

February 12, 2008

Hon. Joel I. Klein  
Chancellor  
New York City Public Schools  
Department of Education  
52 Chambers Street, Room 314  
New York, NY 10007

**Re: DynTek, Inc.**  
**SCI Case No. 2007-0363**

Dear Chancellor Klein:

An investigation conducted by the SCI office has substantiated that DynTek, Inc. (“DynTek”), a Department of Education (“DOE”) vendor, improperly engaged a subcontractor to service the DOE’s Department of Instructional and Information Technology (“DIIT”). In violation of its DOE contract, DynTek repeatedly assigned computer consultants to DIIT who were actually employed by ERS Systems, Inc. (“ERS”) without the DOE’s permission. ERS billed DynTek for these services and DynTek, in turn, marked up these costs before billing the DOE. The resulting markup for DynTek’s unauthorized subcontracting cost the DOE approximately \$437,000 over four years.<sup>1</sup>

This investigation began in January 2007, when Senior Director Sheila Raskob of DIIT telephoned the office of the Special Commissioner of Investigation (“SCI”) and reported that DynTek, a DOE vendor, had subcontracted computer consultants assigned to DIIT in violation of the firm’s DOE contract. Raskob said that the contract explicitly prohibited DynTek from subcontracting the placement of consultants assigned to DIIT.

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<sup>1</sup> DynTek remains a DOE vendor. According to a report which SCI obtained from the New York City Financial Information Services Agency (“FISA”), DynTek has contracts with more than 30 City agencies (including the DOE) which are worth as much as \$28.7 million.

She stated that she discovered that Rishard Chapoteau, a DIIT consultant assigned by DynTek, was actually employed by ERS. Raskob reported that Adam LaChant, DynTek's representative on the DIIT account, admitted the subcontracting to her, and that he agreed to make restitution to the DOE for the difference in price between DynTek's charges to the DOE and ERS's charges to DynTek. Finally, Raskob said that DynTek had other consultants assigned to DIIT, and that she intended to determine if they were employed by subcontractors rather than by DynTek.

SCI investigators met with Raskob, who provided documents indicating that DynTek had assigned six consultants to DIIT, including Chapoteau, Mohammad Ehtesham, and Faisal Malik.

SCI investigators interviewed Rishard Chapoteau, who said that he had been assigned to DIIT by DynTek for seven years. He reported that at the time of his initial assignment, he was employed by NuTek, Inc. ("NuTek"), and placed at DIIT pursuant to a subcontract between NuTek and DynTek. Chapoteau stated that he left NuTek in 2003 to work directly for DynTek. However, Chapoteau said that he was advised by Adam LaChant, Senior Accounts Manager of DynTek, to form his own company and bill his DIIT services to DynTek. Chapoteau stated that after consulting with an accountant, he determined that he would receive tax advantages from this arrangement and so, with Mohammad Ehtesham, another DynTek consultant assigned to DIIT, he formed ERS in 2003. Thereafter, Chapoteau's and Ehtesham's services to DIIT were first billed by ERS to DynTek and, after DynTek added a markup, then to the DOE.

An SCI investigator interviewed Adam LaChant of DynTek, who promptly admitted fault for his firm's subcontracting. He claimed that he misinterpreted the DOE contracts, and that he and his DynTek supervisors wished to make amends with the DOE. LaChant said that in addition to Chapoteau and Ehtesham, Faisal Malik's services to DIIT were subcontracted by DynTek to ERS.

SCI investigators interviewed Faisal Malik, who reported that he had been assigned to DIIT by DynTek since 2002. He said that during this assignment, he was employed and paid by ERS, which had a subcontracting arrangement with DynTek. According to Malik, in May 2007, pursuant to LaChant's advice, he left ERS and formed a sole proprietorship, Vital Systems, Inc. ("Vital"). Since that time, DynTek has paid Vital for Malik's services to DIIT, which have not been interrupted.

In September 2007, SCI investigators interviewed Mohammad Ehtesham. Ehtesham stated that he had been a computer consultant assigned to the DOE by DynTek since 2000. Ehtesham reported that he was initially hired by DynTek and placed on its

payroll at the time of his DIIT assignment in 2000. Later that year, Ehtesham established ERS, which then billed DynTek for his services to DIIT. Contradicting Chapoteau, Ehtesham stated that he was the sole shareholder and the CEO of ERS. He said that he agreed to place Malik and Chapoteau, his DynTek colleagues at the DIIT assignment, on the ERS payroll so that they could receive group medical insurance and tax advantages. Thereafter, ERS billed DynTek for the work which Ehtesham, Malik, and Chapoteau performed at DIIT.

Ehtesham stated that his billing rate to DynTek for Malik's services to DIIT had varied between \$75 and \$85 per hour for the past four years. Ehtesham said that Chapoteau's billing rate also varied between \$58 and \$65 per hour. According to Ehtesham, he negotiated a raise in the hourly fee charged by ERS to DynTek for Chapoteau's services to DIIT. Ehtesham added, however, that he did not raise Chapoteau's hourly wage after the increase, and instead kept the money for himself. Malik and Chapoteau were paid by ERS for their work at DIIT, and the firm's invoices were submitted to DynTek until they terminated the relationship in May 2007.

Ehtesham claimed that he never was told that he could not subcontract consultants through ERS Systems although in 2003, he learned about an investigation regarding subcontracting irregularities in the DOE.<sup>2</sup> He said that he became aware of the prohibition on subcontracting when LaChant informed him in May 2007.

By subpoena, SCI obtained DynTek's billing records concerning DIIT consultants. Chapoteau provided ERS's corresponding records to SCI. An analysis of the records from July 2003 through May 2007 revealed the following:

- **Chapoteau** was paid \$58 per hour by ERS, which billed his services to DynTek at \$90 per hour (more than the \$58 to \$60 Ehtesham reported to investigators). DynTek then billed the DOE \$112.50 per hour. ERS raised the rate it billed DynTek for his services in November 2003 to \$95, and to \$101 in April 2006. As noted above, ERS did not increase Chapoteau's compensation, nor did DynTek raise its billing rate to the DOE above \$112.50. The total markup for his services – the difference between DynTek's invoices to the DOE and ERS's invoices to DynTek – was \$129,168.75.
- **Malik** was initially paid \$80 per hour by ERS, and he received a five dollar raise in July 2005. ERS initially billed DynTek \$127.50 for Malik's work, and raised that sum to \$136 in June 2005 (again, more than the \$75 to \$85 reported by Ehtesham). That month, DynTek raised its billing rate to the DOE for Malik from \$150 to \$160. The total markup for his services was \$150,987.75.

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<sup>2</sup> This may be a reference to SCI's investigation concerning subcontracting and other improprieties involving Reba Software and DOE vendors Data Industries, Ltd. and TSR, Inc. See letter to Joel I. Klein from Richard J. Condon, Dec. 27, 2005 (SCI Case No. 2003-1981).

- As the owner (or co-owner) of ERS, **Ehtesham's** business records do not reflect his personal compensation for his work at DIIT. However, ERS initially billed DynTek \$112.50 for his services. This was raised to \$120 in March 2006, at which time DynTek increased its rate to the DOE for Ehtesham's services from \$112.50 to \$120. The total markup for his services \$156,727.52.

SCI investigators separately interviewed consultants Sajid Mahmood, Kevin Batt and Denise Pedernera, each of whom was assigned to the DOE by DynTek. Mahmood and Batt said that they were the sole employees of their own corporations, each of which billed DynTek for their services to the DOE. The Batt Consulting Group, LLC ("Batt Consulting"), and Mahmood's company, LogiNet, Inc. ("LogiNet"), were each issued 1099-Misc tax statements by DynTek reflecting the payments for services to the DOE.<sup>3</sup> Pedernera told investigators that she formed a company, Elite Group Consulting ("Elite"), in 1999 as a "fifty-fifty partnership" with her husband, a web developer. She said that her firm also received a 1099-Misc tax statement from DynTek in connection with her DOE services.<sup>4</sup> According to Pedernera, Elite pays salaries to her, her husband, and a nephew.<sup>5</sup> Elite is further distinguished from Batt Consulting and LogiNet, in that it advertises and solicits business, aside from its arrangement with DynTek.<sup>6</sup>

### **Conclusion and Recommendations**

DynTek's unauthorized subcontracting of services provided to DIIT was in violation of its DOE contract. It resulted in nearly \$437,000 in needless costs to the DOE. DynTek's subcontracting hampered the DOE's ability to obtain services at the best possible price, and it removed a level of control and oversight from the DOE. LaChant admitted to DynTek's misconduct, and expressed willingness to make restitution. This should be minimally calculated at the aforementioned sum, plus interest, as a condition of doing further business with the DOE. We note that subcontracting for services has been a recurring problem at DIIT.<sup>7</sup> Accordingly, we recommend that in contracts for services to DIIT, the DOE should include a requirement for the vendor to periodically provide certified documentation sufficient to prove that it directly employs the personnel assigned to DIIT, or that the vendor is otherwise in compliance with the terms of the minibid solicitation and the DOE contract.<sup>8</sup> The case of Pedernera and Elite illustrates that once a

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<sup>3</sup> DIIT's "minibid" no. 2291 solicitation for consultants, obtained by SCI, states that "Candidates must be employees of the submitting company or independently contracted to the company, with a 1099 form."

<sup>4</sup> Invoices obtained by SCI indicate that Elite billed DynTek from \$100 to \$106.50 per hour for Pedernera's DOE services; DynTek, in turn, billed the DOE from \$135 to 147.50.

<sup>5</sup> Pedernera's husband and nephew are not assigned to the DOE.

<sup>6</sup> See <http://elitegroup.net/index.htm> (last visited Feb. 6, 2008).

<sup>7</sup> See note 2, *supra*. See also letter to Joel I. Klein from Richard J. Condon, Dec. 18, 2007 (Information Methods, Inc. (SCI Case No. 2007-1510)).

<sup>8</sup> See note 3, *supra*.

consultant establishes his or her own corporation, there is nothing to prevent it from expanding, and possibly engaging in subcontracting. The DOE contract should further provide for liquidated damages paid to the DOE for violations, calculated at the markup in billings, plus a large interest payment on that sum.

We are forwarding a copy of this letter and of our report concerning this investigation to the Office of Legal Services. We are also sending a copy of our findings to the Mayor's Office of Contracts. Should you have any inquiries regarding the above, please contact Deputy Commissioner Gerald P. Conroy, the attorney assigned to the case. He can be reached at (212) 510-1486. Please notify Mr. Conroy within 30 days of the receipt of this letter as to what, if any, action has been taken or is contemplated concerning DynTek, Inc., and the recommendations set forth above. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON  
Special Commissioner  
of Investigation for the  
New York City School District

By: \_\_\_\_\_  
Gerald P. Conroy  
Deputy Commissioner

RJC:GPC:gm

c: Michael Best, Esq.  
Theresa Europe, Esq.