



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

November 18, 2021

The Honorable Bill de Blasio  
Mayor  
City Hall  
New York, NY 10007

Re: Strategic Procurement Reforms

Dear Mayor de Blasio:

In our constantly evolving city government, it is imperative that we take proactive steps to reform the procurement process to adapt to current realities, stay ahead, and ensure that the goods and services that New Yorkers rely on are delivered in a timely and cost-effective manner. The COVID-19 pandemic was one of the greatest disruptors our City and the world has ever faced and highlighted fundamental flaws in our City's procurement process. What remained unchanged, however, is the City's reliance on its contracts and its vendors, particularly the human services providers that deliver essential programs and support to children, families, and seniors.

In order to improve our procurement system, change must be made using a multi-pronged approach including updating Procurement Policy Board (PPB) rules and deploying modern technology tools such as the City's PASSPort system. Change will require the collaboration of multiple City entities and the vendor community, but these necessary and achievable reforms will be worth the effort.

My office calls on the PPB to address the issues plaguing the City's procurement process that cause disproportionate harm to human service providers by ensuring that contracts are executed and implemented on time, that individuals providing services under those contracts are paid fairly, and that technology tools such as PASSPort are implemented with all their promised functionality.

**Contract Continuity**

Automatic, Short-Term Extensions for Human Services Contracts

The PPB should explore the feasibility of adopting a new rule allowing nonprofit human service providers to automatically activate limited-time extensions for continuity of services when a formal extension or renewal process has not been initiated by an agency.

In many instances when contract processing and submission of contracts for registration are delayed, vendors will take on excessive risk and begin work before contract registration. This is

common in human services, especially for contract renewals or extensions, where the provider will continue to deliver services to clients while waiting for the contract to be submitted for registration and for payment to be received. Although the City offers interest-free bridge loans to nonprofit human services providers awaiting contract registration, this is a patchwork solution that still incurs costs, negatively impacts cashflow, and does little to encourage agency accountability in timely processing of contracts – in particular, the foreseeable renewals and extensions regarding existing services.<sup>1</sup>

The new rule for limited-time extensions should require agency public reporting through PASSPort and implement financial consequences if agencies delay in initiating the formal extension or renewal process. The PASSPort system was established with the ability to automatically track applicable dates and this functionality should be used to enforce existing and new rules regarding timely extension, renewal, or potential re-letting of contracts.

### Agency Procurement Timeframes

The PPB should set a standard 60-day timeframe for all mayoral agencies to conduct oversight duties from the point of award to submission of a contract for registration. The new PPB rule should require the PPB to review timeliness as required by the City Charter. Complying with this mandate would prevent contracts from languishing, keep parties accountable, and reveal areas in the process that require improvement. The explicit timeframes would provide a publicly available metric to measure performance in moving contracts, programs, projects, and vendor payments towards implementation and completion. The City Council has proposed a Local Law that seeks to create a public-facing procurement database that would include “the procurement timeline, including, but not limited to, the anticipated start date for new contracts, anticipated solicitation release date, approximate proposal submission deadline and anticipated award announcement date.”<sup>2</sup> It is time for the PPB to work with all interested parties to create accountability in the procurements system.

### Key Performance Indicators

Monthly updates of key performance indicators, to be published by MOCS through PASSPort on the City’s website, should be required going forward. Currently, § 2-04 of the PPB requires the City to centralize agencies’ human service contract plans to inform the public and the sector of new contracts and contract continuations. However, a broader requirement is necessary because the City does not leverage the plans or procurement metrics to drive down retroactivity. Key performance indicators that should be published to drive accountability in the procurement process include the number of days for each oversight agency to complete its review and approval, and data on agency’s preparation and finalization of the budget, legal review and approval, etc.

### Publishing Agency Compliance with PPB Rules

Currently, pursuant to PPB § 4-12(a)(ii), agencies wishing to replace, renew, or extend an expiring contract under certain PPB provisions must notify the selected vendor no later than 90 days prior

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<sup>1</sup> According to an analysis by SeaChange Capital Partners, the fiscal impact of Fiscal Year 2017 delays on human service vendors was \$675 million: \$662 million in negative cash flow from delays between contract start date and registration, plus \$13 million in financing costs. The loans generally provide one to three months of contract expenses for rent, utilities, and payroll. In Fiscal Year 2017, the fund made 751 loans totaling \$150 million. Other organizations utilize lines of credit to fund operations.

<sup>2</sup> See New York City Council Intro. No. 2401, introduced by Councilmember Kallos on the September 23, 2021 agenda, discussed during the committee on Contracts Hearing on October 23, 2021.

to the expiration of the contract. Additionally, this section requires agencies wishing to replace a contract by means of a new RFP award to publish a Notice of Solicitation no later than 250 days prior to the expiration of the contracts to be replaced.

With the roll out of PASSPort and promised increase in accessible procurement data as a result, PPB §§ 2-04 and 4-12 should be amended to require recording and publishing of agency compliance with the 90- and 250-day deadlines. Properly tracking agency compliance with PPB rules and deadlines prevents untimely submission of contracts for Comptroller registration and allows MOCS to institute penalties and remediation of these issues.

### Emergency Contract Riders

In the aftermath of an emergency, all too often, the city calls upon the nonprofit sector to perform miracles. The City depends on the sector to provide hands-on recovery services such as the distribution of food and provision of support service to vulnerable communities. The sector always steps up even though their contracts do not automatically allow for the provision of these services and do not contain funding to reimburse vendors.

To address this problem, the City should include comprehensive “emergency contract riders” in all contracts. These riders will allow the City to access services that are needed in emergency situations from existing vendors that have been previously vetted by City agencies. In addition, the City should budget for “emergency contingencies” and include this funding in providers’ contracts so that it is accessible immediately in the event there is a citywide, statewide, or nationally declared emergency. Given the documented increase in the likelihood of climate-based emergencies, we must start planning for emergency services in the normal course of business.

### Prompt Contract Payments

As previously discussed, the slow pace of New York City procurement can cause nonprofit human service vendors to provide service before payments can be issued, making it difficult for these vendors to cover their expenses. Although PPB § 4-06 already allows vendors to receive interest on non-prompt payments, an amendment that ensures interest is paid on late payments under City contracts with nonprofit human service providers is necessary. The amendment should allow agencies to implement a system of electronic invoicing, while requiring them to report dates of receipt and payment of invoices on PASSPort.

To ensure agency compliance, MOCS should be required to make quarterly reports on PASSPort regarding invoice receipt and payment dates, as well as payment on interest. Also, interest payments should be automatically paid to providers through vendors’ human service contracts and not from the programmatic budgets.

### Vendor Pay

#### Cost of Living Adjustment for Human Service Workers

The City should re-introduce a cost of living adjustment (“COLA”) for human service workers. In Fiscal Year 2018, the City introduced a three-year COLA for human services workers. The COLA expired at the end of Fiscal Year 2020 and was not renewed. This left frontline workers

without a COLA increase in the middle of a pandemic. Human service employees dedicate themselves to improving the lives of New Yorkers, yet their wages now remain stagnant.

Anticipating regular wage increases to keep up with cost of living increases is customary for City workers, and the City should do the same for its contracted public sector workforce. COLAs should no longer be the subject of a protracted annual negotiation that is implemented through retroactive contract amendments. The City should amend the standard human services contract to expressly include annual COLAs. This can be modeled after the City's construction or professional services contracts which allow for annual increases to certain titles that are tied to published pay indices, e.g. using the consumer price index (CPI) for escalation.<sup>3</sup>

#### Fair Pay for Human Service Workers

Compensation for those providing human services must be examined and addressed. Human service workers face pervasively low wages despite the fact that they are the ones providing essential services to New Yorkers. The human services workforce is predominantly comprised of women and people of color who are already facing larger issues of pay parity and equity. Low compensation in the sector sometimes means the individuals who are providing critical services are also entitled to receive those services. This inequity must be addressed.

#### **Continued Use of the Technology Solutions - Remote Access to Public Hearings**

PPB § 2-11 should be amended to specifically establish a virtual public hearing option to complement the traditional in-person format using the infrastructure put in place during the COVID-19 pandemic. The clear advantages are increased public access to government, increased transparency in the procurement process, and greater civic engagement.

Thank you for your attention to these critical issues. Our agencies, vendors and New Yorkers deserve on-time, continuous and well-paying contracts which can be achieved through utilization of the technology tools at our disposal such as PASSPort and reform of the rules governing procurement.

Sincerely,



Scott M. Stringer  
New York City Comptroller



Lisa Flores  
Deputy Comptroller for Contracts and Procurement

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<sup>3</sup> See, Strengthening New York City's Nonprofit Human Services Sector, July 22, 2021, accessible here: <https://tcf.org/content/report/strengthening-new-york-citys-nonprofit-human-services-sector/?agreed=1&agreed=1>.