



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER

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COMPTROLLER'S MEMORANDUM
#17-01

To: Agency Heads/Fiscal Officers

From: Kathryn E. Diaz *KE D*
General Counsel

Date: September 1, 2017

Subject: Amendment to Section 7.0, Computer Hardware, Software, Networks and Systems, of the Office of the Comptroller's *Directive #10 – Charges to the Capital Project Fund*.

This Comptroller's Memorandum (CM) reflects an amendment to the Office of the Comptroller's *Directive #10 – Charges to the Capital Project Fund*. The amendment comprises a new subsection in the Directive, which will be added to Section 7.0, when the Directive is updated and reissued.

The additional subsection is as follows:

7.x Eligibility Guidelines for Cloud Computing Projects

The objective of this CM is to provide the City and its agencies with guidance on the capital eligibility and treatment of frequent scenarios surrounding cloud computing projects.

7.x.1 Length of the Software Agreement

The length of the software agreement must equate to at least the entirety of the deployment timeline and the useful life of the asset. For example, if the deployment timeline is anticipated to be two years, the software agreement must have a term of at least seven years (two-year deployment; five years of useful life).

7.x.2 Other Terms in the Software Agreement

The software vendor must not be able to change the contract provisions or terminate the agreement unilaterally without cause (e.g. the City's failure to make the payments, etc.).

7.x.3 Possession of Software

The City must be able to take possession of the software license at any point during the "majority of the time" of the executed agreement without significant penalty and diminution. The "majority of the time" is defined as the term of the executed agreement, less one year. For example, if the contract duration is six years (one-year deployment, five years of useful life), the City must be able to take possession of the software license through year five. If the contract duration is eight years (three-year deployment, five years of useful life), the City must be able to take possession of the software license through year seven.

The City must have a license that would allow the City to take possession of the software in order to capitalize any components of the project.

7.x.4 Significant Cost Test

If a cloud-based project has a Penalty that exceeds 10% of the Total Fees (as defined below), it would not be eligible for capital funding.

$$\text{Significant Costs} = \frac{\text{Penalty}}{\text{Total Fees}}$$

7.x.5 Penalty

Each of the following should be included in the determination of the penalty costs associated with the portability of the software.

- Any additional costs resulting from the porting of the software from the cloud onto City premises or third-party provider. This should include contractor costs and any associated City Personnel Services (PS) costs.
- Any costs incurred to configure the software to enable the system to operate on City premises or another third-party provider. This should include contractor costs and any associated City PS costs.
- Any termination costs stipulated in the host agreement for porting the software. This may include ongoing hosting costs that are required to be paid, despite the fact that the City no longer uses the hosting services.

- Any costs incurred for the purchase of new hardware or facilities required to feasibly run the software on City premises.
- Any cost differentials between the operational costs of the original hosting agreement and the operational costs of running the software on City premises or another third-party provider.

7.x.6 Total Fees

Each of the following should be included in determination of total fees for the project:

- The overall costs required to be paid pursuant to the entire software agreement.
- Implementation costs (defined as, but not limited to, installation, development, migration, testing, documentation, training, etc.) of the project.
- Any costs associated with updates to existing systems or tools needed for the successful deployment of the new system. This would include data cleanup activities in the legacy systems for the specific modules being migrated to the cloud, or development of specific integration points/interfaces.

7.x.7 Significant Diminution

If a cloud-based project will bear a significant diminution in utility or value when the City takes possession of the software, it will not be eligible for capital funding.

Significant diminution will be based on a variety of factors, including, but not limited to, the following:

- If the City would forfeit the right to specified/unspecified upgrades in the arrangement, even if upgrades had been provided on a when-and-if-available basis, but the vendor has a history of regularly providing significant upgrades to which the City would no longer have access.
- Whether there are features/functionality included in the cloud version of the software that would not be included in the software if the City were to take possession of the software.
- Whether incremental resources would be necessary to support the ongoing functionality of the software if the City elects to take possession of the software included in the Software-as-a-Service (SaaS) arrangement. For example, the City may need to obtain an additional software product (e.g. third-party database software) or implement manual procedures to compensate for a loss of utility in the software included in the SaaS arrangement in the event the City takes possession of the software.

7.x.8 Bundled Costs

There are various elements included in the bundled costs of many cloud computing arrangements. This may include the software license, the right to receive future software upgrades, hosting services, and/or other professional/support services. If the

City has the ability to take possession of the software, the City may consider capitalizing certain components of the bundled costs.

In order to determine the capital/expense values of the bundled costs, the City needs to perform an analysis of the relative fair value for the various elements to determine the segregated costs. In addition, any discounts received due to the bundling of the software with all other services will be applied to the capially eligible components cost; discounts cannot be capitalized and as such will need to be paid out of expense.

The City may accept the following documentation:

- Segregated costs provided directly from the vendors;
- Internal resource estimates.

The internal resource estimates must show the basis of such valuation either by using the relative cost breakdown from other vendors, data from industry benchmarks/leading practices, and/or experience of the Agency's executive IT staff.

Questions related to this Comptroller's Memorandum, or Directive #10, should be sent via email to the *Technical and Professional Standards Unit*.