



**NEW YORK CITY COUNCIL
COMMITTEE ON CONTRACTS JOINTLY WITH THE COMMITTEES ON
GOVERNMENTAL OPERATIONS AND ECONOMIC DEVELOPMENT**

**TESTIMONY OF MARGARET GARNETT
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**CONCERNING INT. NO. 1980, A LOCAL LAW ESTABLISHING
A SPECIAL INSPECTOR WITHIN DOI TO REVIEW CONTRACTS AWARDED
IN RESPONSE TO THE COVID-19 PANDEMIC AND
THE ESTABLISHMENT OF A RELATED ONLINE DATABASE**

OCTOBER 22, 2020

REMOTE MEETING, VIRTUAL ROOM 2

Good morning Chairs Kallos, Cabrera, and Vallone, Councilmember Chin, and members of the Committees on Contracts, Governmental Operations, and Economic Development. My name is Margaret Garnett and I am the Commissioner of the New York City Department of Investigation ("DOI"). Thank you for inviting me to address the Committee on Intro Bill 1980, which proposes establishing a Special Inspector within DOI to review contracts that were awarded by the City under emergency circumstances in response to the COVID-19 pandemic; to continually evaluate such contracts to identify potential or actual deficiencies in monitoring and integrity and make recommendations; and to develop an online public database including specific indices from these contracts.

I have reviewed this Bill in detail and discussed it at length with the members of my team who have broad expertise in the area of contract oversight and vendor investigations. DOI cannot support this Bill in its current form.

In my testimony today, I will discuss what DOI's role is in this crisis, what we have been doing as part of our anti-corruption mandate as it relates to COVID-19 contracts, and the reasons why the current Bill is not the best way to address what I believe are the Council's policy goals in this area. I will also describe a potential option that has worked effectively in the past to manage oversight and auditing of crisis initiatives and projects in the City.

Although I oppose the proposed Bill in its current form, I commend these Council Committees for raising important concerns about accountability and integrity when the City is spending billions of dollars under emergency powers during a crisis, without the

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usual scrutiny provided by the City Comptroller and other oversight agencies. To be clear, my opposition is not to the need for such action in some form, but rather to the structure and allocation of responsibilities proposed in the Bill, which I believe are not the best use of City personnel or City funds.

During a fiscal crisis for the City, it is more important than ever that beneficial oversight be conducted in a way that avoids unnecessary duplication of effort and deploys scarce resources efficiently and effectively.

DOI's Role in Emergency Contracting

I'd like to begin by outlining for the Council what DOI's role is in contracting (both emergency and non-emergency), and what we have been doing to date to provide some oversight over the City's COVID-19 spending within the current structure and mandate of DOI.

By way of background, in the standard vendor contracting process, the Procurement Policy Board ("PPB") rules reinforce integrity and fairness in the City's contracting process. PPB rules call for the involvement of multiple agencies and checks, many of which are captured in the City's primary contract and procurement system, known as PASSport. DOI has only one discrete role in this normal process, and that is to provide information related to Vendor Name Checks ("VNCs") of the vendor and its principals for contractors that meet the PASSPort disclosure threshold of \$250,000 or more, whether on one contract or over a 12 month period. This is a not a full background check, nor is it a responsibility determination. DOI's role in the contracting process is very limited: we check our own internal databases and relay to the contracting agency whether

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DOI has previously investigated a vendor or its principals and had substantiated findings from those investigations.

The information DOI provides is only one small part of the vetting process. City agencies are expected to go through their own series of checks and ultimately make their own determination as to whether a vendor is responsible and whether a contract should be awarded. Other agencies, such as the Mayor's Office of Contract Services ("MOCS") and the Comptroller also play very important roles and provide crucial oversight in this area. DOI is one resource for City agencies during this process, but we do not parse through individual contracts or bidding processes, and do not continuously evaluate the breadth of the City's contracts or procurement practices for integrity deficiencies. That is not DOI's role, and it never has been.

As this Council knows, during the early weeks of the pandemic, there was a desperate need for Personal Protective Equipment ("PPE") and other items related to COVID-19 response, including everything from ventilators and vital medication to computing equipment that enabled City employees to do their jobs from home. This need was not unique to New York City. In particular, the procurement process for PPE became a chaotic seller's market, with decisions about whether to purchase PPE necessitating swift action so a vendor did not sell its equipment elsewhere. Because of the heightened emergency, the City suspended its regular procurement process through emergency executive order so it could navigate this critical situation more nimbly. Although the PPB rules contain emergency provisions meant to expedite the procurement process in an emergency, the executive order did not invoke that process but simply eliminated the role

of several agencies, including the City Comptroller, which normally has a robust oversight role in the City's procurement process, and DOI, which has a much more limited role in vendor review for larger contracts.

However, DOI understands the value of even our limited role in the contracting process. As a result, after the Mayor issued Executive Order 101, suspending the regular procurement rules, DOI proactively reached out to City agency contracting officers and to MOCS. For agency contracting officers, we offered to do our usual vendor name checks for them, even though they were not required by the EO, and assured agencies of our ability to do them on an expedited basis for emergency contracts. To date, we have provided that service for approximately 120 vendors for potential contracts that fell within the EO. In addition, DOI asked MOCS to provide DOI with a rolling list of contracts related to COVID-19. MOCS began providing us that list in April and has sent us regular updates when requested. We then provide those lists to the relevant agencies' Inspectors General within DOI for them to review as they deem appropriate. Each Inspector General geared their reviews to the specific needs of the agencies they oversee and the information provided to them by MOCS, taking a range of actions, from discussing the emergency contracts with their agency, to checking certain vendors through a matrix of databases or investigating whether certain purchases were made and if they comported with the intended purpose.

Emergency procurements and suspension of the normal safeguards provided by procurement rules create two distinct categories of risk for corruption and fraud. The first kind of vulnerability is in the contracting process itself, by, for example, creating

opportunities for sweetheart deals for connected vendors, or waste created through time pressures on agency contracting officers or the need to purchase certain materials for the first time. We have endeavored to address this first kind of risk through the spot-checking I have outlined above, as well as following up on our usual intake of tips and referrals.

The second kind of vulnerability is fraud by third-parties, where bad actors take advantage of an emergency to steal from the City by, for example, promising materials that they cannot deliver, delivering defective materials, or taking advantage of programs intended to assist vulnerable populations. DOI has also been active in targeting this risk category, and we have multiple ongoing investigations in this area that I cannot discuss publicly. However, one matter that has already been announced was the federal arrest of a New Jersey man attempting to deceive and price gouge the City into paying him and his co-conspirators approximately \$45 million for personal protective equipment he was not authorized to sell and could not deliver. DOI partnered with the United States Attorney's Office for the Southern District of New York on that investigation. Notably, that case began with one of this City's best defenses when it comes to ensuring integrity in contracts: astute and proactive procurement specialists who implicitly understand the complex, exacting details of contracting and related pricing, and question them. In this case, procurement specialists at the Department of Citywide Administrative Services questioned the astronomical price, and then City officials reached out to the manufacturer, leading to our criminal investigation. Finally, even where we have active investigations, we have given real-time feedback to agencies on their vulnerabilities and potential ways to address them, to try to stem any ongoing losses to the City.

DOI is primarily an investigative agency, albeit one with a very broad mandate. We are able to investigate any issue of corruption, fraud, malfeasance, and other related wrongdoing that involves the City. However, the breadth of that mandate means that we must be strategic and focused in how we use our resources, otherwise DOI risks diminishing its ability to make an impact and broadly combat corruption, fraud and waste. In the area of unprecedented emergency contracting, we have tried to use our resources and expertise effectively, without draining resources away from our many ongoing investigations into other types of corruption and fraud throughout City government.

DOI's Concerns with the Proposed Bill

I will turn now to outlining DOI's concerns with certain elements of the proposed Bill. This legislation has the admirable goal of ensuring integrity in the City contracting process during a crisis situation, protecting the taxpayer dollars used to pay these vendors, and providing public transparency. DOI supports all of these important anti-corruption principles, and I commend the drafters of this Bill for wanting to memorialize these good-government efforts through legislation.

However, DOI has a number of objections to the means by which the Bill proposes to accomplish these goals.

First, as to subsection (b) of the Bill, that calls for the creation of a public database: it requires that DOI develop, populate, and maintain an online database with information that is neither gathered nor maintained by DOI. To the extent the data called for by the

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Bill is kept at all, it is kept either by MOCS or by each individual contracting agency. Moreover, DOI is an investigative agency. We have neither the personnel nor the expertise to perform the task called for by subsection (b). Gathering the listed information from dozens of City agencies and putting it into a public database created by DOI would be a herculean task for us, especially given our lack of experience with this type of work. Moreover, even if the resources were available, completing it within 30 days would not be remotely possible for DOI, given that qualified staff would have to be hired or diverted from other necessary tasks, the listed information would have to be culled from all of the contracting agencies, hundreds of contracts would need to be manually reviewed, a database with public functionality would have to be created from scratch, and staff would then have to manually input the information and check it for accuracy.

Public databases can play an important role in crowd-sourcing oversight of government operations and actions. In addition, this type of transparency can increase public confidence in how government is run. But DOI is not a manager of City information or data, nor an expert in creating databases. Accordingly, assigning this task to DOI would not be an efficient or effective use of City resources.

I would also urge these Committees to assess whether this section of the proposed Bill is duplicative of Local Law 76, which has already been passed by the Council and goes into effect on October 23rd, and also whether the desired transparency is already achieved, at least in part, by existing mechanisms for public disclosure such as the Comptroller's CheckbookNYC database. All parts of City government have an obligation

to conserve our resources during this challenging time by avoiding waste and duplication of effort.

Turning now to subsection (a) of the proposed Bill, which calls on DOI to create internally a Special Inspector for COVID-related contracting, I do not believe that staffing this function within DOI, with the tasks described in the Bill, is feasible or is the best way to achieve the apparent goals of this legislation.

As I have noted earlier in my testimony, DOI's role is as an investigative agency with a mandate to root out corruption, fraud and wrongdoing. It is not structured or adequately staffed to be an agency that parses through and reviews each and every COVID-related contract in the City, both looking back to April and forward, as the City continues to grapple with the pandemic. The continuous evaluation of contracts for monitoring and integrity deficiencies should be tasks of the contracting agency, which are awarding and managing the contract on a daily basis. During normal contracting processes, an important role is also played by the Comptroller, which has an extensive contract approval staff and audit staff focused on, and highly knowledgeable about, the City's procurement and contracting. When serious discrepancies are found, or when suspicious activity is identified, they should be reported to DOI and we step in at that point to investigate potential violations of criminal law or the City's conflicts of interest rules. We regularly receive and investigate such referrals from the Comptroller, from agency contracting officers, from MOCS, and from tips that come into our complaint lines from a variety of sources.

Becoming a de facto double-check agency for all City contracts is not the best or most effective use of our expertise and staff. This is particularly true because the City is already paying for this service to be provided by the skilled and experienced personnel at the Comptroller's Office, who are constrained only because of the current emergency executive order. Restoring the contract registration and independent oversight role of the Comptroller would accomplish all of the forward-looking goals of this Bill. Most significantly, requiring DOI to duplicate a task better performed by the Comptroller would limit our ability to conduct the breadth of anti-corruption work that we do across all City agencies, and to do the type of in-depth investigations that DOI has become known for, all of which are focused on deterring corruption and holding wrongdoers accountable.

The resources needed to establish a "Special Inspector" office as described in the Bill would be significant, and to do the kind of daily work outlined in the Bill would take hiring a Special Inspector, and a minimum of six specialized staff with audit or procurement expertise. This does not include the staff that would be needed to develop, populate, and maintain the online database described in subsection (b). This cannot be achieved effectively through redeployment of DOI investigators from other units, and certainly cannot be achieved without significantly taxing DOI's current, critical operations and investigations, which are already strained by staffing reductions due to the hiring freeze of the last seven months. Specifically, DOI has lost 36 staff due to attrition since January, including five data analysts, in addition to our normal stock of existing vacancies going into the calendar year. Due to the hiring freeze and fiscal crisis, we have been permitted to hire only one person since April.

A Better Option: Hire an Outside Integrity Monitor That Reports to DOI

While I believe creating a Special Inspector unit to review contracts is misplaced within the structure of DOI, I also understand the Council's desire to keep a close eye on emergency contracting and for greater visibility into these expenditures of City and federal money. To that end, a better option would be for the City to consider meeting that need through an outside Integrity Monitor that reports to DOI, a strategy that has been used numerous times during prior crises in this City that have called for large-scale contracting endeavors, for example the Ground Zero clean-up and the rebuilding efforts in the wake of Hurricane Sandy, among other extensive projects.

Hiring an outside Integrity Monitor for a specific and specialized short-term task is ideal for a variety of reasons. Our experience in this area has shown that outside Integrity Monitor firms are able to gear up and deploy highly specialized staff quickly to perform the kind of work that is set out in this Bill, faster and often for less money than could be accomplished by staffing a new unit within DOI. With a few experienced staff members, DOI can effectively supervise the work of these Monitors, who regularly report to DOI, particularly regarding any findings of wrongdoing or potential criminal conduct. A Monitor could, for example, audit a selection of the contracts entered into during the emergency period, with integrity and best practices in mind. On larger or ongoing contracts a Monitor can assist in ensuring that vendors are complying with City rules and providing the promised goods or services. This option allows DOI to act as it is mandated to do, as an investigative agency working with other investigators to find patterns of fraud and other

wrongdoing, working with prosecutors when laws have been violated, and issuing necessary recommendations within the City to tighten internal controls and improve practices.

In contrast, as I have outlined already, DOI does not have the staff, nor is it currently set up to do what the Bill calls for us to do. DOI would need to hire specialized staff, place them on the City's payroll, and then disband that unit in a year — actions that would all be highly difficult, time-consuming, and disruptive, especially given the current fiscal constraints. If the goal is additional oversight and review of the emergency contracting that has occurred over the last seven months, the City can get faster results and more bang for its buck through DOI hiring and overseeing an Integrity Monitor for this purpose. They become DOI's "eyes and ears" for a specific project, and the contract is designed to end when the project ends. And DOI has vast experience managing Integrity Monitorships, dating back to 1996.

Of course, an Integrity Monitor would still require expenditure of new funds at a time when the City faces severe fiscal constraints. However, should there be additional federal funds made available for state and local governments, such relief programs frequently include funding for integrity monitors or expressly allow funds to be used for that purpose. If funding were available from this or any other source, I believe that this alternative would accomplish the retrospective oversight goals of the proposed Bill, for less money and without diverting DOI's already strained resources from our many ongoing investigations (including investigations directly arising out of the City's emergency-response efforts). As to the prospective oversight goals for future pandemic-

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related spending, restoring the independent oversight role of the Comptroller is a better pairing of problem with existing expertise than requiring DOI to attempt to duplicate this function. Finally, the contracting database requirement of the Bill, if it is needed at all in light of Local Law 76 and existing portals like CheckbookNYC, likewise should be performed by an agency with control over the data and expertise in database creation and management, none of which is currently possessed by DOI.

I thank the Committees for allowing DOI to share its significant concerns about this Bill and our suggestions that I believe will help the City achieve many of the same goals without weakening DOI's ability to perform its core anti-corruption mission across City agencies and functions.

I am happy to answer any questions that the Councilmembers may have.