agency in need of systems or services may be placed in charge of the process but may not necessarily have the necessary technical expertise available internally. For the CityTime project, such a situation occurred and created an “excessive reliance

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<sup>29</sup> Local Law 18 §1(b).

<sup>30</sup> Local Law 18 §1(d).

<sup>31</sup> *Id.* at 1.

<sup>32</sup> *Id.*, at 16.

<sup>33</sup> *Id.*

- upon consultants to manage and oversee the project.”<sup>34</sup> Yet, such expertise may be available in other agencies, executive offices or affiliated bodies, and could be utilized in place of reliance of non-City entities.
- ii. The second recommendation was to assign an integrity monitor selected by the DOI to all large IT projects to perform regular audits of consultant hiring and work products.<sup>35</sup> An integrity monitor firm can include accountants, attorneys, auditors and investigators with law enforcement backgrounds, but the purpose is generally to be a source of independent investigative review.<sup>36</sup> Although the agency overseeing the CityTime project engaged the services of a separate Quality Assurance consultant, this type of consultant is mostly concerned with evaluating if the product developed by the vendor meets specified needs, rather than identifying fraud, and is not independent from the process.<sup>37</sup> Further, for this particular project, the lead quality assurance consultant became a source of fraud.<sup>38</sup>
- iii. The third recommendation was for the City to create “a more robust due diligence and approval process regarding large technology contracts, amendments and change orders.”<sup>39</sup> The CityTime project scope was expanded several times, adding significant cost in time and money. The most significant alteration was an amendment that changed the contract from paying a fixed price for completed deliverables to one that paid for level of effort expended on the project, which

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<sup>34</sup> *Id.*, at 14.

<sup>35</sup> *Id.*, at 18.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*, at 9-10.

<sup>38</sup> *Id.*, at 12-13.

<sup>39</sup> *Id.*, at 20.

lead to a “steep rise” in the number of consultants on the project.<sup>40</sup> The report suggested that approval of change orders to contracts should therefore be scrutinized more carefully, especially with regard to the potential financial impact of such changes.

- iv. The fourth recommendation was to hold contractors accountable for failures to provide deliverables on time and on budget, by making penalties explicit and enforcing them where appropriate.<sup>41</sup> Throughout the CityTime project, deadlines were not met by various contractors yet payments continued to be made. Instead of penalizing the contractors it was the practice of the overseeing agency to extend the deadlines.<sup>42</sup>
- v. The fifth recommendation was to require consultants to undergo a conflicts of interest background check, where they must disclose relationships with employees of the contracting agency, and for subcontractors of significant size to be vetted.<sup>43</sup> Among the abuses highlighted by the DOI was the hiring of sub-contractors with conflicting relationships that went undiscovered prior to the DOI’s investigation.<sup>44</sup>
- vi. The sixth recommendation was for the City to “develop a plan on all large technology projects to transition maintenance and control to the City at the conclusion of the project” because at “no time should a vendor have sole control of maintaining a system for an unspecified amount of time.”<sup>45</sup> Within the report the DOI recognized that City employees may not always be able to wholly

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<sup>40</sup> *Id.*, at 11, 19-20.

<sup>41</sup> *Id.*, at 21.

<sup>42</sup> *Id.*, at 20-21.

<sup>43</sup> *Id.*, at 22.

<sup>44</sup> *Id.*, at 12-13.

<sup>45</sup> *Id.*, at 23.

maintain a system without outside help, but the element of City control was put forth as a bulwark against long-term abuse by non-City persons or entities.

d. *Current City IT Projects*

Currently, there are multiple, ongoing large IT projects that are being monitored pursuant to a contract with the City. The most notable IT project is the Emergency Communications Transformation Program (ECTP), which is reportedly over a billion dollars over budget and has received a significant amount of press attention.<sup>46</sup> ECTP is discussed further below, but there are other contracts of comparable size underway as well, such as a contract in excess of \$200 million for the Citywide Mobile Wireless Network (NYCWIN).

Among recent capital IT contracts, there are three that have seen significant cost increases in excess of 50% over their original cost. The largest of which, a contract to provide ‘Systems Integrator Services’ for the Health and Human Services Accelerator Initiative, has increased over 117% above its original contract amount of \$13 million.

To give an example of some of the problems such projects face, ECTP began in 2004 as a five-year project to modernize the City’s 911 emergency communication system. Although it has progressed, elements of the project remain unfinished.<sup>47</sup> As a consequence, a review of the project was ordered by Mayor Bill de Blasio, which was led by DoITT Commissioner Anne Roest and included representatives from the Mayor’s

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<sup>46</sup> “Gonzalez, Juan, ‘Mayor de Blasio puts troubled 911 upgrade on hold for probe of budget, schedule delays,’ *New York Daily News*, May 19, 2014, available at <http://www.nydailynews.com/news/politics/exclusive-mayor-de-blasio-puts-911-overhaul-hold-probe-article-1.1797261> (last visited December 9, 2014).

<sup>47</sup> “Assessment of Key Requirements and Components of the Emergency Communications Transformation Program (ECTP),” Prepared at the request of the First Deputy Mayor, August 6, 2014, p. 3, available at <http://www1.nyc.gov/assets/home/downloads/pdf/reports/2014/ECTP-60-Day-Assessment-Final-140806.pdf> (last visited December 9, 2014).

Office, Police Department, Fire Department, Department of Design and Construction, Office of Citywide Emergency Communications, OMB and DoITT.<sup>48</sup> The “comprehensive review revealed a number of root causes for repeated program challenges and delays, including overreliance on external consultants and lack of communication and input from stakeholder agencies.”<sup>49</sup> The recommendations made at the conclusion of this review included the following: (i) large projects should be broken down into smaller, more manageable projects; (ii) operational needs should drive technology choices, not the reverse; (iii) a governance model that promotes interagency/stakeholder communication should be implemented; and (iv) layers of vendors should be reduced and a vendor and contract management lead for the City should be appointed to oversee the various contracts associated with the program.<sup>50</sup> The assessment also states that these findings are in agreement with the initial findings reached by DOI, which is conducting its own independent review of ECTP.<sup>51</sup> Although these projects lack the element of criminality found in CityTime, the systemic inefficiencies identified in these more recent projects have some similarities to CityTime, as do the proposed solutions.

There may be valid reasons for delays or an increase from an original contract amount, but such examples serve as a reminder of both the particular difficulties of estimating the costs for technology projects and the value of attention and technical expertise in their managing. The Committees hope to learn how the most recent DOI

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<sup>48</sup> “De Blasio Administration Announces City’s 911 Technical Review Recommendations,” Mayor’s Press Release, Aug. 6, 2014, available at <http://www1.nyc.gov/office-of-the-mayor/news/388-14/de-blasio-administration-city-s-911-technical-review-recommendations> (last visited December 9, 2014).

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> “Assessment of Key Requirements and Components of the Emergency Communications Transformation Program (ECTP),” p.4.

recommendations outlined above, as well as the lessons learned from other projects, such as ECTP, are being implemented in both future and ongoing contracts.

### **III. Summary of Int. No 498**

In considering Int. No. 498, the Council seeks to enact a local law that incorporates the spirit of DOI's recommendations by requiring contractors to undergo a conflict of interest vetting process.<sup>52</sup>

Currently, when the City enters into a contract, there is no vetting process to determine whether a conflict of interest exists amongst subcontractors. For instance, the CityTime scheme involved a number of actors (e.g. contractors, consultants, and shell companies) who were Mazer's family members and friends. Importantly, there was no process in place for the City to know or obtain that information.<sup>53</sup> Int. No. 498 would require the City Chief Procurement Officer to establish standards and procedures to require contractors (or subcontractors or independent contractors) that enter into contracts for \$10 million or more to determine whether a conflict of interest exists. The bill would also require a conflict of interest clearance where multiple contracts entered into during the previous twelve months bring a contractor's aggregate total to \$10 million or more.<sup>54</sup> Int. No. 498 would also require all contractors to certify that they have complied with the standards and procedures established by the Chief Procurement Officer and that no conflict of interest exists.<sup>55</sup> The main goal of Int. No. 498 is to prevent contractors at any level or tier from contracting with the City if a conflict of interest exists.

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<sup>52</sup> Int. No. 498.

<sup>53</sup> Department of Investigation, 'CityTime Investigation: Lessons Learned & Recommendations to Improve New York City's Management of Large Information Technology Contracts, at p. 3.

<sup>54</sup> This threshold amount of \$10 million was a change from DOI's recommendation as any lower would cause the city to be overburdened in the amount of background checks that would be required.

<sup>55</sup> Int. No. 498 § (c).

The bill would take effect 120 days after enactment into law and would only apply to contract solicitations after its effective date.

By Council Members Rosenthal, Kallos, Constantinides, and Wills

A Local Law to amend the administrative code of the city of New York, in relation to conflicts of interest in city contracts.

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-140 to read as follows:

§ 6-140 Conflicts of interest in city contracts. a. As used in this section, the following terms have the following meanings.

1. "Agency" means a city, county, borough, or other office, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

2. "Contractor" means any individual, sole proprietorship, partnership, joint venture or corporation that enters into a contract with an agency, an elected official or the council.

3. "Covered contract" means any agreement between a contractor and an agency, an elected official or the council that by itself or when aggregated with all contracts awarded to such contractor by any contracting agency during the immediately preceding twelve months has a value of ten million dollars or more.

b. The city chief procurement officer shall establish standards and procedures to be used by contractors for determining the existence of any conflict of interest, as set forth in chapter 68 of the New York city charter, that may exist between a city employee and the contractor or a subcontractor or independent contractor of the contractor.

c. Every contractor that enters into a covered contract shall certify when entering such contract that the contractor has complied with the standards and procedures established pursuant to this section, and that no conflict of interest exists.

§ 2. This local law shall take effect 120 days after its enactment, provided that it shall apply only to contract solicitations occurring after its effective date, and provided further that the city chief procurement officer may take any actions necessary for the implementation of this local law before its effective date.

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