

Baltimore City Council Automated Traffic Violation Enforcement System (“ATVES”) Report

Prepared by:
Baltimore City Council
Judiciary and Legislative
Investigations Committee
Councilman James B. Kraft,
Chairman

May, 2015

INTRODUCTION

On February 10, 2014 Council Bill 14-0149R was introduced in the Baltimore City Council (hereinafter referred to as the "Council"). It called for an "Investigative Hearing - Costs of the Speed and Red Light Camera Program Failures" (hereinafter referred to as "14-0149"). More specifically, it called on *"Representatives from the Finance Department, the Department of Transportation (hereinafter referred to as "DOT") and all other agencies involved with the City's speed and red light camera programs, to appear before the Council to thoroughly discuss the serious problems with these programs and the full past, and likely future, costs to the City of the failed camera programs"* (unless otherwise identified, all Departments referenced herein are departments of the Baltimore City government).

14-0149 was introduced by Council member Carl Stokes (12th), Council President Bernard C. "Jack" Young (hereinafter referred to as the "President") and every other Council member with the exception of Council member Rochelle "Rikki" Spector. The bill was referred to the Council's Judiciary and Legislative Investigations Committee (hereinafter referred to as the "Committee") with the charge to collect all of the relevant information; to interview the necessary

witnesses; to obtain the requested information and to report its findings and recommendations back to the Council.

Less than thirty days prior to the introduction of 14-0149, the Council's Land Use and Transportation Committee had conducted a public hearing on City Council Bill 13-0079R which called for an "Investigative Hearing - Speed Camera Program" (hereinafter referred to as "13-0079R").

This bill had been introduced by Council member Brandon Scott (2nd) and had been co-sponsored by the President and every other member of the Council. While it was introduced on December 3, 2012 and referred to the Land Use and Transportation Committee on that date, it was not heard until January 15, 2014.

While Mr. William M. Johnson had not been the Director of DOT at the time of the introduction of 13-0079, the position having then been held by now-Deputy Mayor Khalil A. Zaied, he appeared and testified on behalf of that Department. The notice of the January 15, 2014 hearing, bill synopsis, Agency Reports and meeting notes, the DOT Automated Traffic Violation Enforcement System (hereinafter referred to as "ATVES") power point presentation and the *Final Report to the Mayor of Baltimore by the ATVES Task Force* dated June 13, 2013 (hereinafter referred to as the "Task Force Report") have all been attached to this Report.

The "*lessons learned*" by DOT and the "*Recommendations*" contained in the Task Force Report, both of which were cited by Mr. Johnson that evening will be addressed later in this Report.

In early February, 2014, Council member James B. Kraft (1st), Chairman of the Judiciary and Legislative Investigations Committee (hereinafter referred to as the "Chairman"), sent a request to the Rawlings-Blake Administration to produce a list of documents that the Committee believed were necessary to begin its investigation. In the beginning of March, the Committee was provided with CDs that representatives of the Law Department described as containing "*over 100,000 pages*".

When the Chairman inquired as to how many pages of documents there were to be reviewed in total, he was told "*millions*". The investigation immediately stalled.

The Chairman approached the President and apprised him of the situation. After much discussion, a formal request was made by the Committee for professional staff, "*at least four (4) full-time paralegals*", to assist in conducting a thorough review of all of the documents. The President engaged in negotiations on behalf of the Committee with the Administration over a number of months in an effort to obtain the funding for such a staff.

The Administration finally agreed to provide funding for two (2) investigators for a period of ninety (90) days, effective August 25, 2014. This was more than six (6) months after the passage of 14-0149. The Board of Estimates approved the expenditure of those funds on October 15, 2014.

The two CDs provided by the Law Department in response to the Chairman's request for production of documents contained 37,101 individual documents. They were produced electronically and divided into batches of approximately 1,000 each. The investigators divided the documents between them and systematically reviewed each document page-by-page. At the end of three months, the investigators had only been able to complete a line-by-line review of 26,639 of the documents.

At the request of the Chairman and with the support of the President, funding was granted for one of the investigators to stay on for an additional sixty (60) days to complete the review of the remaining 10,462 documents.

It is important to note a number of things at this point:

1. The documents being reviewed were those originally produced by the Law Department as well as some additional ones requested by the investigators as a result of questions that arose during their review of said documents.

2. Two hundred twenty-two (222) of the documents were unreadable and, despite repeated requests by the investigators. Legible copies were unobtainable. The condition was attributed by the Law Department to a “software glitch” and the documents were described as duplicates of others already provided. The investigators noted that there were many items that were duplicated in the thousands of documents reviewed; however, they could not verify whether any of those unreadable e-mails were indeed among any of the duplicated correspondence.
3. After the production of the two (2) initial CDs, none of the remaining “millions” of pages of documents were produced. They were discussed on a few occasions but, given the difficulty that the limited staff was having already in conducting its review within the given time frame, it made no sense to request those additional documents.
4. During the final “sixty (60)” days, the sole investigator was also charged with attending the witness hearings and reviewing their testimony, reviewing traffic event statistics

and assisting in the preparation of this Report.

To compound all of these problems, the funding for the investigator which was supposed to have been extended until February 2, 2015 was cut off on January 23, 2015.

The Committee and its investigators identified a number of individuals whom they believed could provide answers to a number of questions raised about the operation of the ATVES program. The following persons appeared before the Committee and gave testimony, under oath, at public hearings in December, 2014 (in alphabetical order by last name):

1. Mr. C.B. Brechin
2. Mr. James Harkness
3. Mr. Paul Manik
4. Mr. Jamie McDonald
5. Sgt. Paul McMillian, BPD
6. Mr. Darrell Mims
7. Mr. Ryan Nicholas
8. Mr. Raj Sharma
9. Erin Sher Smyth. Esquire
10. Mr. Allen Shutt

11. Mr. Francis Udentia
12. Deputy Mayor Khalil A. Zaied

In addition, DOT engineer Carlos Vidal was also considered to have had extensive knowledge of the circumstances that lead to the failure of the ATVES program; however, the Committee was unable to contact him to secure his appearance.

Finally, the Committee acknowledges the work of the Land Use and Transportation Committee and more particularly, the Task Force Report and the *Evaluation of the ATVES, OIG Report #2013-0149* (hereinafter referred to as the "OIG Report"). Both of the referenced reports provide extensive background history on both the origination and operation of the ATVES program. They both contain conclusions and recommendations.

It is not the intention of this Committee to challenge or repudiate those reports, nor is it our intention to restate every bit of information that has already been researched and put forth in them. The Committee will offer brief summaries where necessary and explain why it has reached any particular conclusion and/or made any particular recommendation.

ATVES PROGRAM HISTORY

The ATVES program started in February, 1999 and was originally administered by Lockheed Martin. It had an initial three (3) year contract with two options for two year extensions. The original program was only for red light cameras at six sites.

From February 4, 1999 until July 25, 2012 the program grew from those six red light camera sites to 82 red light cameras, 75 fixed speed cameras and 82 PCU sites on which 8 PCUs were rotated. In thirteen years, Baltimore had created what was described in *The Sun* series (described hereinafter) and confirmed during the hearings as the "largest speed/red light camera program in North America".

Affiliated Computer Services, Inc. (hereinafter referred to as "ACS") entered into a contract in December, 2003 to operate the program beginning July 30, 2004. Its contract was for five years with one three year renewal option. Both the contract and the option were fully exercised. During that time period, ACS was acquired by Xerox State and Local Solutions Corp. (hereinafter referred to as "Xerox") and, unless circumstances demand otherwise, ACS will henceforth be identified as Xerox.

It should be noted here that there is a slight discrepancy in the reporting of this history, although we do not feel that it makes any difference for our purposes. The Task Force Report at page 5 references the initial Lockheed Martin contract; however the Public Synopsis of the OIG Report at page 8 identifies the original contract as having been with ACS and makes no reference to Lockheed Martin.

At the end of the three-year extension approached in 2012, the DOT decided to issue a Request for Proposals (hereinafter referred to as an "RFP") to determine whether there were any other prospective operators available for its camera program. While the RFP was pending, it entered into a contract extension with Xerox to continue to operate the ATVES program until December 31, 2012.

In the interim there were three responses to the RFP: Xerox, Brekford Corporation (hereinafter referred to as "Brekford") and Redflex Traffic Systems, Inc. DOT reviewed the bids and, after having done so, awarded the contract to Brekford. It was to assume control of the ATVES system on January 1, 2013.

Brekford took over the program in January, 2013. When it began to manage the system, it attempted to utilize the equipment that has been previously installed by Xerox. The speed cameras were non-operational and Brekford had to purchase new red-light cameras. By April, 2013 the City suspended the ATVES program. In October, 2013 the City and Brekford attempted to reinstitute the program and

make the system operational without issuing any citations. At the end of a one-month trial period, the ATVES system was shut down and the City began the process of terminating its contract with Brekford.

The ATVES system remains non-operational. While there is a draft RFP in the possession of DOT for a new manager of the program, it has not been issued. It is the Committee's understanding that it will not be issued until the findings of this Report have been reviewed by the Administration, the Council and DOT and, to the extent appropriate, been incorporated therein.

BALTIMORE AND XEROX

On November 18, 2012, *The Baltimore Sun* printed an article entitled "Fast Money". It was the beginning of a series of articles which were the result of more than six months of work by *Sun* reporters investigating the proliferation of speed cameras in the Baltimore region over the prior three years, i.e. 2009-2012. [[http://articles.baltimoresun.com/2012-11-18/news/bs-md-speed-cameras-mainbar-20121117_1_camera-contractor-camera-tickets-camera-program.](http://articles.baltimoresun.com/2012-11-18/news/bs-md-speed-cameras-mainbar-20121117_1_camera-contractor-camera-tickets-camera-program)]

These articles focused the public's attention on the City's camera program and the problems that had arisen with its operation. It was, in fact, this series of articles that led Council member Scott to introduce 13-0079R.

Throughout this time period the camera system was operated by Xerox. It was also during this time period that DOT decided to issue and did, in fact, issue the aforementioned RFP seeking a new operator for the program.

It is not quite clear when the City or Xerox became aware of the nature and extent of the issuance of erroneous citations or the problems evolving therefrom. Suffice it so say that both were aware at the time of the publication of the series.

Deputy Mayor Zaied testified that the City did not intend to renew the contract with Xerox and was going to put it out for bid. He seemed to imply that the City became aware that the ATVES program was systemically generating erroneous citations after DOT had issued the Request for Proposals. According to his testimony, he first learned of the erroneous citations from an article published in *The Baltimore Sun*; however, he also said that he was aware of an incident sometime in August, 2012, but came to realize that there was a systemic problem in October/November 2012.

As a direct result of *The Sun* series the City requested that Xerox do a study of the accuracy of the cameras. While this was initially done at a few locations, i.e, those specifically identified as having issued large numbers of erroneous citations, it eventually expanded to all of the cameras.

As was stated earlier, Xerox's contract had ended in July, 2012; however the City extended that contract to operate the program until the end of the year. It needed to get the responses to the RFP and make its decision with regard thereto. In the event that Xerox were not to have received the new contract, it was the City's belief that Xerox would assist in the transition to the new operator and that the City would retain ownership of all of the operating system for the program. It was wrong on both counts and those beliefs cost the City dearly.

During this same time period, the City was working with Xerox to reclaim the ATVES system and ensure that the existing cameras continued functioning effectively after December 31, 2012. Despite the City's belief that the ATVES system and its operating equipment belonged to Baltimore City, Xerox claimed ownership of the software necessary to operate the system, stating that it was "proprietary".

The debate over the language of the original contract between Xerox and the City regarding the surrender of the equipment at the termination of the contract became critical. One thing remains clear and was confirmed by the testimony of numerous witnesses: the eventual recovery of an inoperable ATVES system was never the intention of the City. It is the Committee's opinion that the Law Department failed to note the distinction here or adequately clarify what was

considered “proprietary” by Xerox at the initiation of the contract.

This oversight not only led to the City paying millions of dollars for useless hardware, but also made it virtually impossible for Brekford to complete the transition in the time frame demanded of them due to the inadequacy of the equipment that it inherited and their inability to rig it to work effectively absent the proper software.

The Committee notes that Xerox made things worse by its continued course of conduct during the fall of 2012. It clearly wanted to maintain control of the system despite having lost the contract to Brekford.

In its negotiations with Brekford, there is evidence not only of this attempt to maintain control but also to reap the vast majority of the bounties then available under the contract. The following is from December, 2012 correspondence between Maurice Nelson of Brekford to Deputy City Solicitor Erin Sher:

“Yesterday Brekford met with the members of the Xerox negotiation team and have since spoken with them on several occasions throughout the day. Brekford had hoped that further discussions would have profited more positive results, but we have not been so privileged. The result of our discussion had Xerox agreeing to potentially changing the terms and pricing of the attached proposal by, in their words, “only minimal cents – and not dollars”.

We have spent nearly three additional hours in discussions and they [Xerox] have not advanced from the previous stance presented to us on Tuesday. In fact, we were told expressly that they are, “prepared to walk” so these terms are practically “set in stone.” I have further spoken with a two Vice Presidents to

include Mr. Mark Talbot who both agreed that these proposed terms are the "most that they would consider," with respect to ours or the City's interest.

The attached document had a disclaimer of confidentiality thus Brekford is asking that it only be shared among privileged individuals of your circle. Below is a summary of each page of their proposal:

Page 2 – (Preferred Vision) – This page shows for each first bullet under each camera type, Brekford's offer. The second Bullet is Xerox's counter offer.

Page 3 – (Current Proposal) – This page capsulizes the terms of Xerox's proffered agreement with Brekford. Xerox made a correction that this would for 24 months minimum, instead of the already unacceptable 18 months.

Note: Xerox would replace and maintain ownership of the red light cameras and control over the program for life.

Page 4 – (Portable Speed Camera) – 2 months of payment from the cameras and complete operation

Note: \$9.70 payment to Xerox for each paid ticket (Brekford bid \$11 per ticket)

Page 5 – (Fixed) – Two (2) years of payment from the cameras and complete operation

Note: \$9.70 payment to Xerox for each paid ticket (Brekford bid \$11 per ticket)

Page 6 – (Red Light Cameras) - Two (2) years operation and maintenance with install of new systems

Note: Once new systems are installed – full operation and maintenance for life of contract.

Note: \$19.60 payment to Xerox for each paid ticket (Brekford bid \$20 per ticket)

Given the absurd nature of the attached proposal – and their non-negotiable and highly unacceptable terms, Brekford is unable to move forward with any potential

agreement with Xerox. We have mulled over the ramifications of their insidious offer and realize that this is nothing more than another backdoor way of continuing to strong-arming the City into a longer agreement. Brekford cannot endorse this proposal and feel that it is neither in ours nor the City's best interest to move forward with any further contractual discussions with Xerox.

Further communication between Brekford and Xerox failed to result in their wanting to agree to either any expedited transition or any mechanism by which to effectively culminate complete conversion.

Even though Brekford continued to attempt to find a way to coordinate the transition, Xerox was non-responsive. It prompted this statement from Mr. Nelson to Mr. Allen Shutt at Xerox:

"...Xerox's nearly two-month long delay in providing Brekford with a requested written proposal - coupled with your avoidance for face-to-face discussions until three days ago (12/19/12) has created a near impossible task of completing an agreement before year's end. ..."

From a business owner's standpoint, few could blame Xerox for wanting to maintain its position as the service provider for this system; however, these type of tactics effectively stopped any type of smooth transition.

The documents that were reviewed also contained allegations that Xerox deliberately sabotaged City property. A number of them point to an alleged tampering event in which Xerox technicians made two camera units inoperable on the last day of the contract.

This email exchange is among City Engineer Carlos Vidal, Ms. Sher and Mr. James Harkness. It discusses these events stating that Mr. Nicholas, a Xerox employee, had admitted to Mr. Vidal that Xerox technicians had indeed entered into at least two camera cabinets. The full text of document number 1879 is below, with emphasis added:

From: Vidal, Carlos A.
Sent: Mon 12/31/2012
To: Sher, Erin
Cc: McDonald, Jamie; Harkness, James E.
Bcc:

Subject: Delivery from Xerox
Attachments: Delivery from Xerox 2012.12.31.PDF; Red Light Cameras_001.msg

@
@
@

Today Mr. Nicolas from Xerox delivered the following to the City:

- 1. Deemed transfer of property form signed by Mr. Allen Shutt*
- 2. Inventory List for Xerox Speed and RLC systems (incomplete and Xerox representative stated that five enclosures are empty and Xerox maintained possession of equipment)*
- 3. Inventory list for ATS RLC systems (elements listed only)*
- 4. Calibration certificates prior to 2012 (Certificates only went to 2009)*
- 5. External hard drive - physical unit received cannot vouch for its content but from today's meeting Xerox was only to provide the text files and no images. Images were going to be delivered on Wednesday by the COB.*
- 6. 2 sets of keys to all camera enclosures and control cabinets. Each set contains a total of six (6) keys*
- 7. Combination coded for padlocks.*

Additionally, Mr. Nicolas has informed us that Xerox technicians went into the cabinets that had been previously locked by the city (E33rd St @ the Alameda and

Hayward @ Park Heights). He explained that they had cut through our lock and broken our two key bolts to gain access to them. Refer to email attachment. (Emphasis added)

This is for the record.

*Carlos A. Vidal, PE
Engineer III
Baltimore City
DOT Maintenance Division*

The alleged admission by Mr. Nicholas that Xerox tampered with two different camera systems was listed as an email attachment; however, it was not attached to any of the documents provided to the investigators. They requested that the Law Department locate and retrieve this document; however, they were informed that the Department had been unable to do so.

Unfortunately, the attachment was not contained in the other thousands of documents that the investigators reviewed and, as stated earlier, the Committee was unable to locate Mr. Vidal to take his testimony in the hearings. Thus, this allegation cannot be confirmed.

Furthermore, it should be noted that the allegation referenced hereinabove was contradicted by both Mr. Shutt's and Mr. Nicholas's testimony in the hearings. They both categorically denied any sabotage of city property by anyone from Xerox; however, there is other correspondence which shows that many

others believed that Xerox had intentionally tampered with some of the cameras.

One section from DOC ID# 87931 reads:

"This letter is to address the concerns that Baltimore City and Brekford had with regard to a possible corruption of city property (Baltimore City Red Light Systems) at the following locations Benson Avenue and Caton Avenue (Crossing Guard) and Northern Parkway and Falls Road (Crossing Guard 2). Because Brekford had integral knowledge of red light systems they agreed to help the city determine what caused the problem they observed while visiting the sites on January 9, 2013."

Attached to that email was the field inspection report that states:

"Mr. Baker commented to Carlos that on 12/31/2012 between the hours of 11 am and 12 pm he had witnessed technicians working on the control cabinet for RLC located at the intersection Eastern Avenue and Kane Street. Mr. Baker explained that he had found it odd that technicians from the Vendor at the time were servicing control cabinets when their contract was to expire on midnight that day..."

Other correspondence, on or about February 15, 2013, among Erin Sher, Deputy Mayor Zaied, Mr. Jamie McDonald, Mr. Harkness and Barbara Zektick, Esquire of DOT indicates that she, David and Matthew (?) heard from Xerox that Xerox now claimed to own any camera that had been taken from the poles before December 31, 2012. This included the five (5) cameras with the high error rate and they affirmatively refused to provide them to the City.

The attorney claimed that Xerox replaced those cameras and, therefore, they were no longer part of the system. DOT confirmed, however, that Xerox never replaced them.

These emails contain but some of the information that the City had when it made the decision to settle with Xerox and pay out the contract. They serve as examples of Xerox's consistent non-responsiveness and non-cooperation. Its tactics during this period amounted to bullying both City officials and Brekford.

When Xerox refused to assist in the transition to a new vendor; allegedly sabotaged camera equipment and attempted to negotiate itself into Brekford's contract, it cost the City money. The city had lost revenue from the payment of valid citations. It had to purchase new cameras and software and pay the wages of employees who were trying to keep up with Xerox, prepare for the transition and assure that the system work upon Brekford's assumption of operation.

-----Original Message-----

From: Paul McMillian

[mailto:Paul.McMillian@BaltimorePolice.org]

Sent: Thursday, December 20, 2012 5:02 PM

To: McDonald, Jamie

Subject: Hello Jaime this is Sgt McMillian I did receive your email earlier and just a quick thought I have to discuss with you about the data dump that Xerox is going to do with all the citations that need to be approved by Dec 31. Can you call me at your earliest convenience 410 3756357.

Thanks

----- Original Message -----

From: McDonald, Jamie

Sent: Thursday, December 20, 2012 05:44 PM

To: Harkness, James E.; Sharma, Raj; Udentia, Francis

Cc: Vidal, Carlos A.; McMillian, Paul (BCPD); Woznysmith, Eric D.

Subject: Citations

Sgt. McMillian has a concern because Xerox is going to shut down the Citeweb program on January 1st. He said that we need to ask Xerox to download all of the red light citations with the photos into the City's mainframe so that BPD can print them out and approve or disapprove them by hand. But the speed citations issued next week will not be in Citeweb next week for BPD to approve and his concern is that BPD will not approve them in a data dump format since they are not in the proper program. Has this issue come up and how do we address it? We are looking to lose a whole weeks worth of speeding citations at least.

----- Original Message -----

From: Harkness, James E.

Sent: Thursday, December 20, 2012 05:57 PM

To: McDonald, Jamie; Sharma, Raj; Udentia, Francis

Cc: Vidal, Carlos A.; McMillian, Paul (BCPD); Woznysmith, Eric D.

Subject: Re: Citations

Any word from MOIT about whether Xerox submitted speed data today?

-----Original Message-----

From: Sharma, Raj

Sent: Thursday, December 20, 2012 6:05 PM

To: Harkness, James E.; McDonald, Jamie; Udentia, Francis

Cc: Vidal, Carlos A.; McMillian, Paul (BCPD); Woznysmith, Eric D.

Subject: Re: Citations

Jim,

Not to my knowledge, we will follow up tomorrow.

Raj

From: McDonald, Jamie
Sent: Sat 12/22/2012
To: Leist, Tricia
Cc: Vidal, Carlos A.; McMillian, Paul (BCPD); Woznysmith, Eric D.; Harkness, James E.
Bcc: McDonald, Jamie
Subject: RE: Citations

Tricia, please let us know what data that Xerox sends you every day and cc all in this e-mail.

Carlos, please track responses from MOIT.

Thank you,
Jamie

These e-mail exchanges took place with less than two weeks before the close of the contract. This is when the system still had the software to operate the system and yet Xerox was not assisting in this part of the transition either and both DOT and the Baltimore Police Department (hereinafter referred to as "BPD") knew it.

In February, 2013 the City hired URS to perform a secondary review of citations previously audited internally by Xerox. URS reported its initial findings in the URS Technical Memorandum No. 1 dated March 22, 2013.

That Memorandum reviewed 242 citations. It found that 83.9% were "Reasonable", 9.1% "Need Further Evaluation", and 7.0% "Might Be

Discardable". 13 of the 17 citations proposed for "discarding" came from only two of the eleven locations reviewed.

URS followed up with another Memorandum, URS' Technical Memorandum No. 2 dated April 12, 2013. That Memorandum reviewed 933 citations. It found 63.8% were "Reasonable", 25.6% "Need Further Evaluation", and 10.6% "Might Be Discardable". One-third of the 99 citations proposed for "discarding" came from only three of the 37 locations reviewed. It is not clear why URS marked any given citation as "Needs Further Explanation" or "Discardable."

In April, 2013, around the time of second Memorandum, Xerox discontinued all services to the City related to the ATVES program. Xerox had been defending citations issued during the time it was operating the system in Court. It stopped doing so and it terminated the City's access to CiteWeb, the software operating system for ATVES. Without such access, the City was unable to defend contested citations issued by the Xerox-operated cameras.

In an effort to resolve this, the City agreed to pay Xerox \$1 million on June 20, 2013 for invoices dated December 15 and 31, 2012 in exchange for access to CiteWeb for nine (9) weeks.

When the nine-week period expired, the City owed Xerox approximately \$5.8 million and was continuing to collect money from citations. On September

30, 2013, the City entered into a Closeout Agreement with Xerox. Under this agreement, the City paid Xerox \$2.3 million on the outstanding invoices. Combined with the earlier payment of \$1 million, Xerox received a total of \$3.3 million against their claims of approximately \$5.4 million.

In exchange, Xerox released the City from paying the remaining balance owed, any payments on future revenue that may have been generated from Xerox-issued citations and compensation for hosting and support services for ATVES. The total value of this was approximately \$2.1 million. Under the agreement, the City also gained ownership of the cameras, but not the software to operate them (the Xerox “proprietary” claim”).

The OIG Report contains more details regarding Xerox’ operation of the system, the settlement its role in the transition.

Given the actions of Xerox and the damage caused to the City by those actions, and based upon the information available to the Committee, there remains a question as to why the contract was “paid out” or settled.

BALTIMORE AND BREKFORD

Brekford assumed responsibility for operating the system on January 1, 2013. In the simplest of terms, given the behavior of Xerox and the City’s failure

to require Xerox to meet its obligations under the contract as well as the City's overall failure to properly staff and operate the ATVES program (which will be addressed shortly), Brekford had little chance to succeed.

As was stated previously, even in the light most favorable to Xerox, it did little to assist in providing for a smooth transition of the operation. In reality, Xerox was more concerned with retaining its ability to operate the system than with making certain that the system continued to operate properly for the benefit of the City, let alone for its successor.

When Brekford submitted its response to the RFP it believed that the software operating system belonged to the City. It was only later that it found out that this was not the case. During the Xerox contract extension period, questions had arisen about the quality of the performance of the existing equipment and system primarily because of the issuance of the erroneous citations.

Due to the aforementioned problems with Xerox, the system had performed at far less than peak efficiency during the final months of 2012. As a consequence, the City was eager and, we think safe to say, impatient to have the system fully operational. At the same time, Brekford was eager to prove to the City and, to some extent, Xerox, that it was more than capable of handling such a large system.

Problems that plagued Brekford, however, included both component failure and staffing issues. The component failure manifested itself in the generation of citations with missing data and picture fields.

The most notable example of Brekford's lack of staff was illustrated is where the statutory time for issuing a citation was missed, a "missing event." While Brekford was attempting to get things up and running, many hundreds of citations were voided as a result of failing to be sent within the statutorily permitted time frame, *i.e.*, statutorily they needed to be approved by the BPD and sent to the driver within fourteen (14) days from the date of the offense. Many of the citations issued during Brekford's time were not being sent to the police for verification until the twelfth or thirteenth day which did not allow them to be properly processed.

The Committee investigators could find no reports that Brekford had experienced these kinds of problems with any of the other systems that it managed and attributes it to the difficulty of the situation in which it found itself.

The pressure that the City had placed on Brekford combined with the pressure that it had placed upon its self created an unrealistic expected level of performance for both parties. This only exacerbated the stress of the situation,

particularly on the City's side as it was very quickly determined that none of the speed cameras worked any longer and all would need to be replaced.

In addition, as the City no longer had the operational software for the existing red light cameras, Brekford had to work to get them operational. They were able to get between twenty and thirty up and running somewhat quickly but the City faced another immediate problem.

It had developed an increasingly serious dependence upon the income generated from the camera violation citations. Very shortly after Brekford assumed responsibility for the system, the "word" came down that the City was "losing a million dollars a month" because the cameras were not fully up and running. We have not been able to attribute the actual source of this quote, but it was referenced by several individuals on all sides of the issue so we accept it as credible.

Not that an additional factor was needed to reach a "tipping point" as to the success or failure of Brekford, but this may have been so because the situation for both DOT and Brekford became extreme and in mid-April, 2013, the City suspended the program.

Over the next six months DOT and Brekford worked on the system in an effort to get it operating at the level expected by the City and called for under the

contract. In October, 2013, a thirty (30) day trial was run during which the system was operational, but no citations were issued. The results of that trial were such that the City elected to shut down the ATVES system. It remains so to this day.

There is one other item of interest involving Brekford. During the beginning of the transition, Sam Schwartz Engineering (hereinafter referred to as "SSE") was hired for its expertise in the field of automated enforcement and to perform site-engineering studies for DOT.

SSE had initially been included on Brekford's proposal for the purchase of the 72 speed camera units, but DOT had wanted to hire SSE directly and not through the ATVES vendor, so Brekford was instructed to remove them from their proposal. By doing it this way, they would be able to have an "independent" safety review.

The item that drew the Committee's attention here is in an email from C.B. Brechin of Brekford to Richard Retting of SSE wherein Brechin says, "*Great news, we were able to get the City of Baltimore to hire you separately so it looks independent...Again thanks for all your service.*" [Emphasis supplied.]

While there may have been no impropriety involved on the part of either Mr. Brechin or Mr. Retting, the choice of words in the email leads one to question the propriety of this hire. The investigators forwarded this email and related

documentation to City Solicitor Nilson for further investigation. No response was received.

The OIG Report contains more details regarding the transition to Brekford and the settlement agreement terminating the City's contract with them.

DOT'S OPERATION OF ATVES

The City did not have sufficient staff prepared to manage the ATVES program. Not only did it not have sufficient staff, it did not have adequately trained staff. During the Xerox contract, this lack of staff was mostly camouflaged by the size of Xerox's operations.

During the transition, all of these inadequacies became readily apparent because there were no staffing counterparts in Brekford to offset the City's inadequate staffing levels. This can be illustrated no more clearly than in the e-mail between Mr. McDonald and Mr. Vidal. For example, in his December 26, 2012 e-mail Mr. McDonald states:

Carlos, below is your assignment (effective January 3rd) on the ATVES program until we get a full time DOT employee or consultant on board:

- 1. You will work in the field office (Brekford's) and in the field full time. They will supply you a work station and computer with required software. Where is the field office located at? What kind of software or interface will be used at the work station? Will they make all software licenses currently in use by city assigned workstation available on the work location assigned? Will access to city server*

space be made available at the location? Keep in mind I am still providing some level of support to the maintenance division.

2. We need you to oversee their office operations to ensure that they are doing proper quality control reviews of the citations before sending them to the police. What do the office operations entail? Currently I have yet to see a complete set of SOPs may it be by the City or a proposed SOP from the new vendor. It is my humble opinion that the City has stayed out of the previous vendor operations to the degree that there is no centralized information for the overall program that can be readily be made available. You are not going to review the citations unless they call you over for questionable ones. Once again need to look at the flow chart for this process. But we need you to make sure that they are doing the right amount of QC that is needed for the program. QC (or lack thereof) is the main reason that this program is in jeopardy. I believe utter ignorance of the process and lack of oversight is the reason for failure. There cannot be any control or monitoring of a process unless the process itself is well documented and specific check points can be clearly defined. The City could fall into becoming a bottle neck of an operation that is not well known. We want you to make a recommendation to the Director if DOT needs full time analysts to review all citations after the vendor reviews them after you work there about a month. This will basically be relieving the Police Department of their responsibility. Random sampling would be a better solution with effective training to the police officers assigned for reviewing the citations.

3. Field supervision. You will need a City vehicle available full time. Do you have one? If not let me know and I can arrange for it. What type of field supervision is being referred to? No vehicle has ever been assigned to me.

4. Maintenance oversight that Brekford does and ensure proper documentation of all maintenance work performed. This is a simple maintenance log and inventory control. It should be defined and included in the proposed SOP that the Vendor is to supply to City for approval. It should also be noted on the contract with the new vendor. It was already suggested to Ms. Sher.

5. As-Built submittal requirements. Also warranty info, model/serial #'s, etc., that the City will need. Need for dedicated space in the City's Server with just a few group having access to the information. This dedicated space needs to be

backed up. It has been my experience that DOTIT has sometimes omitted this vital step and historical information would likely be lost unless clearly requiring it from DOTIT. Also the OnBase filing system should be one tool for storage but not the only one as its user friendliness is not high and constantly disregarded by DOT users. Suggest implementing a simple file structure for each of the locations in addition to an access database with hyperlink to the files at server location for retrieval purposes.

6. *Field inspection supervision – we need you to verify that they are properly inspecting the equipment. What does a field inspection entail. Have inspection forms been defined? Has a standard protocol for site inspections been approved and is currently in use?*

7. *Other related assignments that may become necessary. Such as?*

I estimate 70% of your time in the office and 30% in the field.

To his credit, Mr. Vidal adamantly protested against much of this delegation, stating in emails that he was only a “civil engineer” and not a “subject matter expert” in regards to the camera program. The documents reviewed show Mr. Vidal as an employee who did his best to perform outside of his training and expertise.

While Brekford admittedly had organizational and technical problems of its own, having an engineer who was already busy with other projects and did not specialize in this technology added another level of strain to an already complicated transition. Mr. Vidal’s initial inexperience in ATVES systems made

him a poor choice to supervise the program. Unfortunately, DOT had no one more qualified to send there and this lack surely assisted in the failure of the transition.

DOT knew that ATVES was too large to be sustained by the number of employees who were allocated to the program. Below is the full text of an e-mail correspondence between Mr. McDonald and Mr. Harkness.

*From: McDonald, Jamie
Sent: Thursday, March 14, 2013 11:46 AM
To: Harkness, James E.
Subject: Privileged - Brekford's QA Plan*

I would like to send this to Khalil, Frank, Barbara, Erin and Billy to help manage their expectations. What do you think?

Attached is the latest QA Plan from Brekford. It is still a working document but getting better with each iteration. I would like to make sure that our Administration is aware that while the goal is to have a 100.0% accuracy rate, the reality is that it is unlikely that the program will be perfect since it is so large. Baltimore City has more ATVES cameras than anywhere else in the country, and we have more than the entire State of Maryland has. The City is working with Brekford to add incentives and disincentives to the contract so that they are rewarded for good work but will lose their bonus and begin to pay a fee for each erroneous citation that is over the 0.5% threshold. When you are talking about 50,000 citations per month, the City could still issue up to 250 erroneous citations and Brekford would still get their bonus. If this is not acceptable then I recommend one or all of the following actions:

- 1. Remove up to 75% of the speed cameras. The program is too large for the staff levels at the City. We would still need to pay Brekford for purchasing them.*
- 2. No more new speed cameras. We get a lot of requests for them but if we want to add a location then we need to take one out.*

3. *If we keep the same # of camera then we should hire a lot more staff at BPD and DOT to work on this program full time. Police Officers only work on this during overtime and there are not nearly enough workers at DOT committed full time to a program this large. BPD needs to hire full time officers to work on this program due to the volume of citations. Plus it is not good for them to be reviewing citations for accuracy after a long days work. At DOT, we need to establish an entire section just for ATVES if we want to keep this many cameras in operation.*

The real challenge will be getting the media to accept that, while the City is doing everything we can to improve the accuracy rate, the system will not be perfect and some (very small) percentage level of error may still occur.

I don't mean to get anyone upset, I tell it like it is, and the Task Force did not uncover the real issue. Our program is too large for the manpower we have on it.

*Thank you,
Jamie McDonald
Program Manager
[Emphasis supplied.]*

This was sent in March, 2013 during the Brekford transition. It is further confirmation of the Committee's position that the transition was doomed from the start. The question arises: why didn't Mr. Harkness heed Mr. McDonald's overall advice?

Testimony from numerous witnesses including Mr. McDonald, BPD Sergeant Clark and BPD Sergeant McMillian and Mr. Harkness himself stated, in one way or another, the need to either reduce the size of the program or increase

the number of employees to match the scope of the program that they were trying to replace.

In fact, Mr. Harkness probably summarized it best when he testified: "Don't build a program if you can't operate it".

Only one agency offered to address the issues raised by Mr. McDonald and that was the BPD which actually trained and assigned additional officers to citation review. The Committee was advised that this significantly increased the average amount of review time per officer which was originally calculated at between six and nine seconds per citation. We do not know whether they were actually aware of the existence of this correspondence.

There was, however, a larger flaw in the BPD's role in the process and that was the personnel cost. Its review unit was fully-staffed by officers from its overtime unit thus every officer involved in the citation review was being paid at a premium. This process also had other obvious flaws. While there is no official data, one would logically conclude that an officer who had already worked a full shift may be more prone to certification errors. This would be especially likely if one were inundated with a high volume of citations and a short time to complete the review.

DOT established a Standard Operating Procedure (hereinafter referred to as the “protocol”) for the placement of the cameras and that protocol was to be followed prior to the placement of any camera, whether speed or red light. In both testimony before the Committee and apparently in the investigation of the OIG, it seems clear that this protocol was not followed in all cases. In fact, when testimony was taken from DOT personnel, it appeared that only one person knew who made the actual decision as to the final placement.

We believe that the decision maker was Randall Scott. The more interesting disclosure came in response to the question as to whether the decisions were made on a revenue-generating or safety-prevention basis, the latter of course being the statutory justification for placement.

While a number of witnesses testified that they either didn’t know how the locations had been chosen or that all of the locations had been chosen prior to their involvement, others indicated that they believed that the locations were chosen on a safety-prevention basis. When asked, however, to provide documentation of that, it was determined that the placements ultimately fell into three categories:

1. Those locations for which the protocol was properly applied, i.e. each requirement was reviewed; found to have been met; and the proper documentation fully completed prior to the placement of the camera.

2. Those locations for which the protocol was applied, i.e. each requirement was reviewed and found to have been met prior to the placement of the camera; however, the proper documentation was not fully completed prior thereto or not completed until thereafter. While a technical violation of the law, it is understandable given the inadequate staffing, etc.

3. Those locations for which there is no evidence that the protocol was ever applied. This is a real problem in that it plays directly into the allegations that locations had been chosen solely for the purpose of revenue generation and not for reasons of safety and prevention.

The latter placement is of particular importance because the amount revenue generated by the ATVES system has become a serious issue both in the City and in the Maryland General Assembly. A successful program should generate ever-decreasing revenues. Despite the safety numbers produced for both this Committee and the Task Force, such has not been the case here. Some of that can be attributed to the rotation of camera locations; however, those cameras are only eight of 165 units. This also strengthens the argument that some placement may

have been chosen primarily for revenue generation with safety and prevention being an ancillary benefit.

Another item of note is that there was no evidence presented of a request by DOT or BPD for increased safety measures to be implemented at the camera locations during the “down time” leading some to question how dangerous those agencies actually viewed the particular locations. The response to inquiries along this line was that it was believed that the cameras, even though non-functioning, served as an effective deterrent.

If the goal is safety and prevention, this may argue for a mix of actual and non-functioning cameras in the future.

The net revenue generated from the program had been deposited into the General Fund since 2009 and the Department of Finance had become dependent on it. This is evidenced by the numerous comments made to this Committee, other Council members, the public and the press about the loss of “significant” revenue during each month of “down time”. We do note, however, that such talk has been tempered and that the FY16 Budget attributes little income to a camera program were one to be re-instituted.

The Committee questions whether that has been appropriate in the past. Without belaboring that point, it believes that the reporting requirements of the

Speed Monitoring Systems Reform Act of 2014 will require the segregation of those funds in the future.

CONCLUSION

The ATVES program is a valuable one for the City and its citizens. One of the best statements made, read or presented during this process was that of Mr. Harkness: "Don't build a program if you can't operate it".

That is the message that was sent loudly and clearly throughout our investigation. It was the evidence discovered in our investigators' inspection of those documents which they had sufficient time to review.

While we are dealing primarily with DOT in this report, we have also had the opportunity to observe the work of the BPD, Law and Finance Departments as it applies to the program.

Mr. McDonald's e-mail was sent to Mr. Harkness on March 14, 2013. It could have been sent just as easily and been just as applicable on that date in 2012. There appears to have been not only no written response but, in the questioning of the witnesses, no acknowledgment of the seriousness of the problem at that time.

In hindsight, virtually all agree that the program was too big, DOT did not have the proper personnel to handle it and too few people were assigned solely to its operation.

When the difficulties arose with Xerox, DOT had an opportunity to re-evaluate the program and determine how it should be best operated. The transition to Brekford offered the time to review where the program was and where it was going. This opportunity was only made greater by the need to buy new speed cameras and to set up new operating systems for the red light cameras.

It is our belief that the short-sighted demand for immediate revenue generation not only prevented DOT availing itself of this chance but also stifled any serious consideration of it. As a consequence, the failure of Brekford and the shutting down of the system occurred.

Either the BPD took advantage of the situation by insisting that the citation review be conducted by its overtime unit or DOT or Finance (we are not sure of the applicable party) was negligent in its failure to identify who in the BPD was going to conduct the review and how much it was going to cost. In fairness, however, we realize that this may have never crossed anyone's mind at the time and is an easy second guess on our part.

Typically, if the City needs to ratify a settlement with another entity, that proposed settlement will have to be approved by the Board of Estimates (hereinafter referred to as the "BOE"). The settlement agreement with Brekford was approved in this manner. The City paid Brekford \$2.2 million for cameras and work performed per contractual obligations and another \$600,000 through negotiated settlement over and above contract obligations, a total of \$2.8 million.

In contrast, there was a "contract closeout agreement" (hereinafter referred to as the "closeout") made between Xerox and the City that did not go through the BOE to get that approved. There is very little difference in the language and structure of the respective agreements. In fact, the Xerox closeout was repeatedly referred to as the "settlement" throughout the hearings by parties from both sides.

It appears that the sole reason for it having been identified as a "contract closeout agreement" was to avoid taking it before the BOE and it is a factor in our concern over the reasonableness of the "settlement" with Xerox.

In the same vein, it should be noted that not only was the closeout referred to as "settlement" as stated above, but many of the same Law Department officials have also referred to the closeout as a "settlement" in numerous different departmental correspondence.

In document I.D. numbers 8349, 8348, 266, and 766 which are copies of correspondence among a number of individuals in the Law Department, it is stated: "...*the addendum was negotiated by the law department as part of a legal settlement...*" in specific reference to the closeout. No one disputed the fact that it was a "settlement" in any of their subsequent responses. Our questions about this remain.

Finally, prior to this investigation there were many allegations of "misconduct" and "corruption". No specifics were ever provided during the time that those allegations were made. Although requests were made for the production of any evidence of this misconduct or wrongdoing by both the Committee and by the OIG during its investigation, none was ever forthcoming.

Based upon the evidence reviewed and the testimony taken, it is our opinion that, with the possible exception of the SSE matter, there was no wrongdoing here. There was sloppy work at times but, more often than not, the problems were caused by the fact that there were either too few people to do the work or the people doing the particular job were the wrong people.

RECOMMENDATIONS

The OIG Report at pages 28-30 makes seven recommendations. The Committee concurs with all seven of these recommendations.

With regard to the role of BPD which is specifically addressed in OIG recommendations #2 and 3 and the Task Force's "Oversight" section, it is the Committee's belief that this review be done by individuals with sufficient police power to sign off on the citation, but not necessarily officers removed from regular police duties. We concur that in no event should this remain in the hands of the overtime unit.

The Task Force Report 16-18 also contains a series of recommendations. A number of these, particularly those contained in the section entitled "Contractor Accuracy Incentives", have been addressed and resolved by the Speed Monitoring Systems Reform Act of 2014 which was passed by the Maryland General Assembly in the wake of *The Sun* series (hereinafter referred to as the "Reform Act"). There is a great deal of overlap between those remaining of the Task Force and those of the OIG.

The Task Force made some very specific suggestions that we believe should be integrated with those of the OIG. Those are contained in its section entitled

“Public Awareness” and they complement OIG’s 6 and 7. They make sense; however, they do not go to the core of the operation of the system.

The Task Force sections on “Oversight” and “Camera Placement” get to some of the core issues and they mirror to a great degree those recommendations found in OIG 1 - 3.

In an effort to simplify rather than duplicate or run along a parallel track, we offer the following:

1. The OIG has reviewed the proposed new RFP. It should be reviewed again by DOT, the Law Department and the Finance Department taking into consideration the recommendations contained in all three reports (i.e. the OIG, Task Force and this Report). A new draft RFP should be submitted to this Committee, the Task Force and the OIG for final review with a strict time line response which should be no longer than thirty (30) days from the date of receipt.
2. The Law Department needs to do a thorough review of the “form” documents that it is using to make certain that each one actually contains the terms and conditions of the actual contract and nothing more. While these forms may be of great value and are certainly convenient to use, particular care must be used to make certain that the City does not find itself in the Xerox position again.

3. DOT must have a full-time director of this program who has prior experience in this area. In addition, there should be adequate staffing. DOT should consult internally with Mr. Sharma but also reach out to both Mr. McDonald and Mr. Harkness to discuss the best level given the City's conditions.

4. BPD should consult with Sergeant Stanton Clark regarding its staffing levels. He appears to have a real grasp of the systems's needs both in terms of review and staffing levels. The changes that he made during Brekford's operation made a significant difference in the review process.

5. While we are reluctant to set an actual number of cameras in the re-establishment of the program, it is our belief that the program should be reduced significantly. We acknowledge that the presence of "dummy" cameras may actually have a deterrent effect and suggest that maintaining a number of them along with actual working cameras may accomplish the City's safety-prevention goals.

6. In the same vein, DOT owns a number of cameras that do not work. The cost of repairing them is significant, particularly given that the state of the art has progressed dramatically thus almost mandating their replacement rather than repair. While the City would still need to sign these locations in accordance with applicable law, employing the older cameras as dummies" would offer the

City the opportunity to provide coverage at many more locations without incurring the cost of operating and maintaining those cameras, processing the citations, etc. There is one additional benefit here: we would be getting something out of the Xerox settlement, i.e. the use of those cameras.

7. The recommendations contained in both the OIG and Task Force Reports regarding site selection cannot be overemphasized. Every step of the protocol must be met and documented prior to its selection. If there is ever a question as to whether the choice of a site were based upon revenue generation or safety and prevention, that documentation should be available at the touch of a key.

8. In that same vein, site selection should never be made simply upon the request, or “demand”, of an elected official regardless of who that official may be. While that request or “demand” should receive the priority and respect that it deserves, the site should only be selected if it meets every step of the protocol. This protects both the official and the City from any suggestion that the site was chosen for any reason other than the proper one.

9. To avoid any appearance of conflict with the Reform Act, Finance should establish an Automated Enforcement Special Fund rather than commingling these funds with the General Fund. This will assure that the City

follows both the letter and intent of the Act by both facilitating its detailed reporting requirements and allowing the public to easily recognize that any remaining balance after the covering the costs of operation of the system have been spent solely as required by the Act: for “related public safety purposes, including pedestrian safety programs”.

ACKNOWLEDGMENTS

The Committee extends its deep appreciation to William Sherwood, Esquire and Ms Amy Chesebrough, its investigators for the tireless efforts on the Committees behalf. Together they reviewed over 27,000 documents. Special thanks go to Mr. Sherwood who worked for us through the extended period and reviewed an additional 10,000 documents.

Mr. Sherwood also staffed the Committee’s hearings through the taking of all of the witness testimony. He also conducted both the research for and contributed toward the drafting of this Report for which we owe him a great debt.

We also want to thank the staff and former staff of the Chairman. Emily Sherman, Jeff Amoros, Kaitlyn Golden, Katie Miller and Kristyn Oldendorf for their assistance.

Council members Robert Curran (3rd), Bill Henry (4th) and Rikki Spector (5th) submitted written questions to the Committee which were very helpful to us.

In our review of the Task Force and OIG Reports we found some similar descriptions of events and actions. Where we have described the same event, our language may be similar. In some instances, we may have inadvertently used a portion of one of their sentences. In such event, we acknowledge that usage and apologize if we have in any way taken it out of the context in which it was originally intended in either report.

Finally, we thank the office of the President of the City Council and the President of City Council, Bernard C. "Jack" Young for his continued support and advocacy throughout this arduous process.

James B. Kraft,
Chairman