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COMMITTEE ON CONTRACTS

Council Member Helen Rosenthal, Chair

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**Oversight – A Day Late and A Dollar Short: Exploring the Impact of Late Registration of
Contracts on City Vendors**

Introduction

On February 27, 2014, the Committee on Contracts (the Committee), chaired by Council Member Helen Rosenthal, will hold an oversight hearing concerning the impact of late contract registration on the City's vendors, with particular focus on its human services vendors, and the extent to which burdens may be alleviated by the City's Returnable Grant Fund. Representatives from the Mayor's Office of Contract Services (MOCS), the New York City Comptroller, the Fund for the City of New York, advocates, and interested members of the community are invited to testify.

Background

MOCS defines retroactive contracts as contracts with a start date that "occurs before the contract is registered by the City Comptroller."¹ With limited exception, City contracts must be registered with and receive approval from the New York City Comptroller before vendors can be paid.² Mayoral agencies must submit completed contracts to the Comptroller, who then has 30 days to either approve the contract or return it to the agency.³ The Comptroller can refuse to register a contract if he or she finds that: (1) there are insufficient allocated funds for a vendor to satisfactorily complete the work specified in the contract; (2) there is reason to believe that a contractor is engaged in corrupt activity or there is corruption in the letting of a contract; or (3) the

¹ New York City Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2013*, at 31, available at http://www.nyc.gov/html/mocs/downloads/pdf/Fiscal%202013%20Procurement%20Indicators%20complete%20text%2010%2021_for%20web.pdf.

² See New York City Procurement Policy Board Rules, §2-12.

³ See New York City Charter §328.

paperwork submitted is incomplete.⁴ If the Comptroller does not approve a contract, an agency may resubmit it.⁵

Although agencies are not supposed to commence contracted work until they receive Comptroller approval, retroactive contracts are legion. MOCS tracks retroactive contracts across all City agencies, yet it finds that there is only significant harm associated with retroactive contracts in the context of the provision of human services.⁶ According to MOCS, where contractors outside of the human services sector typically do not incur significant costs until contracts are registered or operate in an environment where it is customary to provide service in advance of billing, nonprofits who must rely on regular payment from the City to meet their financial obligations as they provide service are acutely impacted by retroactive contracts.⁷ In circumstances where contracts must be renewed or extended or existing programs are re-bid (collectively, contract continuations),⁸ human service providers generally continue to serve their clients' needs while contract registration is pending. In Fiscal Year 2013, MOCS counted 666 retroactive continuation contracts for human services worth a total of \$706 million out of a total of 1,223 contracts worth \$2 billion, or 35% of the total value of human service contract continuations, compared with 55% in the previous year. The average length of retroactivity was 61 days, the highest that number has been since FY07.⁹

⁴ See New York City Procurement Policy Board Rules, §1-01.

⁵ *Supra* note 3.

⁶ See *supra* note 1.

⁷ See Written Testimony of Marla G. Simpson, City Chief Procurement Officer and Director of MOCS, *Oversight: The Scope and Impact of Retroactive Contracts*, Sept. 28, 2011, Committee on Contracts.

⁸ See *supra* note 1.

⁹ See Exhibit 1 for a count of retroactive contracts for FY09-FY13.

Impact of Retroactive Contracts

As noted above, the community based organizations and other nonprofit vendors that provide human service generally have tight cash flows and so the delays in payment that result from the late registration of contracts can force these organizations to scramble to pay rent and their employees while continuing to provide services to the public.¹⁰ As such, MOCS primarily focuses its enforcement efforts to reduce retroactive contracts on agencies responsible for the bulk of the City’s major human services programs: the Administration for Children’s Services (ACS), the Department for the Aging (DFTA), the Department of Health and Mental Hygiene (DOHMH), the Department of Homeless Services (DHS), the Department of Youth & Community Development (DYCD), and the Human Resources Administration (HRA).¹¹

However, retroactive contracts present some risk to all vendors. If a contract is rejected by the Comptroller for a substantive reason, vendors that have already started work under a retroactive contract may not be compensated for that work.¹² Further, small vendors other than human service providers may also have trouble paying their employees if the disbursement of funds is delayed for a long period of time.

Beyond the burdens placed on City vendors, retroactive contracts may also impose costs on the City, as vendors sometimes increase prices to compensate for

¹⁰ *Supra* note 7.

¹¹ *See supra* note 1; *see* Exhibit 2 for a count of retroactive contracts among these “human services agencies.”

In recognition of the depth of the problems that retroactive contracts caused for human service providers, the Council enacted a package of reform measures in 2004. Local Laws 13 and 24 of 2004 addressed the role of transparency and information sharing between agencies and vendors to reduce delayed registration, and Local Law 20 of 2004 required the Procurement Policy Board to set timelines and sanctions for the timely registration of contracts.

¹² Under such circumstances, the City might use closeout contracts to compensate vendors for work performed. *See* Transcript, *Oversight: The Scope and Impact of Retroactive Contracts*, Sept. 28, 2011, Committee on Contracts, at 31-32.

anticipated delays.¹³ Even if such increases are modest, the City can ill afford even the smallest waste.

Returnable Grant Fund

In order to alleviate the cash flow problems created by delayed contract registration, in 1992, the City created a loan fund for human services vendors called the Returnable Grant Fund (RGF), which is administered by the Fund for the City of New York (FCNY) in conjunction with MOCS.¹⁴ In 2009, as part of Mayor Bloomberg's Mayor's Nonprofit Assistance Initiative, the RGF expanded from \$8 million to \$20 million.¹⁵ With these funds, the RGF offers no-interest loans to assist vendors with short term cash flow problems,¹⁶ generally providing one to two month advances to vendors as soon as their contracts are registered to tide them over until they receive their first payment from the City. The 2009 initiative also expanded the criteria for loans in order to offer additional relief to vendors experiencing funding delays in payments on registered City contracts and those experiencing funding delays from sources other than City contracts.¹⁷ In FY13, the FCNY disbursed 246 loans valued at \$38.8 million to 143 vendors.

Although the RGF provides an important stopgap for human services providers, many vendors must still go for months without any City funding while they wait for their contracts to be registered. As a result, some vendors resort to taking out private loans, for

¹³ New York City Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2011*, at 31, available at http://www.nyc.gov/html/mocs/downloads/pdf/procurement_indicators_2011.pdf.

¹⁴ See *supra* note 1, at 33.

¹⁵ *Id.*

¹⁶ *Supra* note 7.

¹⁷ See *supra* note 1, at 33.

which they must pay interest; others, who may have difficulty securing such loans, have sought funds from board members to tide them over until they receive payment from the City.

Objectives

Today's hearing will explore the prevalence of retroactive contracts, the steps that MOCS is taking to curb registration delays, and whether the RGF can be further expanded to provide loans to vendors before they are registered in order to better address the burdens created by these delays.

Exhibits

Exhibit 1: Overall Retroactivity Contract Continuations, All Human Services Agencies

Fiscal Year	Total Number of Continuations	Total Value	Total Number of Retroactive Continuations	Total Value of Retroactive Contracts	Average Days Retroactive
FY09	1,568	\$1.6 billion	687	\$1.1 billion	33
FY10	1,908	\$2.7 billion	721	\$1.6 billion	27
FY11	1,583	\$4.9 billion	542	\$1.4 billion	41
FY12	1,443	\$1.4 billion	590	\$788 million	45
FY13	1,223	\$2 billion	666	\$706 million	61

New York City Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2009 through Fiscal Year 2013*.

Exhibit 2: Retroactive Contracts, Human Services Agencies

Table III-2: Major Human Service Agencies Overall Retroactivity for Contract Continuations									
Agency	Fiscal 2013					Percent Retroactive by Dollar Value			
	All Continuations		Retroactive Continuations			Fiscal 2013	Fiscal 2012	Fiscal 2011	Fiscal 2010
	Count	\$ Value	Count	\$ Value	Average Days Retro				
ACS	60	\$70,106,488	42	\$27,574,007	14	39%	83%	23%	69%
DFTA	160	\$83,600,962	82	\$41,698,313	8	50%	44%	36%	9%
DHS	54	\$413,498,605	3	\$22,480,710	20	5%	43%	37%	34%
DOHMH	95	\$533,192,072	9	\$12,300,260	56	2%	17%	44%	43%
DYCD	707	\$312,758,303	464	\$273,246,499	75	87%	64%	29%	64%
HRA	85	\$500,909,067	31	\$260,507,433	90	52%	56%	69%	91%
All Other Agencies	62	\$121,626,989	35	\$67,988,576	51	56%	81%	55%	73%
Total	1,223	\$2,035,692,486	666	\$705,795,798	61	35%	55%	29%	61%

New York City Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2013*, at 31.