



August 28, 2024

Attn: Procurement Policy Board
Mayor's Office of Contract Services
255 Greenwich St, 9th Floor
New York, NY 10007
(VIA EMAIL ppb@mocs.nyc.gov and submitted via website <http://rules.cityofnewyork.us>)

RE: Challenge Based Procurement Reform Testimony

I write on behalf of the Surveillance Resistance Lab, where we investigate how the expansion of corporate technology solutions in government (data collection, AI, chatbots, etc.) can undermine democratic engagement and civic space, as well as cause real harm to communities accessing government services. In this testimony, we focus on potential negative impacts that arise when these technologies are obtained through opaque procurement processes that lack meaningful community engagement or oversight.

The proposed rule changes impacting demonstration projects would expand the scope of what agencies can use the demonstration project process for, extend how many years agencies can take to evaluate a demonstration project, allow agencies to engage a demonstration process without any intention to hold a competitive bid process, and add language encouraging agencies to use challenge-based procurement for demonstration projects.¹

Our concerns for this scope expansion for demonstration projects without oversight emerges alongside related developments in New York City that consolidate state and corporate power through policing, law and technology. This includes the consolidation of City data through the MyCity data sharing agreement and portal, the One City Act² proposed in the New York State Senate and Assembly that would allow the same, the executive's proposed Charter revision process, and the Mayor's announcement of a training facility that consolidates training for law enforcement staff of city agencies.

If the Procurement Policy Board (PPB) is focused on ensuring that New York adopts best practices in procurement, the Board must ensure that procurement processes increase

¹ See Appendix 1 at the end of our comments for a chart with existing language, proposed language, and rationale for the proposed changes.

² <https://www.nysenate.gov/legislation/bills/2023/S9124>

democratic access and community oversight of the digital public infrastructure that will shape New York's future. Streamlining the procurement process for a vendor must be matched by a deliberate and intentional process of collecting community and other stakeholder input while also soliciting the guidance from experts in public technology development. This is necessary to ensure that best practices of digital infrastructure development, including data security and privacy, are reflected in the procurement process. As identified in a 2021 report, *Best Practices for Government Procurement of Data Driven Technologies, A Short Guidance for Key Stages of Government Technology Procurement*, a key practice to improving tech procurement is to precisely name the problem or need that is being addressed through the specific procurement program.³

Efficiency at the expense of design will only create worse outcomes for New Yorkers. The PPB would benefit from following this advice and taking a more critical approach to encouraging agencies to complete comprehensive problem-definition through public engagement that articulates the defined narrow need an agency is looking to the private sector to solve. The risk of loosening the demonstration project rule could make New Yorkers and New York City agencies more vulnerable, for example, to technologies that expand the government's capacity for surveillance. ShotSpotter technology, recently criticized for how many New Yorker taxpayer dollars it has wasted, got its foot in the door in New York as a demonstration project.⁴

We agree with the point made by the Comptroller's office in the July hearing: if agencies need clarification about what challenge-based engagements the rules allow them to have, it should be clarified in the definitions section of the rules rather than in the demonstration project rule.⁵ Agencies in New York City already have the option to use challenge-based procurement methods to invite vendors to offer solutions to a problem defined by an agency. As Richardson recommended in the 2021 report on tech procurement, when governments are exploring a new data-driven initiative, they should utilize "Requests for Information" to do so rather than limit themselves to specific responses to a Request for Proposal.⁶

The rules limiting demonstration projects are important protections for New Yorkers' digital autonomy, democratic power, and for protecting unionized workers who provide New Yorkers' critical human services. Rather than invite the tech industry's "move fast and break things" motto to be codified into the Procurement Policy Board's rules on demonstration projects, reforms informed by technology innovations and industry market strategies should encourage city agencies to slow down the process of procuring technology given the high stakes of durable digital infrastructure.

³ Rashida Richardson, *Best Practices for Government Procurement of DataDriven Technologies* (2021). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855637

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<https://medium.com/citymartinsights/how-new-york-city-procured-innovation-on-gunshot-detection-2c4af4dd98d0>

⁵ https://s-media.nyc.gov/agencies/mocs/PPBMeeting_20240604.mp4

⁶ Rashida Richardson, *Best Practices for Government Procurement of DataDriven Technologies* (2021). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855637

Below we share several detailed concerns for how the proposal impacts the public's ability to participate and shape how government programs are designed and delivered. Our specific concerns about the expansion of the demonstration project process detailed below include (1) opacity and undemocratic decision-making, (2) data extraction, (3) data security and privacy, (4) corporate dependency, and (5) protecting unionized workers' jobs.

We call on oversight bodies like the City Council, the Comptroller's office, and other New York City organizations that fight for democracy and good government to join us in demanding a conversation about how the Procurement Policy Board rules in New York can protect its residents above its vendors.

Concerns

The overall rationale for the proposed rule changes paints a picture of future flexibility for testing and contracting demonstration projects with tech vendors:

This new subdivision will also allow the City to simultaneously test multiple proposed solutions to the same challenge, utilize the extended potential maximum term to test the effectiveness of one or more solutions more fully, and then to use other permissible procurement methods to implement one or more solutions that prove most effective. This provision highlights an approach to procurement that encourages innovators to partner with the City to solve problems.

Our driving concern is that this proposed rule change benefits vendors more than it protects New Yorkers. It will open our communities, the City and New Yorkers' data to being a sandbox for untested technologies. This leaves us vulnerable to opacity and undemocratic decision-making, data extraction, threats to data security and privacy, and corporate dependency. It also allows tech vendors to compete with services and unionized jobs delivering critical human services to New Yorkers.

Opacity and Undemocratic Decision-making

Demonstration projects already allow companies to engage with data collection and perform city services without full notice, disclosure or oversight that competitive processes and contract agreements otherwise would require. It is more difficult for the public and other oversight agencies to learn about, scrutinize, limit use policies, and hold tech vendors accountable when they are engaged through a demonstration project method. In this way, demonstration projects take advantage of city funding with little public oversight and enable vendors to win lucrative contracts while undermining democratic and competitive processes.

ShotSpotter's aggressive lobbying, for example, successfully installed its gunshot detection technology in over 90 cities as of 2015, despite concerns from advocates and the public.⁷ That

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<https://theintercept.com/2015/03/26/rapid-deployment-shotspotter-controversial-urban-microphone-system-aided-aggressive-lobbying/>

year, the NYPD used a demonstration project to pilot a two year, \$1.5 million contract with ShotSpotter to deploy about 300 sensors into criminalized communities in Brooklyn and the Bronx.⁸ ShotSpotter has close ties with the NYPD; former NYPD Commissioner Bill Bratton now sits on the ShotSpotter board of directors.⁹ With little transparency, the NYPD was able to implement this surveillance technology with no evidence that it has impacted New York’s gun violence. Indeed the Comptroller’s recent audit of ShotSpotter technology, its costs, and its consequences have demonstrated exactly how companies get access to city data and secure contracts with little proof of materially improving the safety of New Yorkers.¹⁰

Another concerning demonstration project went to MoCaFi, the financial technology (fintech) company¹¹ behind the proposed digitization of the IDNYC. MoCaFi was awarded a three year contract for a digital wallet demonstration project worth \$5,602,017 in January 2023.¹² There is not much information publicly available, but the contract notification/scope extract states: “It is the City’s desire to demonstrate that it can utilize a proprietary financial technology platform to more effectively provide benefits disbursement and related financial services through one card to New York City residents in need and to provide financial literacy and community engagement to the City’s unbanked and underbanked residents.” The administration is advocating for this program under these premises: to offer financial services to the unbanked as well as deliver City benefits, as well as other incentives and resources, such as Fair Fares. Federal benefits, such as SNAP, may be incorporated into the digital wallet. A future phase may implement a “nudge” program which incentivizes certain behaviors by public benefits recipients (e.g., rewards will be granted to those who buy healthier foods versus sugary drinks). The proposal for a digital wallet integrated into the city’s services and benefits portal is coming on the heels of a contested attempt by the City to digitize the municipal ID program, IDNYC, in 2018. After much pressure from advocates due to concerns that it would threaten financial equity and increase surveillance, the City never launched this plan—making its quiet return in another form through the demonstration project process more concerning.¹³

Other demonstration projects have exceeded the contract amount threshold—for example, Citibank got a \$15 million demonstration project in 2011 for an electronic payment system for

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<https://medium.com/citymartinsights/how-new-york-city-procured-innovation-on-gunshot-detection-2c4af4dd98d0>

⁹ <https://ir.shotspotter.com/board-of-directors>

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<https://comptroller.nyc.gov/reports/audit-report-on-the-new-york-city-police-departments-oversight-of-its-a-greement-with-shotspotter-inc-for-the-gunshot-detection-and-location-system/>

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<https://www.forbes.com/sites/kristinstoller/2021/06/18/ex-jpmorgan-chase-exec-has-a-plan-to-narrow-racial-wealth-gap-in-every-major-us-city/?sh=6e7780422980>

¹² <https://drive.google.com/file/d/1Mjox994RsoqmA68oWQrmDXEXbaLwm1zw/view?usp=sharing>

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<https://www.thecity.nyc/government/2019/9/12/21210822/city-s-idnyc-smart-card-chip-plan-slammed-as-security-risk>

the City.¹⁴ While this project was publicly noticed, it was not required to go through the oversight and audit process of the Comptroller’s office.

Opacity about govtech projects served by private tech vendors also becomes a problem when the tech makes mistakes. New Yorkers trying to understand what training data informed the pilot MyCity chatbot, for example, before it produced facially illegal advice,¹⁵ are unable to answer this question because it is “proprietary” according to the 2023 annual algorithmic report.¹⁶

At a minimum, we support the Comptroller’s call for more notice about demonstration projects to oversight agencies including the Comptroller, not just announcements in the City Record.¹⁷

Data extraction

“If it’s free, you are the product.”¹⁸

Most people are currently aware that the tech industry’s model of offering platform services, like social media, entertainment, news, and more, is not just about the content of their platforms but about tech companies creating honey pots where they attract people in order to collect data. With data, especially data that is not publicly accessible, companies can craft tools like risk assessment tools and automated decision-making systems, and sell them back to the cities they extracted data from. Cities must operate with the same understanding as consumers when they are considering engaging with technology platforms. Agencies must realize that they are giving companies access to a precious resource—New Yorkers’ data.

Surveillance Resistance Lab warned the New York City Council Technology Committee in June 2023 of the true costs of tech vendors’ “free” model last year related to the LinkNYC technology:

Vice later reported, for the first time, that each kiosk has roughly thirty sensors collecting a variety of information, including environmental data, at all times.¹⁹ This revelation exposed that the promise of “free” WiFi came at a cost to the user. While free WiFi was CityBridge’s pitch, their business model is to collect personal, visual, passive, and other data on NYC communities in order to earn advertising revenues to fund this project. By relying on this profit model, CityBridge constructed an infrastructure that violates civil liberties and rights as a function of this service provision.²⁰

¹⁴ <http://s-media.nyc.gov/agencies/cityrecord/2011/September%202011/cityrecord-9-6-11.pdf>

¹⁵ <https://themarkup.org/news/2024/03/29/nycs-ai-chatbot-tells-businesses-to-break-the-law>

¹⁶ <https://www.nyc.gov/assets/oti/downloads/pdf/reports/2023-algorithmic-tools-reporting-updated.pdf>

¹⁷ https://s-media.nyc.gov/agencies/mocs/PPBMeeting_20240604.mp4

¹⁸ Paraphrasing various versions and attributions of common modern wisdom

<https://quoteinvestigator.com/2017/07/16/product/>

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<https://www.vice.com/en/article/epzmvj/privacy-advocates-say-nycs-fix-for-the-digital-divide-is-a-hyper-surveillance-mess>

²⁰ <https://surveillanceresistancelab.org/wp-content/uploads/LinkNYC-Testimony-June-2023.pdf>

Companies may seek access to City data for many purposes. They may truly want to become a vendor, in which case the concerns about corporate lock-in strategies described below should be considered. Companies may also have other intentions behind proposing a demonstration project—they may want access to the data for development of another type of tool outside the scope of their demonstration project.

Loosening demonstration project rules would make New Yorkers' data vulnerable to tech vendors seeking access to their data to capture public sector markets, to the use of their data for purposes outside the scope of their proposed demonstration, or to vendors hoping to backchannel the piloting of their services to avoid public scrutiny.

Data security and privacy

New York City technology infrastructure like LinkNYC has been “a privacy disaster” according to oversight organizations like New York Civil Liberties Union.²¹

Worse still, a recent audit commissioned by the City's Office of Technology and Innovation (OTI) revealed that CityBridge—the consortium behind LinkNYC—repeatedly violated its own privacy policy. Among other issues, the audit shows CityBridge failed to anonymize MAC addresses of user devices. MAC addresses are unique identifiers assigned to each network device and they can be used to identify and track the devices, or the people using them, over time.²²

Demonstration projects for tech vendors, with even less transparency, carry these same potential threats. Even the NYC Economic Development Corporation's report *Pilot NYC: A roadmap to make New York the global hub of urban innovation* warned that NYC's agency staff are insufficiently trained to ensure that they and the vendor understand the “City's evolving cybersecurity and privacy policies.” It warns “[this] can lead to false starts in which agency staff expend time negotiating with a preferred vendor, before learning that the vendor is not capable—or not willing—to comply with city policies. While these cases are ultimately caught before a contract is signed—ensuring New Yorkers remain protected—training on OTI's policies would likely increase efficiency for both agency staff and vendors.”²³

This gap in agency staff's ability to initiate pilots within contours of evolving cybersecurity and data privacy policies makes the proposal to loosen the rules of demonstration projects even more concerning.

²¹ <https://www.nyclu.org/commentary/linknyc-privacy-disaster-heres-why>

²² *Id.*

²³ <https://edc.nyc/sites/default/files/2023-11/Pilot-NYC-Report-11-10-2023.pdf> at 38.

Corporate dependency

We wrote in our March 2024 report, MyCity, INC about the risk of corporate lock-in.²⁴ Professor Keith Breckenridge describes lock-in in the context of the information economy as the “familiar, almost banal” corporate ambition to dominate “bounded networks of compatible resources and fiercely defended terrains of control over the global market in personal communications.”²⁵

We all experience this as Apple or Google customers whose options for headphones, chargers, software, and other services are determined by which devices we own. Companies have also recognized centralization of city data as an opportunity to lock-in their products as “proprietary architectures”—durable infrastructure that guarantees a long-term dependency by the state on companies. This “lock-in” between companies and the state mirrors that of customers locked in, for example, to Apple or Google.²⁶

Demonstration projects uniquely allow a company to access New Yorkers’ data, whether by installing their sensors on city infrastructure that gives them unique access to pedestrian data trends, or whether because an agency shares historical data with a company to develop a risk assessment tool.

Protecting unionized workers, care providers and human services

The rationale behind these changes states that “The Rule currently limits the ability to use demonstration projects for existing services to the client services industry (3- 11(a)), (3-11(f)). This limitation prevents other critical City programs from soliciting novel solutions to the challenges they face.”

We are concerned that this expansion of what demonstration projects can be used for will justify shrinking city human resources, program policy, and research staff through tech vendors and corporate consultant reports. It also opens up the possibility for demonstration projects to be used to consolidate City data across agencies through interoperability and backend digital technologies. These types of technologies have been used in other jurisdictions to circumvent the expertise of public servants by replacing them with more pliable consultants and tech vendors who automate client services to the detriment of the public.²⁷ This should be a red flag to existing client service providers, signaling that the City could be solicited by companies who are offering “novel” services to replace program, research, and HR staff that support client service agencies.

²⁴ https://surveillanceresistancelab.org/wp-content/uploads/MyCityINC_March2024.pdf

²⁵ <https://doi.org/10.1080/02692171.2019.1523836>

²⁶ https://surveillanceresistancelab.org/wp-content/uploads/MyCityINC_March2024.pdf

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<https://www.theatlantic.com/technology/archive/2020/06/michigan-unemployment-fraud-automation/612721/>

In an era where our government consumers are vulnerable to AI snake oil and overpromises about the potential for technology to solve long-standing public sector problems without addressing their root causes, expanding the use of demonstration projects without an equal level of oversight from the comptroller's office and participation from the public will invite more corporate lock-in, obstruct public engagement with policies being implemented through technology vendors, make New Yorkers vulnerable to being tested on without remedies for harm, and make New York City government and New Yorkers' data more susceptible to extraction by tech companies.

Conclusion

This proposed rule change may have adverse unintended consequences for New Yorkers. As digital technologies increasingly become the backbone infrastructure for the operations of city agencies and the delivery of City services, the design and procurement of these technologies must also reflect the concerns, interests, and needs of the communities and the workers who will use the technologies. This proposal better reflects the interests of the potential vendors who may provide these technologies rather than the people who will use or be subject to these technologies.

Streamlining the vendor's experience should not take precedent over the interests of those accessing City services. If it does, New York is likely to see more examples of failed digital public infrastructure designed to serve police and the private sector first, and the public last.

Respectfully submitted,

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PPB Rules²⁸ vs. Proposed Amendments and Rationale²⁹

3-11 Rule Change	Client services programs	Time limit	Transition to contract	Challenge based demonstration
Existing Language	For client services programs, agencies may initiate a demonstration project in order to invite proposals for innovative approaches to the provision of existing or new services.	If the ACCO makes such a determination [that the City’s best interest is ensuring no break in provision of services at the end of a demo project], the ACCO should establish an initial term that, although no longer than three years, is long enough to allow for the subsequent solicitation of those services at the conclusion of the project’s evaluation. In the event that a longer period is needed to allow for continuity of services and/or to evaluate the demonstration, the agency may extend the contract for an additional period of up to one year with CCPO approval.	At the conclusion of the contract term, based upon the documented results of the project, the agency shall make a determination, including the reasons therefore, whether to competitively acquire or to discontinue the use of the product, approach, or technology.	n/a
Proposed Language	Agencies may also opt to initiate a demonstration project in order to invite proposals for innovative approaches	In the event that a longer period is needed to allow for continuity of services and/or to evaluate the demonstration, the agency may extend the contract for an additional period of up to [one year] three years with CCPO approval, provided such	At the conclusion of the contract term, based upon the documented results of the project, the agency shall make a	Challenge-Based Procurement. An agency may issue a solicitation for a demonstration project that defines a challenge or problem and

²⁸ <https://www.nyc.gov/assets/mocs/downloads/Regulations/PPB/PPBRules.pdf>

²⁹ <https://rules.cityofnewyork.us/wp-content/uploads/2024/07/PPB-Proposed-Rules-Relating-to-Challenge-Based-Procurement-Notice-of-Hearing.pdf> (Brackets indicated deleted language)

	<p>to the provision of existing or new services.</p>	<p>extension is only so long as necessary to allow for continuity of services or to evaluate the demonstration.</p>	<p>determination, including the reasons therefor, whether to [competitively] acquire [or to discontinue the use of] the product, approach, or technology using one of the methods of source selection authorized by these Rules.</p>	<p>invites proposals for an innovative product, approach or technology to respond to, resolve or otherwise meet that challenge.</p>
<p>Rationale</p>	<p>“The Rule currently limits the ability to use demonstration projects for existing services to the client services industry (3-11(a)), (3-11(f)). This limitation prevents other critical City programs from soliciting novel solutions to the challenges they face.”</p>	<p>This change will allow additional time for evaluating the feasibility and application of innovative products, services, or solutions, which is often necessary given the scale and complexity of the City’s needs.</p>	<p>This language is being removed and additional language is being added in order to clarify that such contracts may be awarded through any method of source selection permitted under Chapter 3 of the PPB Rules.</p>	<p>This amendment would add a subdivision (j) to PPB Rule §3-11. This subdivision will allow agencies to award contracts for demonstration projects using a challenge-based solicitation, which defines a challenge that the City faces and asks respondents to propose solutions, rather than defining the specific solution, product, or service that the City would like a vendor to provide.</p>