



**Michael R.
Bloomberg**
Mayor

**Testimony of Andrea Glick, City Chief Procurement Officer
Before the City Council
Committee on Contracts**

Andrea Glick
City Chief
Procurement Officer
and Director of
Contract Services

**Oversight: Exploring the City's Use of Emergency Procurement
and
Int. 193 of 2010: A Local Law to amend the New York City charter to
require notification to the Council of emergency procurements.**

January 28, 2013

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Good afternoon Chair Mealy and members of the Contracts Committee.
I am Andrea Glick, Director of the Mayor's Office of Contract Services (MOCS). I am pleased to be here to discuss the City's Emergency Procurement process as well as Int. 193 of 2010.

Background

City contracts are awarded using the vendor selection methods pursuant to rules established by the City's Procurement Policy Board ("PPB"). The majority of contracts are awarded to vendors selected by competitive sealed bids and proposals. In FY 2012, 37% of new procurements were awarded by competitive sealed bids and 27% by competitive sealed proposals. These methods are all governed by State laws, the City Charter and the PPB Rules. All of these procurement methods consist of multiple steps that take time – some can take many months from solicitation to award, depending on which method is used and how complex the good or service to be procured.



When an emergency situation arises which poses an unforeseen danger to life, safety and property it is often not practicable to procure necessary services through a competitive sealed bid or proposal process. Accordingly, the City Charter and PPB rules allow the City to procure goods, services and construction through an emergency procurement with as much competition as practicable under the circumstances in cases of “unforeseen danger to life, safety, property or a necessary service.” The emergency procurement process is much simpler and requires less of a process to afford the City the capability to procure the necessary good or service to meet the emergent need. Before pursuing an emergency procurement, per PPB Rule 3-06, an agency is required to obtain approvals for emergency declarations from both the Comptroller and the Law Department and abide by notice requirements for awards.

Emergency Procurement Process

Once an agency identifies an emergency condition, or one that is imminent, and makes a determination that the solution to address the emergency cannot be met through the normal procurement processes, the agency requests approval from the Comptroller and Law Department via phone call or email. The agency provides specific information to the Comptroller and the Law Department including: the date the emergency occurred; the reason why this emergency poses a threat to life, property or safety; the goods and/or services that need to be procured; the approximate dollar amount; the name of the vendor or vendors to be solicited, if known; and how the agency will procure the services, including how the agency will find vendors. The Law Department and the Comptroller will give the initial approval via



telephone or email and the agency may begin the process of purchasing the goods or services needed. The selected vendor may provide the goods or services as soon as the agency notifies them that they have received the award. The agency will then submit a written declaration of emergency as soon as practicable to both the Comptroller and the Law Department and they, in turn, will each provide written approvals of the declaration to the agency.

Once the procurement is completed, the agency will register the contract with the Comptroller and provide the information required by the PPB rules, which include: (i) the date that the emergency was first identified; (ii) a list of goods, services or construction that needs to be procured; (iii) names of all the vendors solicited; (iv) the basis for vendor selection; (v) the proposed contract price; (vi) past performance history of the selected vendor; (vii) a listing of prior/related emergency contracts; and (viii) a PIN number associated with the procurement. An agency must also perform a responsibility check to ensure that the potential vendor has the required business integrity and capacity to perform the work prior to award, though VENDEX, if required, must still be filed within 30 days after contract registration. Per the Charter and the PPB rules, an agency must publish a Notice of Award in the City Record within fifteen calendar days after contract registration for all emergency contracts exceeding the small purchase threshold. The notice includes the procurement details including the agency name, dollar amount of the contract, pin number, vendor name and address, description of goods or services, summary of the emergency, and a justification for selecting this method of procurement.

As I described, MOCS does not play a role in the approval of emergency procurements – that is a joint function strictly for the Comptroller and the Law Department. Though we may get copies of some emergency declarations directly from the agencies, there is no requirement that we receive all of them.



However, MOCS helps to facilitate the process. For example, we provide regular trainings to agencies on the emergency procurement process. We also provide technical assistance to agency contracting personnel who may have specific questions or concerns about what to include in an emergency declaration. After emergency contracts are registered, MOCS includes the data in our Annual Procurement Indicators Report. As reported in our most recent Indicators Report, emergency procurements represent a very small percentage of the City's procurement expenditures. Only 0.6% and 0.5% of the City's procurements were made as emergency procurements in FY 2012 and FY 2011 respectively.

P-Card

Another procurement resource for an agency in an emergency is the "Purchasing Card" or "P-Card." A P-Card is a credit card issued to certain agency contracting personnel to facilitate the quick processing of micropurchases (those purchases valued under \$5,000). Per the PPB, micropurchases do not require competition as long as contracting personnel determine that the price is reasonable, that the vendor is responsible and that purchases are distributed appropriately among responsible vendors. As the P-Card is meant to assist with micropurchases, there is normally a \$5,000 per transaction limit. The use of the P-Card saves the City money: it reduces administrative costs by streamlining the micropurchase process but most notably, the City receives a rebate on purchases made using the P-Card. For example, in Fiscal 2012, the City received \$114,479 in rebates from use of P-Cards, which is an increase from \$87,278 in Fiscal 2011. Use of the P-Card also provides financial controls, oversight and transparency. An online card management system assists in monitoring and managing card usage, quickly identifies purchases that



have been declined and displays real-time information about authorized transactions. The Department of Citywide Administrative Services (“DCAS”) administers the program by providing technical assistance in fraud prevention and conducting regular audits of P-Card transactions to ensure purchases are consistent with an agency’s expected usage.

To assist agencies with purchasing emergency services and goods, once an emergency situation is determined on the scale of Hurricane Irene for example, the City’s P-Card administrator, with joint approval from the Comptroller, MOCS and the Law Department, allows for a temporary increase in the \$5,000 per transaction limit for P-card purchases. The higher limit provides agencies greater flexibility and speed in purchasing goods and services. During both Irene and Sandy hurricanes, the limit was raised to \$10,000.

In FY 2012, eight agencies (Department of Environmental Protection, Department of Homeless Services, Department of Buildings, Department of Health and Mental Health, Department of Transportation, Department of Sanitation, Office of Emergency Management, and the Department of Parks and Recreation) used P-Cards to purchase nearly \$157,000 of goods and services related to Hurricane Irene. These agencies purchased items included: personal protection equipment for staff responding to flooding; disinfectants and detergents for cleaning airbeds; and blankets used at hurricane evacuation centers. P-Cards allowed agencies to make purchases quickly, avoiding delay of response and remediation efforts by City staff.

Planning for Emergencies

Agencies plan their procurements around their programmatic needs. Though the type and scale of emergencies can never be predicted, and thereby planned for, City agencies may already have tools that can be used to address the unexpected. In fact, the PPB rules require agencies to look through their contract portfolios to see if they can utilize existing contracts to address needs brought on by an emergency before making an emergency procurement. For example, agencies enter into requirements contracts,¹ which allow agencies more flexibility to determine the quantity of work it will contract out in a given term. Agencies can use as little or as much of a contract (up until a maximum amount) depending on the need. For example, after Hurricane Irene, DPR used three existing contracts for tree removal, tree pruning, wood debris clearing and chipping, spending over \$4.9 million in services from pre-existing contracts to address conditions that resulted from that emergency. Additionally, contractors working for DDC removed and disposed of uprooted tree stumps, repaired broken sidewalks, and planted replacement trees supplied by DPR's requirements contracts for trees. Though these types of contracts are helpful in addressing some emergency needs and agencies use them as much as possible, the contracts already in place may not have enough capacity to address all the needs. When existing contracts are not sufficient, the use of emergency procurement is necessary.

¹ Requirements contracts are contracts entered into by a City agency with a vendor that agrees to supply the City's entire requirement for a particular good or service.



Hurricane Sandy

As you all know, Super Storm Sandy was an unprecedented storm that took the lives of many New Yorkers and caused billions of dollars in damage to property. New York City did its best to prepare for the storm - as you have learned from the hearings you are holding on the subject. On the procurement end, in the days before Hurricane Sandy hit, MOCS worked with the Comptroller's office to increase agencies' P-Card spending limit. We also provided agencies with materials explaining the emergency procurement process as a refresher for contracting personnel. Immediately after the storm, MOCS provided technical assistance to agencies regarding the emergency procurement process and worked with the agencies on their emergency contracts as needed.

As Sandy only recently happened, many of the emergency procurements that have been approved have not yet been registered with the Comptroller. This means that we do not yet have complete data on how much the City will have spent on Sandy-related emergency procurements. However, we have worked very closely with the Comptroller's staff since the storm hit to ensure that those who were most severely impacted by the storm had the services they need. I would like to thank the Comptroller and his team for working with the City to expedite procurements that have enabled neighborhoods to be cleaned up, debris and downed trees to be removed, and many other services. In particular, the Comptroller worked with the City on the Rapid Repairs procurement, which has already helped more than 13,000 families in 8,000 buildings return to their homes. As of today, \$207 million of emergency procurements have been registered since the storm hit. As time goes by and more contracts get registered, we will have a complete picture of how much the City spent on Sandy-related emergency procurement and can provide you that information at a later point. Additionally, to date, the Law Department and the Comptroller have



approved approximately \$888 million of emergency procurements associated with Hurricane Sandy. Please note that this figure is only an authorized spending amount based on the best available estimate at the time the procurement is made; it does not indicate how much City agencies have spent or will spend. In some cases, agencies may need more funding authority to complete an emergency task; in others, the authorized amount may be more than is needed to do the work.

Int. 193 of 2010

Int. 193 of 2010 requires notification to the Council on emergency procurements that are approved by the Comptroller and the Law Department. The Administration supports the goal of Int. 193: notifying the Council of such approvals. Given that emergency procurements must be executed in an expedited manner in order to address “unforeseen danger to life, safety and property,” we would not be able to support a bill that would require any additional steps before receiving such approvals. However, we would be happy to work with the Council on language to ensure that it receives notification of emergency procurements without affecting the ability for agencies to obtain the necessary approvals as quickly as possible.

I am available to answer any questions the Committee may have at this time.



OFFICE OF THE NEW YORK CITY COMPTROLLER

TESTIMONY BY

JOHN C. LIU

NEW YORK CITY COMPTROLLER

Written Testimony in Support of Int. No. 193

January 28, 2013

NEW YORK CITY COMPTROLLER JOHN C. LIU

As the Comptroller of the City of New York I thank you for the opportunity to offer written comments in support of Int. No. 193, a bill that would require notification of emergency procurements to the New York City Council. Unfortunately, today I am in Albany providing budget testimony but I would like to thank Council Member Helen Foster for introducing this common sense piece of legislation as well as Chairperson Mealy and members of the Committee on Contracts.

New York City Charter §315, entitled "Emergency Procurement" provides an exception in the case of unforeseen danger to life, safety, property or a necessary service, to the general procurement procedures outlined in the rest of New York City Charter Chapter 13. Before an emergency procurement may be made, the agency seeking such procurement must obtain the prior approval of an emergency declaration from the Comptroller and Corporation Counsel. The approval of the emergency declaration allows the agency to proceed with the emergency procurement.

Int. No. 193 will create additional transparency in the emergency procurement process. Under this bill, agencies not only have to obtain prior approval from my office and Corporation Counsel, but they would also have to notify the City Council, the legislative body charged by the City Charter with overseeing these agencies.

In 2012, my office registered 101 emergency contracts. We understand the importance and need for emergency procurement, and we also understand that agencies are sometimes met with unexpected events that force them to use an expedited procurement method for goods and services.

However, the use of emergency procurements should be reserved for true emergencies and not used as a substitute for planning for an agency's needs. After Superstorm Sandy my office approved two Declarations of Emergency for the Department of Homeless Services ("DHS") for various services related to the aftermath of the storm. However, prior to the storm and since 2010, DHS has submitted five other Declarations of Emergency in which they requested 6,109 beds for homeless individuals.

Out of concern for the number of Emergency Declarations, this past August my Deputy Comptroller for Contracts, wrote a letter to DHS Commissioner Seth Diamond requesting that he institute a better mechanism for projecting New York City's need for homeless shelters and services instead of constantly submitting Declarations of Emergencies. This letter is attached for your reference and for the record.

Emergency procurements by their expedited nature are less transparent. They bypass many of the oversight, notice and public review requirements of other methods of procurement. If misused, emergency procurements can relieve agencies of the responsibility to properly plan and budget for goods and services. Because emergency procurements result in a truncated and accelerated procurement process, taxpayers may also not be getting the best value of their tax dollars. For all of these reasons, my office welcomes the additional transparency.

Thank you again for this opportunity to express support for Int. No. 193, a bill to amend the New York City Charter to require notification to the City Council of emergency procurements.



Geneith Turnbull
DEPUTY COMPTROLLER

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
JOHN C. LIU

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August 21, 2012.

Honorable Seth Diamond
Commissioner
Department of Homeless Services
33 Beaver Street, 17th Floor
New York, New York 10004

RE: Use of Emergency Procurement Process in order to Acquire Shelter Services for the Homeless Population of New York City

Dear Commissioner Diamond:

Pursuant to New York City Charter Section 315 and Section 3-06 of the New York City Procurement Policy Board Rules, the Department of Homeless Services ("DHS") has requested this Office's approval to procure approximately 3,920 shelter beds for single homeless adults, adult families and homeless families with children through various Declarations of Emergency since January of 2010. We are concerned that DHS' emergency requests over this period of time are an indication that DHS does not have an adequate mechanism in place for projecting the City of New York's needs for homeless shelters and services.

While we understand that it is difficult for DHS to predict with complete accuracy how many clients will enter the system at any given time in the future, it appears that the current methodology employed by DHS is critically flawed and needs to be improved. In an effort to avoid emergency situations, DHS should explore using different parameters than it is currently using to determine the need for shelter bed capacity, including but not limited to economic indicators, funding sources, pending litigation and/or legislation that may affect future capacity requirements. DHS should expand the public's participation by creating an open and systemic planning process. A more transparent process will allow communities to be fully informed of DHS's shelter siting decisions. DHS should also base its shelter siting and service allocations on the City's long-range policies and strategies to allow the City to more efficiently plan and budget for the provision of shelters rather than relying on emergency procurements.

Honorable Seth Diamond

Commissioner

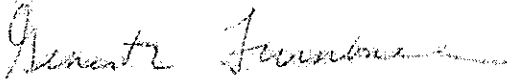
August 21, 2012

RE: Use of Emergency Procurement Process in order to Acquire Shelter Services for the
Homeless Population of New York City

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Accordingly, this Office strongly encourages DHS to develop and implement a credible and tangible plan to improve its future capacity projections.

Sincerely,



✓ Geneith Turnbull

cc: Ricardo Morales, First Deputy Comptroller
Valerie Budzik, Deputy Comptroller, General Counsel
Ari Hoffnung, Deputy Comptroller External Affairs
Charles Odiase, Executive Director
Wilfred Anigekwu, Division Chief
Stephen Malusa, Unit Chief

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 193 Res. No. _____

in favor in opposition

Date: 1/28/13

(PLEASE PRINT)

Name: Lisette Camilo - MOCS

Address: 253 Broadway 9th Fl

I represent: MOCS

Address: _____

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/28

(PLEASE PRINT)

Name: Andrea Glick

Address: 253 Broadway

I represent: Mayor's Office of Contract Services

Address: 253 Broadway

▶ Please complete this card and return to the Sergeant-at-Arms ◀