

**Remarks by DOI Commissioner Rose Gill Hearn
Luncheon Keynote Address at the
Construction Industry Compliance and Integrity Institute Program
Tuesday, Oct. 2, 2012, 12 – 2 p.m.**

“A View of How City Employees and Contractors Should Interact”

Thank you, Lou for that Introduction. And my thanks to Tom Curran for asking me to be here. It is a pleasure to be here today at the first gathering of the Construction Industry Compliance and Integrity Institute. Let me congratulate you. Your presence here today speaks to the significance each of you places on compliance with the law, internal controls and good governance.

Attaining a shared culture of integrity long-term takes an understanding among all parties: government regulators, law enforcement, and the private sector. It means all of us are working toward the common goal of bettering this City through sound and ethical practices. Establishing a dialogue with key stakeholders, such as yourselves, is paramount in achieving success.

The capital construction projects awarded by government agencies are vital to the City - and to your industry. I know that we are all committed to safeguarding the public and protecting taxpayer dollars.

Integrity takes work and due diligence. It must be based on a culture of accountability and transparency.

I know you deal with various federal, state and City regulators and agencies. Let me provide you with some facts and insights from the City's perspective. The New York City Department of Investigation ("DOI") is the City's investigative agency with independent oversight of City government including each mayoral agency, City vendors and an array of boards and commissions. There is a network of supervisors within DOI appointed by the Commissioner to the position of Inspector General ("IG"). Each IG runs a squad of investigators, forensic auditors and lawyers that have external oversight of a cluster of City agencies and areas of City government, such as building and infrastructure. To give you a relevant example, one of our IG squads has oversight of the DOB, DEP, DOT, DDC and EDC. The IG squads at DOI know the missions of the agencies they oversee, their procedures and operations, and the big projects and contracts the agencies are doing at any given time.

At one point, some City agencies had their own internal Inspectors General. In 1986, a Mayoral Executive Order ("EO") removed those internal IGs and their staff from the City agencies they were in, and transferred them under DOI's supervision. The internal IGs had been part of their respective City agencies, their investigative docket was known to the agency commissioner who also set the IGs' budget. In the 1980s, a

series of municipal corruption scandals at several City agencies was thought to have flourished unchecked, in part, because of these internal arrangements, prompting Mayor Koch to sign the EO that established DOI as the single, external IG for New York City government. The EO also reiterates that DOI's Commissioner has the power to conduct investigations in a confidential matter.

Another Executive Order of note enacted in the late 1970s, made it mandatory for a City employee to report corruption that he or she knows of. To not do so could lead to disciplinary action through to and including termination. So as your members interact with City employees, that is something to bear in mind.

While the law requires City employees to come forward when they know of some corruption, they are also protected from any work-related retaliation for reporting wrongdoing pursuant to the City's Whistleblower Law.

DOI will celebrate its 140th anniversary next year, and its history speaks to its unique and wide-ranging role within City government. Its origins are rooted in the Boss Tweed scandal that drained the City's coffers in the 1870s. The corruption permitted by those in public office was so

audacious it consisted of kickbacks from every municipal contract including the construction of our City's iconic Brooklyn Bridge.

In response the legislature created an investigative agency, and they did so at a time when the people insisted the agency have independence from those in power, and serve as a check and balance on government, and on those who receive public contracts and tax dollars. The Commissioner was established as a Mayoral appointee, but unlike other City commissioners, the DOI Commissioner's appointment requires confirmation by the City Council. The people also wanted this Department to have real teeth to be able to conduct effective investigations. Therefore, DOI was given the power to issue subpoenas, take testimony under oath, grant immunity, and issue public reports of its investigative findings.

DOI's history shows that corruption is among the oldest crimes - and people are still not tolerant of any abuse of taxpayer funds.

DOI's jurisdictional purview is broad under the New York City Charter, consisting of Citywide oversight of the 45 mayoral agencies with more than 300,000 City employees, and 200 boards and commissions. DOI also has oversight of any company receiving City contract funds and we play a function in vetting thousands of vendors each year who obtain contracts

with the City. In a moment, I'll talk about DOI's role in that vetting process in more detail.

Of relevance to you there is a "cooperation clause" in all City contracts, which requires City contractors to cooperate with DOI in connection with vetting or other investigative inquiry.

DOI has approximately 300 staff members consisting of investigators, forensic auditors, attorneys, (many of whom are former prosecutors), Computer Forensic Specialists who can obtain evidence from any kind of computer or the latest digital media; Technical Equipment Specialists who deploy the equipment used in undercover operations; analysts who research people, property and corporations; and administrative staff who keep us all going. We also have a Squad of NYPD Detectives assigned to DOI.

Since 2002, we have done a saturated outreach and awareness campaign making sure that people know they may contact us. To that end, we do 500 to 600 anti-corruption lectures each year at City agencies and we do lectures for groups of vendors. The positive impact of that effort has indeed been measurable: over the past five years, almost 14,000 people have contacted DOI annually with tips, complaints and requests for

investigation, up from an average of 9,000 contacts from the public per year prior to 2002. You and your firms are free to do the same. One can contact DOI via our website, by calling our hotline, or by writing to or visiting our offices. We receive reports from people confidentially. And if any of your firms would like us to do a lecture on some of the basics please contact us.

I was appointed by Mayor Bloomberg in 2002 only months after the September 11th attacks. A number of construction firms responded by helping the City tackle the enormous and complex task of cleaning up the site. Some of your firms likely participated. Monitors were put in place and supervised by DOI. Billings to the City were kept in check. The job got done expeditiously. The physical presence of the monitors we know also deterred some criminal activity. Specifically, at the time, several individuals associated with organized crime were heard lamenting that they could not engage in illegal activity at the WTC site because there was too much scrutiny by the City's monitors.

Each year, the City spends billions of dollars contracting with thousands of vendors to provide goods, services and construction. The City expends that public money through the City procurement rules that

include awarding contracts to “responsible” vendors, meaning vendors with a good integrity record. The City’s contracting process is handled by the Mayor’s Office of Contract Services, or “MOC” as you may know them. As the central coordinator of all City contracts, MOC does a tremendous job. I am sure many of you are familiar with the City VENDEX process, which is managed by MOC. It includes a requirement that vendors submit to the City their responses on VENDEX questionnaire forms. These questionnaires are scrutinized by the City. The City needs to know contracts are going to vendors who are upfront and transparent regarding these important questions. Concealing information or providing false information would be extremely problematic on any number of levels. My advice is that if your firm has an issue, put it on the table. There is an awful lot we can work out with corrective action. We do so frequently with companies seeking to do or doing business with the City, so much so that it frankly is an unseen and unsung success story. It is our inclination to have the City do business with as many firms as possible and have as many vendor choices as possible.

DOI plays a role in MOC’s VENDEX process. DOI assesses whether the vendor has any integrity issues. DOI conducts a review of the company and its principals and then issues a memo to the City vending agency

outlining any pertinent facts with which a determination of responsibility can be made. Those memos issued by DOI are called Vendor Name Check memos or VNCs. A VNC would address any criminal activity or serious issues the company may have faced so the City can decide whether to do a contract with the company at all, or after the company addresses the issues raised in the VNC, to the extent possible. That may mean the company agrees to a certification or a monitor, or takes some other action such as paying outstanding fines, taxes or resolving pending regulatory actions.

Last fiscal year, DOI conducted more than 44,000 VNCs on a combination of companies, their principals and affiliates. The procurement rules permit DOI to have 30 days to do a VNC. However, DOI turns its VNCs around for the City on average within 15 days. Thus, DOI does an integrity review on vendors who will receive sizeable tax-funded contracts, *and* those VNCs are processed in an expeditious manner. That is beneficial to the City. I should also note, and as many of you know, other agencies are involved in the procurement process in addition to MOC and DOI, namely, the vending agency seeking to enter into the contract is the main agency involved in the process and who you will interact with; OMB is involved with the funding; the Corporation Counsel's Office, or as it is

known the Law Dept., does such things as drafting, reviewing and approving the contract; and ultimately the Comptroller's Office does final approval and registration. So DOI plays one discreet role in this larger VENDEX/procurement process, and we do so on a parallel track while some of the other agencies are performing their respective functions to keep things moving along.

DOI's goal is always to keep the City's bid pool of potential vendors as broad as possible, while ensuring that only responsible firms receive taxpayer funds. To achieve that result, if an integrity issue is identified during the VNC process, DOI may arrange for the contractor to take a certification or a monitor, which permits a City agency to enter into, or continue a contract with, a vendor that might otherwise be precluded from doing business with the City due to an integrity issue.

These vendors may be awarded City contracts if they agree to be overseen by the monitor, an outside, independent firm that is selected by and reports directly to DOI. Monitors act as DOI's eyes and ears. They are given full access to vendor records and personnel, make site visits, and take other actions necessary to monitor the vendor's compliance with laws, rules and the contract; they deter illegal and unethical conduct; identify

systemic weaknesses in the vendor's practices; recommend corrective actions; and ensure those corrective actions are implemented. Status reports and issues are relayed in real-time to DOI enabling DOI to take any necessary action. Violation of or failure to cooperate with the terms of the monitor agreement by the vendor could result in termination of the contract. Successful completion of a contract by a vendor under a monitor can be enhancing for the company as it applies for subsequent contracts.

Monitors are especially helpful in situations where the City discovers an integrity problem midway through a specialized or crucial project. With the integrity problem addressed by a monitor, the services provided by the vendor can continue uninterrupted. Since the monitor program's inception in the mid-1990s, integrity monitors have been used throughout the City on a wide variety of projects, including on the City's school bus contracts, and the street and traffic light contracts. In these cases, the vendors had been linked to various corruption investigations.

On several occasions, the City has decided even in the absence of an identified integrity issue, to proactively monitor a large project to ensure that there is no fraud or organized crime influence adding to the expense. For example, the City proactively hired and paid for a group of monitors to

oversee the cleanup of Ground Zero after the September 11th attacks that I referenced before. The monitors recommended tens of millions of dollars in costs savings, and with it as a model, I recommended the City proactively monitor the billion-dollar Croton water filtration plant being built in the Bronx. The monitor provides reports to DOI regarding compliance with legal, regulatory and contractual requirements, and they review billing on this massive and complex project. I'm happy to report that the monitor has played a very successful role with DOI on this project.

In the wake of Hurricane Katrina, a Congressional Committee studied the way DOI's monitor program was used to prevent fraud and criminal activity at the cleanup of Ground Zero. I testified before the Congressional Committee about the program, which they viewed as a model for the federal government to use for avoiding fraud and waste when vendors are called upon to provide services under emergency circumstances. DOI's website features information about the Integrity Monitoring Program. I encourage you to visit the site and call DOI if you have any questions.

Let me also add that some issues can be worked out without the need for a monitor. So instead of a monitor, sometimes issues can be worked out in a certification, with a Code of Conduct, increased outside

auditing, or other corrective measures by the company - and so that is what we will do in those cases.

Because of DOI's broad jurisdiction, we work with other investigative agencies at the state and federal level, and make referrals to the five District Attorneys, the two US Attorneys, and the New York State Attorney General's office. Those investigations have included prevailing wage violations, kickback and bribery schemes, MBE/WBE, and overbilling schemes to name a few areas. I understand you heard from DA Vance this morning and will be hearing from US Attorney Loretta Lynch tomorrow, two DOI partners with whom we have done numerous investigations.

You should also know that City employees operate under a robust set of conflict rules, so in addition to investigations that lead to criminal prosecutions, DOI also investigates and refers our factual findings involving conflicts of interest to the NYC Conflicts of Interest Board. The COIB as it is called, is a separate agency in City government that levies fines for ethics violations where warranted.

The conflicts rules, for example, prohibit City employees from using their positions to benefit themselves or their close relatives, and the rules prohibit them from accepting gifts from people or companies doing

business or seeking to do business with the City such as sports tickets, golf outings, show tickets, and meals. In the private sector this may be perfectly acceptable, but with a City employee such gifts could result in serious consequences for the City employee and in some instances the vendor.

That is, City employees are mandated to abide by these rules, but vendors who prompt or cause a violation of those rules may be negatively impacted through loss or potential loss of a City bid or contract; or the added requirement of a monitor. The rules are intended to level the playing field. Vendors should appreciate and be cognizant of them, and what they prohibit, to ensure they too are supporting solid and ethical business practices.

Communication is integral to the success espoused by this Institute. Contracting companies should inform and train their employees who directly interact with the City on the ethics rules. The Conflicts of Interest Board has an excellent website that lists all of the rules. Much like the corruption prevention lectures DOI IGs present to City employees and vendors, contractors who educate their employees on City ethics rules underscore that their company is serious about integrity. Contractors

should also be aware that the conflicts rules regulate how City employees interact with the City in their post-employment years. For instance:

- City employees may not appear before their old agency on business for a period of one year;
- they may never work on a particular matter or project they were directly involved in while employed by the City; and
- they may not divulge confidential City information to benefit themselves or their new employer.

And we are here to assist. Contractors should not hesitate to use DOI or the COIB as a resource when in doubt on issues such as these. Maintaining a dialogue between the private sector and regulators is an important step to better understanding of integrity questions, and creates a better chance of navigating them.

Additionally, contact us if you experience corruption on a City contract, pressure or requests that you know to be improper, or if you observe a violation of any of the conflict rules or if you have a question about a City contract. You can call us on our hotline at (212) 825-5959,

write us, reach us on the web, or walk in to our offices in Lower Manhattan and you can report the matter confidentially.

A shared culture of integrity means that private contractors receiving taxpayer funds do not only follow the rules but embrace them because they establish and support good business practices.

Integrity is good governance and each of us here today has a role. Part of DOI's role is ensuring that City funds are protected and used on projects with responsible vendors. The pursuit of integrity in New York City benefits everyone. It speaks to the heart of good citizenship and good business. Each of our roles is integral in ensuring that happens.

Thank you.