



**Mayor's Office of
Contract Services**

**Testimony of Andrea Glick, City Chief Procurement Officer and Director,
Mayor's Office of Contract Services, Before the New York City Council
Committee on Contracts:
Late Registration of City Contracts**

Bill de Blasio
Mayor

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Good afternoon Chair Rosenthal and members of the Committee on Contracts. I am Andrea Glick, Director of the Mayor's Office of Contract Services (MOCS), and I am here to present the Administration's testimony regarding retroactive contracts. It has been a number of years since we've been called to testify on this issue but it is one that my office is working diligently on in trying to address.

A contract is considered retroactive when the start date occurs before the contract is registered with the Comptroller. The issue of retroactive contracts is not a problem that negatively affects all City contractors. For example, for vendors outside of the human services sector, it is not unusual for vendors to provide services well in advance of billing (i.e. many types of professional services) or they simply wait for registration before incurring any significant costs for the services to be rendered. However, within the human services sector, retroactive contracting may result in cash flow and subsequently service continuity problems for many non-profit vendors who rely on the City's payments for their operations. This is especially true for contracts that continue programs from one year to the next. It is for this reason that MOCS tracks human services contracts retroactivity as a key performance indicator every year.

In Fiscal 2013, City agency performance on this indicator was mixed. Average retroactivity increased to 61 days in Fiscal 2013 compared to 45 days in Fiscal 2012. The number of retroactive contracts also increased to 666 in Fiscal 2013 from 590 in Fiscal 2012. Some of the increase in retroactivity from Fiscal 2012 may be attributed to the effects of super storm Sandy. For example, some of our human services agencies were displaced from their offices for many months and many agencies were focused on other Sandy related issues, like applying for FEMA funds (both for agencies and nonprofits) and assisting many site-specific nonprofits relocate or rebuild. Additionally, another potential cause for the increase may be attributed to the fact that the overall dollar value of human services contracting increased significantly from \$2.9 million in Fiscal 2012 to \$5.4 billion in Fiscal 2013 – mostly in high dollar valued contracts. Larger contracts undergo more scrutiny and process than smaller ones do, which may have added to the increase in retroactivity. However, despite the increase in overall human services procurement, the percentage of overall dollar value of retroactive contracts decreased significantly to 35% in Fiscal 2013 from 55% in Fiscal 2012.

Retroactivity at some of the agencies with large volumes of human services contracts fluctuated in Fiscal 2013. For example, DHS's retroactivity by dollar value significantly decreased from 43% in Fiscal 2012 to just 5% in Fiscal 2013. ACS's retroactivity also decreased from 83% of the dollar value in Fiscal 2012 to 39% in Fiscal 2013. DFTA's total percentage of retroactivity by dollar value increased to 50% in Fiscal 2013 compared to 44% in Fiscal 2012.

While we are concerned with retroactivity, short-term delays (less than 30 days) do not result in payment disruption for vendors and their invoices are timely paid. A more significant indicator than overall retroactivity is the level of "long-term" retroactivity, periods lasting longer than 30 days. Here, the results are also mixed. Long-term retroactivity decreased to 11% by

dollar value in Fiscal 2013 from 12% in the previous year. DFTA and DOHMH were successful in maintaining low levels of long term retroactivity at 3% and 1% respectively. ACS and DHS maintained a steady performance compared to last year and HRA was successful in significantly reducing its long term retroactivity levels down to 7%, which represents an 84% decrease from Fiscal 2012. DYCD's long term retroactivity increased to 40% in Fiscal 2013 from 34% in the previous fiscal year.¹ We continue to work closely with all of the human services agencies, as well as with the Human Services Council and our nonprofit partners, to mitigate and correct late contracting patterns.

It is important to note that the retroactivity data we report only encompasses certain human services contracts, as the goal of the indicator is to improve upon agency action and lateness is not always the result of an agency's acts or omissions. Accordingly, we exclude from our data contracts that are delayed due to reasons outside of agencies' control. For example, we exclude from our retroactivity reports procurements such as: discretionary awards, emergency procurements, required authorized source contracts where the agency may only award to a vendor selected by the State and "atypical" contracts where there are vendor responsibility problems, litigation or investigations that substantially cause the delays. We also exclude contracts where retroactivity does not end up interrupting payment. Those include some programs, most notably in the home care and housekeeping area that are funded by outside sources, like by New York State, where payments continue, even when the contract time frame lapses.

¹ DYCD manages the largest portfolio of human services contract actions – the agency's contract portfolio made up 46% of the City's total human services procurement by dollar value in Fiscal 2013 (up from 44% in Fiscal 2012). Additionally, DYCD experienced a significant increase in overall dollar value related to human services procurement: \$194.5 million in Fiscal 2012 and \$433.5 million in Fiscal 2013. The funding sources for many of DYCD's programs are secured late in the fiscal year and as a result, DYCD has struggled with processing contracts in a timely fashion.

A tool that agencies and MOCS use to monitor and minimize late contract registrations is the Human Services annual plan, as required by Local Law 24 of 2004. The plan, which is posted on MOCS' website and regularly updated, shows the relevant processing milestones and informs providers whether procurements are moving through (or getting stuck in) the pipeline. We use the human services plans as a tracking and management tool, as we endeavor to improve agencies' timeliness.

While it is our goal to have as few retroactive contracts as possible in order to ensure the well-being of our human services providers and the clients they serve, there are many complex variables that contribute towards retroactivity. A significant cause of many delays can be attributed to the agency and OMB budget process, which during times of budget reductions can take extensive time to resolve. Additionally, human services providers may elect to negotiate changes in contract language or terms, including financial terms, which also adds to the time it takes for a contract to be registered.

Additionally, finalizing responsibility determinations may add to delays as well. First, the Vendor Name Checks that are performed by the Department of Investigations and required for contract awards over \$100,0000 may take up to thirty days to complete. Second, VENDEX processing has some impact in delaying some contract registrations. MOCS upgraded the VENDEX system to ensure that the City actually receives the information from vendors that is required by law. MOCS is working to streamline the existing process and implement a paperless, online VENDEX system, although long-term, we believe that the VENDEX law itself should be changed so that it can better target its processing burdens with a risk-based approach. Last year, we worked with the City Council to introduce legislative changes and look forward to continuing our work with you to ensure that such changes are codified. As an example, if the

VENDEX threshold were simply raised to apply to aggregate awards of \$250,000 hundreds of human service contracts would have been able to proceed in a more timely way to registration Fiscal 2013.

In an effort to address VENDEX processing and to expedite the registration of certain contracts, MOCS issued a number of VENDEX waivers allowing qualifying nonprofit vendors to complete VENDEX processing post-registration. Under PPB Rule 2-08, I, as City Chief Procurement Officer, may approve post-registration VENDEX filings for vendors in good standing, based on urgent circumstances. A vendor in good standing is one where the vendor has filed complete VENDEX questionnaires within the statutory three year time-frame and where the agency has enough information, absent new VENDEX filings, to determine that the vendor is responsible. In Fiscal 2013, our office approved 41 requests for VENDEX waivers for human services providers.

The most useful tool the City has to aid nonprofits with delays in contract registration is the City's cash flow loan fund, named the Returnable Grant Fund ("RGF") administered jointly by MOCS and the Fund for the City of New York. The RGF, created in 1992 and greatly expanded in 2009, was designed to assist vendors with short-term cash flow problems resulting from late contract registration to ensure continuity of services. To be eligible for an RGF loan, a vendor must either have a City contract or other funding agreement that is pending registration or it must hold a City contract or other funding agreement entitling it to receive funding from the City's expense budget (not capital funding) if applying for a loan based on another pending funding source – State, Federal or private. In addition, the vendor must demonstrate that it is experiencing a short-term cash flow need. An RGF loan may only be used to pay for salaries, rent and utilities. Fiscal 2013 loan amounts varied in size from \$2,237 to \$2.3 million. In total,

in Fiscal 2013, the RGF made 246 loans to 143 vendors, totaling \$38.8 million, reflecting a 47% increase over the previous year.² Since its inception, the RGF has made over 4,000 interest-free loans, totaling almost \$350 million. We have never had to reject such an applicant based on a shortage of available funds.

The RGF is a resource that is well known to the City's human services providers. Vendors typically learn about the RGF through contracting agencies, as most providers have a relationship with contracting personnel and will inform them of cash flow problems resulting from any delay in registration. MOCS regularly provides contracting agencies with information concerning the RGF either during monthly ACCO or individual agency meetings. MOCS also makes available written information about the RGF to agencies on the internal procurement website "Buy Wise."

MOCS works to get information out to human services vendors directly as well. MOCS administers a website dedicated to non-profit assistance which can be directly accessed by the public via our website that contains detailed information about the RGF as well as the application. Additionally, MOCS' Capacity Building and Oversight (CBO) unit, which reviews and identifies human services vendor needs and provides technical assistance to address those needs, recommends the RGF to vendors that they work with who experience cash-flow problems resulting from late contract registration. Finally, MOCS works with our human services partners, like the Human Services Council, to further get the word out about the RGF to nonprofit vendors.

Another way that the Administration has tried to alleviate the burden for human services providers and speed up contract registration is by easing their administrative burden in the area

² Such an increase in RGF loans in Fiscal 2013 was a result of an increase of additional lending due to ACS' Early Learn procurement. There were 42 loans related to Early Learn totaling \$18.6 million.

of the Division of Labor Services (“DLS”) submissions. Executive Order 50 of 1980 requires that City contractors comply with federal, state and local equal employment opportunity laws and regulations. Prior to a contract award, contractors are required to submit an Employment Report containing information on their employment policies and practices as well as their workforce composition. The DLS submissions were extremely burdensome for many of the non-profit providers that contract with the City and compliance with this requirement added time to the contract registration process. A review of non-profits’ DLS submissions showed extremely low-levels of non-compliance with EEO mandates. Accordingly, in 2011, former Mayor Bloomberg signed Executive Order 159, which amended EO 50 to exempt human services contracts from the DLS submission requirement thereby reducing contract processing times for most human services vendors.

Lastly, another development that will aid in reducing retroactive contracts is Health and Human Services Accelerator (“HHS Accelerator”). It is anticipated that this initiative will simplify and speed the contracting process for client and community based services as it is a web-based procurement system that eliminates redundant paper-based requirements. HHS Accelerator currently has three active components: 1. a citywide data vault; 2. provider prequalification; and 3. the functionality to make competitive human services procurements. The data vault electronically collects all the documents submitted by vendors that are needed for each stage of the contracting process. The documents will be centrally maintained in an electronic manner and city agencies will have instant access to them throughout the procurement process. In addition, HHS Accelerator permits agencies to review providers’ qualifications and capacity prior to the start of the vendor solicitation process and to categorize them based on experience and capacity as well as by criteria specific to service categories, client groups, program size and

location. Prequalification streamlines the vendor selection process, thereby shortening contract processing time. The prequalification function of HHS Accelerator launched in March of 2013. Finally, as of October of 2013, agencies are able to solicit, evaluate and award Request for Proposals electronically through HHS Accelerator which should streamline the contracting process. As an example, the Human Resource Administration issued a proposal on October 31, 2013 and issued award letters to recipients on February 18, 2014 – a speedier process than its paper-based counterpart.

Thank you for the opportunity to testify about these important issues. I look forward to our continued partnership in addressing this problem and I am available to answer any questions you may have.



NEW YORK CITY RETURNABLE GRANT FUND LOAN APPLICATION

About New York City's Returnable Grant Fund (RGF):

The Returnable Grant Fund (RGF) was created in 1992 to help not-for-profit organizations pay for expenses incurred while a City contract was awaiting registration. Since its inception the RGF has made over 3,200 interest-free loans, totaling more than \$200 million. The RGF is administered by the Fund for the City of New York (FCNY) in conjunction with the Mayor's Office of Contract Services (MOCS).

On April 6th 2009 Mayor Bloomberg announced a new initiative to increase loan availability for the next two fiscal years. On July 1st 2009 the RGF was increased by 150%, from \$8 to \$20 million. This enhancement will enable the City to provide loans to additional not-for-profits receiving City funds to assist them during cash flow difficulties.

Application Instruction for Applicants:

To be eligible for an RGF loan, an Applicant must either currently hold a contract or other funding agreement entitling the Applicant to receive funding from the City's expense budget (not capital funding) or must have such a contract or funding agreement pending. In addition, the Applicant must demonstrate that it is experiencing significant difficulty in meeting its operating expenses.

Any Applicant wishing to receive an RGF loan must complete parts 1, 2 and 3 of the attached application. No application for a loan will be approved unless all applicable sections are completed. Applicants must submit the application to the City Agency they are contracting with. Questions should be directed to the contracting agency or to the MOCS Loan Fund Manager, at returnablegrantfund@cityhall.nyc.gov.

Alternatives to New York City RGF:

Not-for-profit organizations that are not eligible for the New York City RGF program may consider the following alternatives:

- 1) FCNY Cash Flow loans: FCNY has a privately funded *Cash Flow Loan Program*, which provides bridge loans to non-profit organizations waiting for committed funds from government and foundations. For more information visit: <http://www.fcny.org/fcny/core/cfl/#cashflow>.
- 2) New York City's Capital Access Revolving Loan Guaranty Program: The Capital Access Revolving Loan Guaranty Program provides assistance to micro and small businesses, including non-profits. Eligible Applicants can receive access to competitively priced loans and a network of small business lenders and guarantee of up to 40% on qualified loans. For more information visit: <http://www.nyc.gov/html/nonprofit/html/credit/credit.shtml>



LOAN APPLICATION FORM PART 1: APPLICANT INFORMATION

Name of Applicant:
Applicant's EIN/TIN:
Agency ID:
<small>If 3-digit Agency code is unknown please contact your authorized City Agency</small>
Authorized Contact Person and Title:
Phone:
Alternate Phone:
Email:
Fax:
Address:



LOAN APPLICATION FORM PART 2: ELIGIBILITY BASIS

Please check all applicable boxes in Category I and Category II. Applicants must meet one of the criteria set forth in Category I and one of the criteria set forth in Category II to be eligible for a loan:

1. **Category I: Applicant holds a current City contract/grant, or is pending receipt of a City contract/grant (i.e., has been so notified by a City agency), funded in the expense budget (not a capital award). Funding for applicants holding current contracts/grants may be ongoing or be expiring with plans in place for continuation. Please check the appropriate box(es) below:**

- ☐ A. Applicant currently receives expense budget (non-capital) City funding.
☐ B. Applicant is pending receipt of new expense budget (non-capital) City funding

For both A and B, please provide, as applicable:

- ☐ Funding agency(ies): _____
- ☐ Contract number(s): _____
- ☐ Grant number(s): _____ (attach Grant letter)
- ☐ Funding agency(ies) notified Applicant of intent to continue funding during next FY:
 - ☐ Yes: Notice date: _____
 - ☐ No

2. **Category II: Applicant has a demonstrated inability to meet its operating expenses for one or more of the following reasons (attach additional sheets as needed):**

- ☐ A. Processing of the City expense-funded contract/grant is delayed for reasons not attributable to Applicant's conduct. Please explain:

- ☐ B. City contract/grant is pending registration/filing by NYC Comptroller.
- ☐ C. Payment under the City contract(s)/grant(s) is delayed for reasons not attributable to Applicant's conduct. Please explain:

- ☐ D. The State or another public or private funder has delayed release of funds to Applicant. Please attach **one** of the following:
 - ☐ Grant letter proving entitlement to funding
 - ☐ Other documentation from the public or private funder that explains the delay *and* explains when funding is anticipated.
- ☐ E. Processing of City capital-funded award is delayed for reasons not attributable to Applicant's conduct, *and* Applicant has advanced costs intended to be funded by such award. Please explain:_____



LOAN APPLICATION FORM PART 3: STATEMENT OF NEED

Amount requested:
Name of City Agency, Grantor, Organization or Foundation (the provider of the delayed funding):
Contract Description:

Please detail the expenses below and their payment dates; attach additional sheets if necessary.

Payroll Expenses	
Payroll Date	Payroll Amount

Other Critical Expenses (rent, insurance, utilities, etc.)		
Expense Date	Type of Expense	Payment Amount

Additional relevant information:

I, _____, hereby affirm that I have been delegated signatory authority by the
(Print Name)
Board of Directors of _____, to enter into contracts/grants with New York City on behalf
(Name of organization)

of the organization and attest that all of the information included herein and attached hereto are true and accurate.

Please attach one of the following:

- ☐ Board resolution authorizing signatory capability on New York City contracts
- ☐ New York City contract signature page

Board Authorized Signature	Print Name and Title	Date
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THIS SECTION TO BE COMPLETED BY THE AUTHORIZING CITY AGENCY

LOAN AMOUNT AUTHORIZED BY CITY AGENCY:	
NAME:	TITLE:
TELEPHONE:	FAX:
SIGNATURE:	DATE:

For all Applications, please provide:

- Applicant's information on current contracts/grant is ☐ correct / ☐ incorrect.
If incorrect, provide correct contract/grant numbers: _____
- The budget codes for each contract/grant are: _____

Based on the Applicant's responses to the questions in Part 2, please attach the documents and/or provide information as indicated below:

1. If the Applicant checked **Category I (A)** please attach:
 - ☐ Notice to Applicant of Agency's plan to continue contract/grant funding during next FY
 - ☐ Signed Responsibility Determination (*for funding continuation, if applicable*)

2. If the Applicant checked **Category I (B)** please attach:
 - ☐ Signed Responsibility Determination

3. If the Applicant checked **Category II (A) or (C)** does Agency consider Applicant's **conduct** to be the **primary** reason accounting for any delays? If so, please explain:

4. If the Applicant checked **Category II (B)** please provide:
 - ☐ Date contract was sent to the Comptroller's office: ____/____/____
 - ☐ OCA #: _____ Contract #: _____

5. If the Applicant checked **Category II (E)** please provide **one** of the following attachments:
 - ☐ Certificate to Proceed (CP)
 - ☐ Written approval from OMB (*in lieu of a CP*)



AGENCY SECTION CONTINUES ON NEXT PAGE

THIS SECTION TO BE COMPLETED BY THE AUTHORIZING CITY AGENCY

Please select **one** of the following recommended repayment plans. Note that this repayment plan may be changed in consultation with the Agency, MOCS and/or FCNY:

- ☐ 90 days for repayment of loan. *This is the suggested time frame for repayment if the Applicant checked Category II (A), (D) or (E)*
- ☐ 60 days for repayment of loan. *This is the suggested time frame for repayment if the Applicant checked Category II (B)*
- ☐ 45 days for repayment of loan. *This is the suggested time frame for repayment if the Applicant checked Category II (C) applies*

If a repayment plan that is not within the suggested time frame has been selected, please explain:

THIS SECTION TO BE COMPLETED BY
THE MAYOR'S OFFICE OF CONTRACT SERVICES

BASED ON THE LOAN FUND REPORT AS OF ____ / ____ / ____ THERE IS \$ _____ AVAILABLE FOR LENDING.	
AGENCY:	
DATE AGENCY SUBMITTED LOAN REQUEST TO MOCS:	
DATE MAYOR'S OFFICE APPROVED LOAN REQUEST:	
AMOUNT AUTHORIZED:	
SIGNATURE:	DATE:





Committee on Contracts

A Day Late and A Dollar Short:

Exploring the Impact of Late Registration of Contracts on City Vendors

February 27, 2014

My name is Michelle Jackson, General Counsel for the Human Services Council of New York. Thank you to Council Member Rosenthal and the Committee on Contracts for holding this hearing on the impact of late contract registration. This issue is of great importance to the nonprofit sector, and I appreciate the opportunity to offer testimony on how the late registration of contracts impacts human services providers.

Since 1991, HSC has been the voice of the human services community. We represent thousands of nonprofit organizations in New York City and we advocate for the needs of the human services sector as a whole. Human service providers can accomplish more for their clients when they work together to increase funding, master complex new regulations, and orchestrate joint technology. HSC provides the structure to make that happen, and has worked closely with the Deputy Mayor for Health and Human Services and the Mayor's Office of Contract Services (MOCS) to improve the procurement and contracting processes.

HSC commends the Mayor's Office of Contract Services for their work in improving the contracting process overall, specifically in their work to increase the timeliness of registering contracts. The City also has a better record of registering contracts than the State; a compliment to the City's efforts to reduce retroactivity. Additionally, HHS Accelerator, which launched in May 2013, is poised to simplify and streamline not only procurement, but the document collection during the contracting process. HSC has worked closely with MOCS and the Deputy Mayor's Office on this issue, and believes it is another way to speed up contract registration.

Unfortunately, City agencies still have a not-insignificant rate of retroactive contracts, both short and long-term, which makes it difficult for nonprofit human services providers to continue to provide services. When a provider is set to commence services on a certain date, or is continuing a program, they cannot wait until the contract is registered to provide services. Particularly when the contract is being extended or renewed, a provider cannot halt a program while waiting for registration, and must therefore continue with their work under the assumption

that the contract will be registered. It is unrealistic for a provider to stop services for months at a time, and any organization that did so would jeopardize its chances of getting contracts in the future. This is problematic because nonprofits often do not have the resources to pay for expenses without being reimbursed for months after the contract starts. Additionally, the provider assumes the risk if, for some reason, the contract ends up not being registered.

The Returnable Grant Fund (RGF) helps nonprofits by providing interest free loans to providers awaiting payment on a City contract. The loan fund is extremely helpful to nonprofits, and also allows them to access the fund with non-City contracts. However, the RGF is a stop-gap measure that requires providers to apply to the loan fund and creates administrative burdens that would not be necessary if contracts were registered in a timely manner. The loan fund is both necessary and appreciated by the nonprofit sector, but should not be seen as the solution to retroactive contracts.

Discretionary awards are another problematic contracting area for human services providers because they are immediately retroactive as part of the City budget process. Additionally, some awards decisions are not made until months after the City budget has been finalized, leaving providers unsure of whether they will even get an award. MOCS has made great strides to speed up the registration of discretionary awards, but are limited by when the awards are made and when the contract is set to begin. HSC suggests that discretionary award contracts start at a date later than July 1, so that contracts can be registered without being retroactive. Contracts could then run on a twelve month cycle off the City fiscal year.

VENDEX reform would also relieve many of the delays associated with contract registration. Raising the threshold from \$100,000 to \$250,000 would mean that many smaller vendors - including many nonprofits - would not have to complete VENDEX, easing burdens on both nonprofits and City contracting agencies. Substituting the VENDEX for the IRS 990 would also streamline the process for nonprofits and still provide the City with necessary information to prevent fraud. VENDEX is a significant burden on nonprofits, contracting agencies, and the Mayor's Office of Contract Services. Reform in this area would not only streamline the process and remove a hurdle to registration, but free up staff on all sides to devote time to contract registration.

Thank you again for providing this opportunity to testify on late contract registration and how it impacts nonprofit human service providers. If I may provide anything further, please contact me at (212) 836-1588 / jacksonm@humanservicescouncil.org.

February 27, 2014

**Testimony from the Dominican Women's Development Center on: Exploring the Impact of
Late Registration of Contracts on City Vendors**

RE: DoVE (Domestic Violence Empowerment) Initiative

Who We Are:

Thanks for your time, my name is Karina Aybar-Jacobs and I am the program Director for the Nuevo Amanecer/New Dawn Anti-Domestic Violence Program from the Dominican Women's Development Center (DWDC), a non-profit multi-services agency based in the Washington Heights area of northern Manhattan. DWDC is strongly committed to the organizing of women and their families, to actively participate in the elimination of gender inequality and the promotion of social justice through multicultural and holistic social services since 1988.

Through the "Nuevo Amanecer" Program, the DWDC has continued to provide direct services to victims of domestic violence throughout the city, such as crisis intervention, a 24-hour hotline, individual and group counseling, information & referrals, advocacy, support groups, outreach and educational workshops.

Importance of the City Council's DoVE Initiative:

DoVE funding is essential in order to provide our community with a 24 hours hotline, where we provide crisis intervention, information & referrals and advocacy. Our Nuevo Amanecer program is the only Anti-domestic violence program with a 24 hour hotline, in the upper Manhattan area. In addition, the Dove funds allow us to provide much needed outreach efforts and workshops to prevent the alarming epidemic of domestic violence, and intimate partner violence in our communities. Because of the Dove funds, we are able to reach out to

approximately 1000 women every year, men and youth from our communities. For instance, the Dove funds allow us to provide outreach efforts and workshops throughout the community such as schools, beauty parlors, churches, clinics, health centers, among other entities.

Accountability with contracts:

The discretionary funds received by our organization, are administered by government agencies such as the Criminal Justice Coordinator (CJC), and the Department of Youth and Community Services (DYCD). Nonprofits that are awarded discretionary funds have to comply with existing oversight government procedures, such as being in good standing (Vendex), programmatic and fiscal monthly and quarterly reporting, audits, reviews of agency policies and procedures, among other demands. Very often, more demands are put on non-profits such as DWDC, to work more efficiently and effectively, despite the fact that we are already providing quality services without timely or adequate reimbursement by the City. The following is an example of the unacceptable tardiness we are faced with, when dealing with city contracts:

In terms of DOVE; payments were received in the following dates for the following fiscal years:

<u>Fiscal Year</u>	<u>Date Payment received</u>	<u>lateness after program commencement</u>
7/1/09 – 6/30/10	September 9, 2011	15
7/1/10 –6/30/11	July 30, 2012	13
7/1/12–6/30/13	August 27, 2013	14

As you can see we have been receiving payments more than a year after we have started providing services; this means that we have to upfront the money for a full year before we get reimbursed by the government through the Criminal Justice Coordinator (CJC), the conduit agency; we have similar levels of lateness with some of our contracts with DYCD; this is

UNACCEPTABLE and it MUST STOP. We cannot ~~longer~~ tolerate this level of lateness and incompetency from our government agencies.

As non-profits we are held to high standards of accountability, thus, government agencies and employees that are paid with our tax monies must be held to the same standards! We cannot ~~longer~~ accept the excuse that payments are received late because CJC is understaffed. We have multiple contracts, limited credit lines, and many financial obligations including making timely payroll payments to our hard working front line staff, bills to pay, etc. and such actions demoralize our non-profit organizations, and greatly affect the overall health of our organization.

Recommendations:

It is imperative that non-profits and the government agencies continue to work in collaboration, in order to effectively meet the needs of underserved populations, such as survivors of violence and their children. Therefore, we propose the following suggestions:

- Increase in staffing at CJC.
- Improvement in the allocation and contracting process used by city agencies in order to disburse funding in a timely manner.
- Advance payments to operate during the fiscal year.

Thank you for the opportunity to testify and share our recommendations.



FUND FOR THE CITY OF NEW YORK

**Testimony Before the City Council Committee on Contracts
“Exploring the Impact of Late Registration of Contracts on City Vendors”
February 27, 2014**

Good Morning. My name is Mary McCormick and I am the President of the Fund for the City of New York. I am joined by my colleagues, Jill Borrero, Vice President for Operations, and Andrew Walrond, Director of the Fund’s Cash Flow Loan Program.

I would like to thank you Chairman Rosenthal and the other Members of the Committee on Contracts for holding this hearing and providing us the opportunity to speak on this important question.

The Fund for the City of New York appears at this hearing in two capacities, having been involved with contracting and cash flow issues of New York City’s nonprofits for almost four decades. What I would like to do is to provide a brief overview of the issues followed by a discussion the Fund’s experience as a recipient of city contracts for our Partner Projects—we currently have contracts with 16 different City agencies. This will be followed by a discussion of our experience and perspective as a lender providing bridge financing to nonprofits against late registrations and delayed payments on government contracts. Last year the Fund lent \$93 million to more than 300 unique organizations in cash flow loans.

I would like to begin by recognizing the important role that nonprofits play in providing services and contributing to healthy families and communities. It is important to remember that many nonprofits have been created or increased in size in direct response to the City’s need for them to provide services. Some of these services are ones that the City used to provide directly itself. The City decided to

"privatize" them by having nonprofits deliver them as way to reduce overall costs and to avoid the controversies that arise over the siting of facilities in neighborhood.

As a result, many of the City's nonprofits are integral components of the City government's service delivery system, providing needed services such as housing for the mentally ill, after-school programs, care for the elderly, alternatives to incarceration for young offenders, and, at we are currently witnessing, opening new pre-K classrooms. This interdependent relationship is seen clearly in the fact that today New York City contracts for over \$18 billion dollars' worth of services to be provided by nonprofits.

As essential as these nonprofit organizations are, they operate under many constraints. Sometimes they receive insufficient resources for what they are being asked to do; their legitimate administrative overhead needs are rarely fully recognized; and they are often asked to begin new programs or end old programs with not enough time to plan. These and other challenges are not the subject of today's hearing. But, exacerbating the overall situation of many nonprofits is what is being discussed today: the delay in the registration of their city contracts. This situation puts nonprofits in the position of having to provide services from the start date of the contract—hire staff, buy supplies, meet payroll, lease space and then wait often months to receive any payment.

For small and mid-sized community-based nonprofits, the lag between the time they are contractually required to provide services and the time they begin to receive payment creates severe hardships for them in terms of time, staff morale and money. The leadership and staff experience stress and anxiety, particularly in terms of worrying about their ability to meet payroll; staff time that should go to service provision is spent in trying to track down the status of the contract; and often hours are used up trying

to find loans, and if successful, the nonprofit must pay high costs in interest, for which the organization has no designated revenues.

The Fund is very familiar with these circumstances from two perspectives: the first as a recipient of government contracts and the second as the provider of bridge financing to nonprofits to cover delayed payments on registered contracts and to provide contract advances before contracts are registered at the Comptroller's Office.

I would like to start first with the Fund's experience as a recipient of government contracts. Last year, the Fund's Partner Projects had contracts with 16 different City agencies; 8 different State agencies; and 4 Federal agencies. Because of delayed registrations and delayed payments, in any given month the Fund had to find between \$4 and \$8 million to pay for expenses that were incurred, but not yet reimbursed for by the contracting agency.

We currently have 11 Partner Projects that have government contracts, ranging from an organization with a \$3,500 City Council Discretionary grant to the organization with 16 government contracts: Center on Court Innovation (CCI), which is a leader in the country in the design and implementation of problem-solving courts. (Among its projects are Midtown Community Court, the Red Hook Justice Center, the Bronx Juvenile Accountability Court, Crown Heights Community Mediation Center, and the Harlem Community Justice Center.)

CCI has contracts with 8 City agencies: NYC Administration for Children's Services, NYC Office of the Mayor/Office of the Criminal Justice Coordinator, NYC Department of Youth and Community Development, NYC Economic Development Corporation, NYC Department of Health and Mental Hygiene, NYC Human Resources Administration, NYC Department of Probation, NYC Department of Education.

Contracts with four State agencies: Office of Children and Family Services, NYS Unified Court System, NYS Division of Criminal Justice Services, NYS Office of Mental Health.

Finally, contract with two federal agencies: the US Department of Justice and the US Department of State.

And while the Fund has a talented and sophisticated staff to manage these contracts and do things correctly, and while our staff works with equally talented and committed employees, CCI's monthly cash flow shortfall ranges between \$3 million and \$7 million. I would like to describe one situation of a contract that went unregistered for 18 months that involved CCI and one other Partner Project and totaled more than \$1 million.

In the summer of 2012, the City Council launched a new initiative—Cure Violence—to reduce violence in selected neighborhoods, with the contracts to be administered by NYC Department of Health and Mental Hygiene. The contract start date was July 1, 2012 and that is when the work started. The two organizations hired staffs, purchased necessary equipment, and leased space. It was not until almost a year later—June 2013—when there was a contract to be signed and then it was not registered with the Comptroller's Office until December 2013. Payment was received in January 2014.

In addition to these first hand examples, the Fund is even more familiar with the issue through the various programs we have created to provide bridge financing to nonprofits who are waiting for payment or contracts to be signed. The issue is one of longstanding.

The Fund was created by the Ford Foundation in 1968 to improve the quality of life for New Yorkers by improving the functioning of government and nonprofit organizations. It was only eight years after the Fund was created, in the administration of Abraham D. Beame, that in 1976—38 years ago— the Fund created its first loan program to respond to the bridge financing needs of nonprofits. Since then the

Fund has created five other programs and has lent a total of \$650 million in 11,500 loans with a default rate of one-quarter of one percent. From the beginning, the Fund decided not to charge interest on these loans—because nonprofits do not have an income stream to cover the interest—and to minimize any fees. This action has saved nonprofits at least \$50 million in interest at today's rates.

Each year since the Cash Flow Loan Program's inception, the lending has increased. Last year, the Fund lent a record \$93 million, making 558 cash flow loans to 300 unique organizations. These organizations received contracts from 14 different City agencies, 9 state agencies, and a handful of federal agencies, foundations and other organizations. \$13 million of the \$93 million were loans made through the Fund's Regular Loan Program, the program established in 1976. Its purpose then and now is to make loans to a nonprofit once its contract has been registered with the City of State Comptroller. Once it is registered, the Fund will advance up to 80 of the pending receivable or in some cases, the value of the contract.

To give but one example, in November of 2012, Baily House, which provides housing and services for individuals who are infected and affected with HIV/AIDS, had a signed contract with the Human Resources Administration and was waiting for payment of \$350,000 of invoices they had submitted—for July, August and September. HRA was reviewing the invoices and Bailey House was concerned it would not be able to meet payroll. They received a loan of \$260,000, which they repaid in June 2013. Some groups, such as Friends of Island Academy, may require two, three, or even four cash flow loans in the course of the year, if they have few reserves and no access to working capital.

While the Regular Loan Program met a critical need, it did not address the issue of how to help nonprofits whose contracts were not yet registered. As the City turned over the delivery of an increasing number of services to nonprofits that it used to provide directly itself, the contracting process became

more complex and the wait for a contract to be considered within a City agency and then sent to the Comptroller's Office became longer. In the summer of 1991, this problem that was particularly visible for the Department of Youth Services' Summer Employment Program contracts. That year, many summer youth programs were over before the contract ever reached the Comptroller's Office. The nonprofits had to front money for staff, equipment and stipends and some programs failed because the nonprofit did not have the capacity to find the money needed. And, the city's newspapers reported on this on a seemingly daily basis.

Spurred on by this crisis, the Fund began to work with the Dinkins Administration, the Department of Youth Services and the Office of Management and Budget to find a solution. The result was the Returnable Grant Program (RGF) which began in the summer of 1992, with a pool of \$4 million. RGF was designed to advance contract payments to nonprofits with Department of Youth Services and Department of Employment contracts, before the contracts had reached the Comptroller's office. These contract advances were and are typically the equivalent of two or more months of expenses. The process is simple: the contracting agency and MOCS decide when in the contracting process when the contract is still at the agency it is appropriate for a nonprofit to receive a RGF loan. Once the Agency and MOCS approve an RGF loan, the Mayor's Office of Contract Services informs the Fund, and the Fund makes the loan within one or two days.

Because RGF was so successful in meeting the needs of nonprofits whose contracts were delayed in being registered, the program was expanded several times. The program now includes the contracts of all mayoral agencies and the Department of Education. The initial \$4 million loan pool was increased to \$8 million in 1994 and then again from \$8 million to \$20 million in 2009. Since then, the \$20 million Loan Pool results in about \$35 million of no-cost loans annually.

From time to time, the Fund has raised Loan Capital for special needs. In the fall of 2012, all the Returnable Grant Fund monies were lent and there was a critical need for loans for child care agencies that were receiving contracts from ACS, discretionary awards from the City Council, or both for the new Early Learn Program. Because of challenges in implementing ACS's new Early Learn Program, three months had gone by without contractors receiving any money on their contracts, which began July 1, 2012, creating cash flow crises for many child care providers. At the request of the Director of Finance of the New York City Council, the Fund privately raised \$20 million and over a five-month period, made \$25.5 million in loans to child care agencies participating in the Early Learn Program.

The second set of special circumstances occurred in the aftermath of Hurricane Sandy, when, the Mayor's Fund to Advance New York City and the Fund for the City of New York, raised \$14 million to make capital loans to repair the buildings of nonprofits that provided services in the areas most affected by the storm. The majority of these loans was made against expected FEMA awards and is due by December 2015.

While this committee is at a fact-finding stage, we would like to make two recommendations for immediate action to consider in further reducing the impact of Late Registration of Contracts for New York Nonprofits. Both concern the Returnable Grant Fund.

The first recommendation is to have MOCS and city contracting agencies more fully utilize the current loan pool of \$20 million by making it a priority that at least \$15 million is out in loans at any one time. The nature of contracting process is indeed a cyclical one, but there are periods when the loan capital is not being sufficiently used. This can be accomplished by:

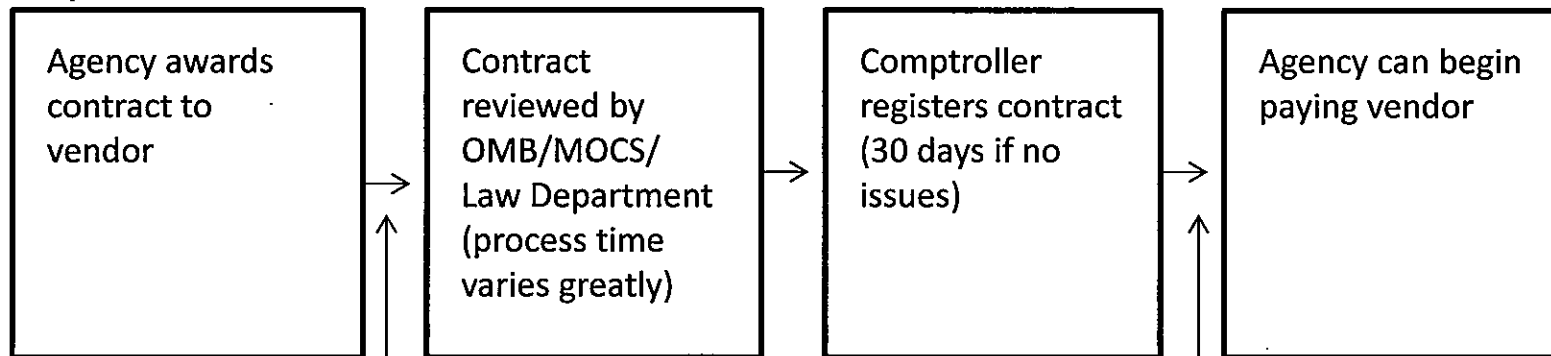
- Increasing the size of the loans
- Increasing the number of second loans when there is a delay
- Continuous training and education for agency ACCOs and their staff to ensure that they are aware of the available of RGF loans and are forwarding nonprofits whose contracts would qualify.

The second recommendation is to increase the RGF loan pool immediately in anticipation of the need for both operating and capital loans that is likely to arise this summer and fall in the process of the implementing of the Administration's new Pre-K program. Many of the nonprofits that have indicated they want to participate in this program do not have lines of credit or the working capital that they need. For both the City and the nonprofit organizations to know in advance that loans funds will be available at no cost will eliminate at least one concern to a smooth roll out of the program.

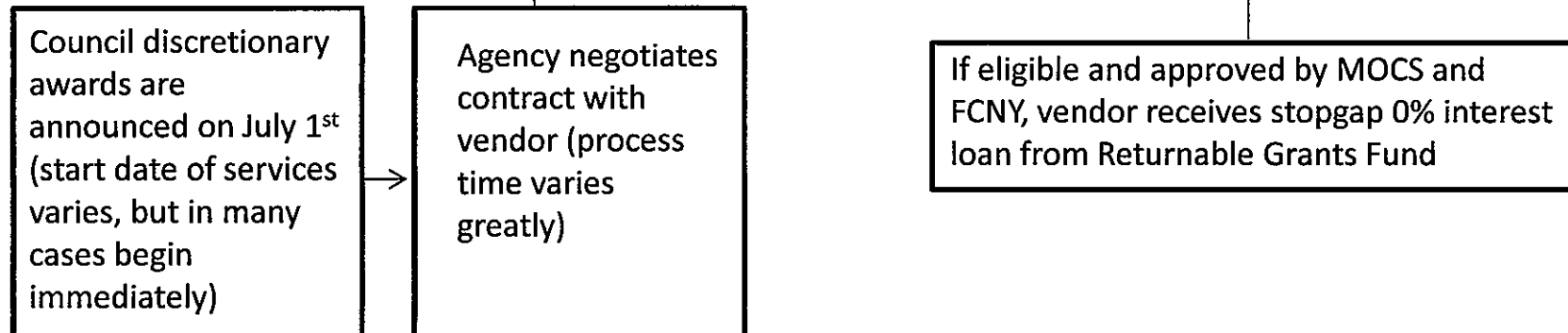
In conclusion, I want to say thank you for holding this hearing. We look forward to working with you as you play a leadership role in improving the contracting and payment process for New York City's nonprofits.

Contracting Process

Agency Award Process



Council Discretionary Award Process



Testimony by New York Legal Assistance Group (NYLAG)

**Before the New York City Council,
Committee on Contracts:**

Exploring the Impact of Late Registration of Contracts on City Vendors

February 27, 2013

Chairman Helen Rosenthal, Council Members, and staff, good afternoon and thank you for the opportunity to speak about the City Council's rules. My name is Yisroel Schulman and I am the President and Attorney-in-Charge of the New York Legal Assistance Group, a nonprofit dedicated to providing free civil legal services to low-income New Yorkers. NYLAG's range of service areas includes immigration, family law, eviction and foreclosure prevention, health care and home care, employment rights, consumer protection, access to public benefits and special education services, and disaster relief.

I am testifying today on the issue of late contract registration. Because of its enormous size and scope of power, it is not surprising that the City of New York contracts with thousands of private companies in order to best serve its citizens. In addition to large for-profit corporations, the City is increasingly relying on nonprofit entities to contract services, as these organizations have the expertise and ability to serve their specific communities. NYLAG, for example, contracts extensively with the New York City Department of Youth & Community Development (DYCD) to provide immigration, domestic violence and other legal services to low-income New Yorkers throughout the five boroughs. This year alone, NYLAG has five contracts and two subcontracts with DYCD. These contracts amount to several hundred thousand dollars in funding that enables NYLAG to provide these important legal services to New Yorkers in need. We are incredibly grateful to the City for providing this funding and for having the confidence in NYLAG's services to continue contracting with us over several years. We are

proud of our relationship with DYCD and the other City agencies with whom we contract. We have, however, often been affected by the slow speed of registration of these City contracts.

Once a nonprofit wins a competitive Request for Proposals (RFP) process and is awarded a contract, the organization must fill out an enormous amount of paperwork, including program documents and standard contract documents. Once these documents are completed, the contract moves to the Office of the Comptroller, where all contracts are evaluated and registered. Unfortunately, once the contract documents are submitted to the Comptroller's Office, the nonprofit is given little or no information on where the contract is in the process and when the contract is expected to be registered. For large contracts, the process often takes several months. On occasion, for NYLAG, the contract approval has been received after the end date of the contract. In fact, we have one contract with the New York City Department of Design and Construction for Fiscal Year 2011 that was just executed in February 2014, nearly three years after the contract was awarded. This very slow process can make getting the correct staffing and apparatus in place for executing the contract nearly impossible. This also makes program numbers and outcomes, which often seem attainable when the contract is first awarded, very difficult to reach.

Even NYLAG, a relatively large organization with assets, has had trouble with funding due to late contract registration. Most nonprofits are much smaller, often with budgets under six figures and less than a dozen employees. These small nonprofits are very connected to their communities and this is why the City contracts with them; they are able to reach those low-income New Yorkers who would not be helped otherwise. Without an idea of when the funding will be received, many of these nonprofits are simply unable to front the money in advance while not being reimbursed for months – or even years – after the expenses are incurred. This puts enormous strain on an agency's cash flow, especially for those agencies that rely on City contracts for the majority of their funding. This can lead to crisis situations for these smaller organizations, as they must decide between terminating staff, taking out lines of credit or simply not contracting with the City. The current contracting process can and should be considered discriminatory against smaller agencies who cannot afford to front the full costs of their programs while

waiting to be reimbursed by the City. Systematic late contract registration means that only the agencies with the largest unrestricted cash reserves can risk accepting City contracts.

NYLAG urges the City Council and the Comptroller's Office to examine and revise their internal protocols to reduce the wait period for contract registration, increase transparency regarding the steps toward contract approval, and consider other means to expedite payment to nonprofits contracting with City.

Respectfully submitted,

Yisroel Schulman, Esq.

President & Attorney-in-Charge

New York Legal Assistance Group

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I represent: Mayor's office of Contract Services

Address: 253 Broadway, 9th Floor New York, NY 10007

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Name: Andrew Walrand

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I represent: Fund for the City of New York

Address: 121 Avenue of the Americas, 6th NY, NY 10013

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Address: 114 Washington Ave

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Address: 121 Avenue of the Americas NY NY

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Name: Jill Borvevo

Address: 163 Ocean Ave #1N Brooklyn NY 11225

I represent: Fund for City of New York

Address: 121 6th Ave. New York, NY

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Name: MARY M. CORMICK

Address: 1 West St

I represent: Fund for City of NY

Address: 121 Sixth Ave NY NY 10014

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Name: Karina Aybar - Jacobs

Address: _____

I represent: DWDC (DOMINICAN Women's Development Center)

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Name: TEROME E. McELROY
Address: 52 DUANE ST. - NYC CRIMINAL JUSTICE AG.
I represent: NYC CRIMINAL JUSTICE AGENCY
Address: 52 DUANE ST. - NY. 10007

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Address: 620 Lenox Ave #1011 NY NY 10037
I represent: Human Services Council
Address: 130 East 50th St NY NY 10022

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