



**NEW YORK CITY COUNCIL COMMITTEES ON
CONTRACTS AND OVERSIGHT AND INVESTIGATIONS**

**TESTIMONY OF JOCELYN E. STRAUBER
COMMISSIONER, NEW YORK CITY DEPARTMENT OF INVESTIGATION**

**HEARING ON
OVERSIGHT - MAINTAINING VENDOR INTEGRITY THROUGH THE PANDEMIC
CONCERNING INTRO BILLS NOS. 300, 301 AND 453**

COUNCIL CHAMBERS – CITY HALL

TUESDAY, OCTOBER 25, 2022

Good morning and thank you Chair Won and Chair Brewer for the opportunity to address the Committee on Contracts and the Committee on Oversight and Investigations on three Bills involving vendor integrity oversight, and the impact of those Bills on the work of the City's Department of Investigation ("DOI").

Vendor integrity is, and has long been, a critical part of DOI's mission to root out corruption, protect public funds, and ensure the existence of strong internal controls and best practices with respect to City operations. DOI's investigations relating to City vendors have led to public reports and recommendations, proposing stronger agency oversight of vendor contracts, as well as criminal referrals and convictions. DOI also manages an integrity monitorship program to ensure that vendors with an ongoing contractual relationship with the City, who have had integrity problems in the past, are acting appropriately.

Within the last year DOI released a report on corruption vulnerabilities in the City's oversight and administration of not-for-profit human services contracts – that is, contracts with third party non-profit entities that provide services to New Yorkers in areas like housing, education and health. The DOI report, based on dozens of corruption and fraud investigations involving nonprofit entities, included recommendations for reform with respect to the City's budgeting, invoicing and auditing of these contracts. The Mayor's Office of Contract Services has not yet responded to our recommendations; we understand the recommendations will be considered as part of a Task Force addressing City contracts with non-profit entities and that we will have an opportunity to weigh in on policies and procedures proposed by the Task Force.

In addition, since February 2021, DOI has been working on a comprehensive examination of Department of Homeless Services' non-profit human services vendors, to

identify for DHS potential compliance risks, including conflicts of interest and financial issues, so that DHS can address these risks the issues, and, if necessary, end the relationship with that vendor. DOI is making significant progress on this examination and expects to issue a public report summarizing its findings early next year.

Vendor misconduct also can involve criminal offenses. For example, a joint investigation DOI conducted with the United States Attorney's Office for the Southern District of New York, led to the guilty plea of the former CEO of the City-funded Bronx Parent Housing Network ("BPHN"), an entity that provided services to DHS. The CEO conspired to enrich himself through bribes and kickbacks in connection with the services that he provided and was sentenced to a 27-month prison term in May as a result.

These are just some examples of DOI's investigative work to identify and prevent corruption, fraud and waste in relation to City contractors.

Before I address the three Bills, I want to explain DOI's role in the City's procurement process, our longstanding initiatives to oversee contracts and vendors that pose a particular risk of fraud and abuse, and the steps that DOI took during the pandemic and in the wake of other crises to provide enhanced oversight of emergency-related contracts.

The Director of the Mayor's Office of Contract Services has explained the City's standard procurement process. DOI has a discrete role in that process – we provide specific information relating to the vendor and its principals for a prospective contract or contracts valued at \$250,000 or more, within a twelve-month period. DOI obtains that information by conducting what we refer to as Vendor Name Checks ("VNCs"). This is not a full background check of a vendor, nor is it a responsibility determination. DOI checks its internal databases and informs the contracting agency of any substantiated findings.

DOI plays a small part in the vetting process; City agencies conduct additional checks and ultimately make an independent determination whether to award a contract.

DOI also oversees an Integrity Monitor Program. The Program is used for vendors with integrity issues – often uncovered through DOI investigations – that City agencies wish to continue doing business with. While these issues might ordinarily preclude a vendor from obtaining City business, this Program allows the company to continue to perform under existing City contracts or be awarded new contracts under certain conditions. These include the condition that the Company pays for an integrity monitor and makes other arrangements – such as separating principals who engaged in misconduct from the business, and the implementation of policies and procedures, and training of employees – to ensure the entity's integrity. The monitor reports directly to DOI, so that we can maintain close oversight, and work in real time with both the vendor and the contracting agency to address any issues. DOI can also join the monitor on site visits, audits, and investigations.

For example, a critical Parks Department contractor pleaded guilty to a \$1 million insurance fraud earlier this month. So that the agency could continue doing business with that contractor, the contractor was required to retain a monitor that reports to DOI. The terms of the monitorship included remedial measures such as barring the now former principals of the company, and any entities those individuals own, from working on any City contracts and construction projects, and requiring the company to establish a code of conduct and train employees on it. The City has taken a similar approach with BPHN, whose principal is serving a 27-month prison term for taking bribes and kickbacks, as I mentioned. Because BPHN provides critical services for the Department of Social Services, DOI worked with that agency to strengthen oversight of BPHN, including

requiring it to retain a monitor that reports directly to DOI, so that BPHN can complete its existing City contract.

Vendor integrity, and identifying and stopping vendor fraud, are high-priority areas for DOI and will continue to be. That is important context for our position on the following three Bills.

DOI does not support Intro. Bill 300, which would establish a Special Inspector within DOI to review contracts that were entered into in response to the COVID-19 pandemic. DOI opposed a similar Bill (Intro Bill 1980) that was introduced two years ago. My predecessor's core concerns about that Bill, as expressed in her testimony, apply to the current Bill as well.

While there have been some minor changes made to the legislation, the current Bill contemplates a role for DOI that is not consistent with, nor the best use of, our expertise. Furthermore, to be frank, it is a role that we cannot fulfill given our current resource limitations.

First, the Bill has an unfunded mandate to appoint a "Special Inspector" to collect and review COVID-19 related contracts in order to identify deficiencies. This broad contractual review would require significant resources that we do not have. To attempt this work with our current staffing would significantly damage our ability to pursue our current docket of active investigations.

Second, the Bill asks that DOI report the results of the review, and other specific vendor information in a public database. DOI does not maintain this information as a general matter. We are an investigative agency, and while we of course can obtain such information for our investigations, our role is not to parse City contracts or manage City

contract data. Putting aside our limited resources, the tasks contemplated by this Bill are not the best use of our expertise.

Third, many COVID-19 related contracts have already been awarded during the height of the pandemic, and our understanding is that most of them have concluded or are winding down. Thus, there is a question whether this is an appropriate use of resources at this time.

DOI's appropriate role in the wake of a disaster or crisis has always been to use our integrity monitoring expertise to assist. We did so in the wake of Hurricane Sandy with the Rapid Repairs Program ("RRP"), an emergency initiative to fulfill New Yorkers' basic needs including heat, hot water, and electricity. DOI implemented a monitoring program for RRP to oversee repairs by contractors at over 13,000 residential units. That monitoring led to a number of recommendations for improvement of the Build it Back Better program, criminal convictions of those who sought to defraud the City of disaster relief funds, and a significant cost savings to the City.

Similarly, during the pandemic, when the regular procurement rules were suspended so the City could obtain essential items such as Personal Protective Equipment ("PPE"), DOI proactively offered to conduct, and performed, vendor name checks for agency contracting officers, even though in that period such name checks were not required. We also asked the Mayor's Office of Contract Services to provide us with the contracts related to COVID-19 on a rolling basis, and gave that list to our Inspectors General. They took a number of steps to ensure the integrity of the vendors. Among other things, they discussed the emergency contracts with the agencies they oversee, checked certain vendors through a matrix of databases, and investigated whether certain purchases were made and if they comported with the intended purpose.

DOI also conducted criminal investigations of Covid-19-related fraud and misconduct. One case resulted in a federal conviction of a New Jersey man for a \$45 million scheme to defraud New York City during the height of the pandemic by trying to supply PPE that he did not possess or have authority to sell. In another matter that is pending in federal court, four defendants were charged with abusing New York City's COVID-19 Hotel Room Isolation Program by falsely claiming to be healthcare workers and by selling hotel rooms to ineligible individuals, defrauding the government of \$400,000.

In our experience, the most effective way to address integrity concerns related to emergency contracting is by engaging an outside Integrity Monitor that reports to DOI. Our proposed approach has been used numerous times during prior crises in this City that have called for large-scale contracting endeavors, including, for example in the wake of Hurricane Sandy and in the clean-up of Ground Zero. While my predecessor reasonably suggested the appointment of an integrity monitor for emergency COVID-19 contracting as an oversight option in 2020, that appointment likely is no longer timely given the limited number of remaining COVID-19 contracts.

With respect to Bill 301, DOI has previously recommended that City contractors be required to make disclosures to aid the City in identifying potential corruption and conflict of interest risks. While this Bill may seek to accomplish the same result, DOI disagrees with the Bill's approach, and in particular the requirement that standards and procedures be imposed on contractors so that the contractors can determine whether corruption or conflicts exist, and make a certification with respect to those issues.

The determination and certification that the Bill asks vendors to make is usually made by law enforcement, or other authorities such as the Conflict of Interest Board, based on laws that are complex and that may differ across state and federal jurisdictions. Such a certification could not be made without a full internal investigation, even if a vendor were well-positioned to evaluate whether any identified conduct constituted corruption or a conflict of interest. To the extent this requirement prompts a vendor to conduct its own investigation, that could have a negative impact on current or future DOI investigations. Furthermore, the requirement that certifications be made public also could interfere with ongoing investigations.

We share the Council's commitment to eradicating corruption and conflicts of interest in City contracting, but note that our proposed approach to this issue was quite different – we recommended in our 2021 report on corruption vulnerabilities with respect to the City's oversight of nonprofit contracts that the City require disclosures of information from vendors, so the City could exercise its oversight responsibility with full information, among other measures.

Intro. Bill 453 would require the employees of City vendors to report corruption, fraud, waste, abuse and conflicts to DOI, and to cooperate with any investigation. Putting aside any implementation issues, DOI supports the imposition of a reporting requirement on City vendors. As the Council is well aware, reporting of potential corruption, fraud, or misconduct is critical for DOI to accomplish its mission. The affirmative reporting obligation of New York City employees is a cornerstone of this City's anti-corruption efforts. The City Whistleblower Law's prohibition on retaliation against City employees, and employees of City contractors, further demonstrates the City's intent to root out corruption, by protecting those who come forward to report it. Imposing a

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reporting requirement on City contractors certainly will aid in DOI's and the City's critical anti-corruption mission.

Thank you.

I am happy to answer any questions the Councilmembers have for me on these important issues.

Testimony to the Committee on Governmental Operations

10/25/2022

John MacIntosh, Managing Partner, SeaChange Capital Partners

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I am the Managing Partner of SeaChange Capital Partners, a nonprofit headquartered here in New York. SeaChange's mission is to serve nonprofits by helping them work through complex financial and organizational challenges. We do this through grants, loans, analysis, and advice. Through our work, we have first-hand experience with organizations that have had issues of fraud, corruption or financial distress including The Hale House Center, FEGs and the Healing Arts Initiative.

I am here today to offer some suggestions with regards to Int 0301 and the Establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning city contracts. I would like to suggest that nonprofits are different and should be treated differently. One main distinguishing feature of nonprofits – and the one that many scholars believe make them ideal partners to government in the delivery of social service – is that there are no shareholders who might have an interest in profits over quality of service. Similarly, there is legal prohibition on what the IRS call “private inurement” – i.e. getting a personal, financial benefit from a nonprofit's activities.

It seems obvious that related party transactions – which I am defining as a situation where the nonprofit does business with any for-profit company in which the leadership or board members have any economic interest – runs counter to the spirit – if not letter – of these rules and in fact reduces one of the primary advantages of contracting with nonprofits over their profit seeking brethren.

Furthermore, while very few nonprofits *actually* contract with related for-profit entities, those that do usually buy things for which there are multiple arms-length providers. Things like security, food or real estate, are all of which are commoditized and competitive. The notion that a nonprofit cannot secure these services from unrelated third parties is preposterous and an obvious opportunity for self-dealing.

Finally, I would suggest ongoing purchases of services differ from the purchase of one-off purchase of goods in that it is close to impossible to know whether the price being paid is fair. There is a price for pencils and gas but things like security it is not a question of whether the price is “fair” but also whether the ongoing relationship is truly arms-length. In fact, in a competitive market if no one will willing to match the price offered by a related-party this alone suggests self-dealing since the market is suggesting that the service cannot actually be provided at the price (so it probably won’t be).

So, I would suggest a blanket prohibition – perhaps phased in over time – on contracting with nonprofits that employ related for-profit companies in which the leadership – board or staff – have any economic interest.

Let me say one other thing. The government agencies that often contract with nonprofits are also surprisingly unable to spot problems. Why? Because the procurement, contracting and reporting processes typically focus on contracts without any real understanding of the values, governance and financial position of a nonprofit organization as a whole. Fraud and corruption are not-contract level issues – they are organizational issues. For example, while [Children's Community Services](#) raised obvious organizational red flags, its contract-level paperwork may well have been impeccable and it likely offered the lowest price for the particular contracts it received.

I would offer two other suggestions:

First, designate the 50 nonprofits with the greatest volume of city contracts as “systemically important nonprofit partners” and appoint an ex officio observer on the board to the board of every one of these organizations. This is not a novel idea, as the federal government already designates some Systemically Important Financial Institutions and the New York City Department of Cultural Affairs appoints ex officio observers to boards of certain institutions. At the same time, organizations so designated should have fewer hoops to the jump through at the level of individual contracts which is, as I said, seldom where the action is.

Second, rebid contracts that fail to attract any experienced organizations. If the city offers a large contract and not a single experienced nonprofit responds, this is strong evidence that no organization can actually deliver the service on the terms indicated.

Whether this is intentional fraud or mere lack of knowledge is irrelevant – the contract should be redesigned.

Thank you for your time.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 10/25/22

(PLEASE PRINT)

Name: Lisa Flores

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453
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Name: Toraki Kometsu
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I represent: Self
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