



OFFICE OF THE MAYOR

OFFICE OF CONTRACT SERVICES

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MARLA G. SIMPSON
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**Testimony of Marla G. Simpson, City Chief Procurement Officer and
Director of Mayor's Office of Contract Services,
Before the City Council Committee on Contracts: Charter Section 312(a)**

October 15, 2009

Good afternoon Chair James and members of the Contracts Committee. I am Marla Simpson, Director of the Mayor's Office of Contract Services (MOCS). Today's oversight hearing topic is listed as "Oversight - Charter Section 312(a) analysis by City agencies and why it did not work for the painters employed by the Department of Homeless Services." At the outset, I would like to explain the legal basis for the City's determination that Section 312(a) of the Charter does not apply to the DHS decision to eliminate in-house painting services as a budget cutting measure.

Section 312(a), added to the Charter by Local Law 35 of 1994, requires agencies to determine, before they solicit a *new* contract for "*technical, consultant or personal* services" valued at \$100,000 or more, and again at the point of a proposed *renewal* of such a contract, whether the procurement in question will "directly result" in the displacement of any city employee. Within the meaning of this provision, displacement includes such actions as layoffs, demotions, bumping, involuntary transfers, time-based reductions and reductions in hours, wages or benefits.

However, the recent layoffs of a small number of DHS painters were *not* tied to the procurement or renewal of any contract for similar services. To the extent that DHS' painting work is now being performed by outside contractors, the relevant contract – an "on-call" painting services contract – long predates the decision to trigger these layoffs. In addition, the services in question – painting – fall outside the scope of Section 312's coverage, as they are *not* technical, consultant or personal services.

DHS, along with the City's other human services agencies, had to make many very tough choices this past year, as a result of the economic downturn and its significant impact on the City's budget. Obviously, as much as possible, DHS endeavored to target any necessary cuts to avoid those that would diminish the agency's ability to serve its core mission, which is the protection of clients who are among our City's most vulnerable residents. To that end, all areas of the agency's administrative budget were reviewed carefully, to see what could be trimmed with the least possible impact on client services. For example, DHS took steps to cut the usage levels on a number of its on-call contracts with outside vendors, including the contract that provides cleaning services for its offices.

In the case of painting services, in particular, the simple fact is that DHS expects to do *less* painting overall in the upcoming fiscal year and beyond. The on-call contract was already modest in size – it has a “not to exceed” value of \$2.3 million. Even before the layoffs, DHS' utilization of that contract was generally declining – and that pattern that has continued *after* this summer's layoffs, as well.

Going forward, the Administration recognizes that there may be heightened interest in this subject. We are confident that all agencies, including DHS, have and will continue to faithfully discharge their responsibilities under Section 312(a) of the Charter. MOCS will provide detailed technical assistance to help any affected agencies comply with these provisions, as needed.

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

**TESTIMONY OF STEPHEN MELISH, JR., PRESIDENT
LOCAL UNION 1969, CIVIL SERVICE EMPLOYEES,
DISTRICT COUNCIL 9, INTERNATIONAL UNION
OF PAINTERS AND ALLIED TRADES, AFL-CIO**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON CONTRACTS AND
COMMITTEE ON CIVIL SERVICE AND LABOR
OCTOBER 15, 2009**

My name is Stephen Melish and I am the President of Local Union 1969 ("Local 1969"). Local 1969 represents approximately 465 civil service employees employed by the City of New York and its covered organizations, including members in titles such as supervisor of painters, painters, and glaziers.

I want to thank the City Council, the Committee on Contracts, and the Committee on Civil Service and Labor for holding this hearing. Oversight of New York City Charter Section 312(a) ("the Charter") and the failure of the Charter to protect painters at the Department of Homeless Services ("DHS") are of the utmost importance during this hearing.

I cannot emphasize enough that these issues are of great importance to my union members, their families, and all public sector workers, given the City's ever expanding use of outside contractors and the ever increasing number of lay offs of New York City employees.

On October 23, 2007, the Department of Homeless Services held a bid opening wherein outside contractors were permitted to place bids for services required by DHS. Riverdale Painting Corporation ("Riverdale") submitted the lowest bid at \$2,237,920.00, and thus was awarded the contract by DHS. The Riverdale contract began April 1, 2008 and will end March 31, 2012. The total cost of the contract is not to exceed \$2,034,960.00. As a result of the short-sighted contract DHS entered with Riverdale, 12 painters and 2 supervisors lost their jobs at

DHS as part of larger city-wide lay offs, wherein nearly 1100 employees were laid off. This lay off resulted in the complete elimination of all public sector painters and supervisors in that agency. Now, in spite of the clear intent of the Charter, all painting at DHS will be done by Riverdale, a New Jersey-based company.

According to DHS, the purpose of this contract is to provide “on call painting services for Adult and Family shelters.” My members, New York City painters, previously were responsible for painting at DHS.

The facts in our particular case demonstrate the complete disregard the City has for the requirements of the Charter and how it chooses to narrowly interpret the Charter’s language to avoid compliance. For example, on July 27, 2007, DHS certified in its “Pre-solicitation Review Report” (the “Report”) that the contract will not result in the direct displacement of City employees, pursuant to Charter Section 312(a). DHS further certified that the basis for contracting out was in order to “obtain cost-effective services” and to “obtain personnel or expertise not available in the agency.” None of the representations made by DHS in its Report are true. My painters are more experienced and more familiar with DHS facilities than any private sector painters. I challenge the City to prove that painting shelters requires a greater level of expertise than that exercised by City painters.

Further, due to the constraints of Labor Law 220, which mandates that any person performing public work must be paid the prevailing wage rate and benefits, it is always cheaper to paint with in-house personnel than with outside private contractors. Outside contractors mark up the cost to the City to cover profit, inventory, overhead, etc. As to DHS’ certification that no painters would be displaced as a direct result of the contracting-out painting to Riverdale, the lay

offs of September 2009 have shown this was yet another agency misrepresentation. DHS turned over its entire painting operation to Riverdale. As you know, under Local Law 35 (later codified as New York City Charter Section 312(a)), the Mayor is required to justify laying off city workers when replacing them with private contractors. As such, each time a City agency decides to contract out for services, such as painting, it is required under the Charter to make sure that it will not displace City workers in the process. If it makes the determination that the contract will displace workers, the City must then make certain that the outside contract is more cost effective. This is accomplished by performing a cost-benefit analysis which is subject to review by the City Council.

Given these tough economic times, I believe you share my opinion that strict adherence to the Charter is more critical than ever to ensure that the City uses its scarce resources in the most efficient manner. After having a few labor-management meetings with representatives from DHS, it is my opinion that the agency never took Charter Section 312(a) into consideration when deciding on layoffs. DHS never considered alternatives to layoffs by identifying services it out sources, which can be performed in a more cost efficient manner by in-house painters. It became very clear to me, after my meetings with DHS, that the agency never performed any cost-benefit analysis prior to making its decision to lay off painters. Instead, the agency simply reacted to the Office of Management and Budget's ("OMB") mandate to reduce the head count, regardless of whether there was a more cost effective way to obtain painting services.

If DHS had correctly followed the mandates of the Charter, it would not have certified that employees would not be displaced as a result of the outside contract. The contract was an "on call" contract spanning four years and in excess of two million dollars. Any reasonable

person would have concluded that the execution of such a contract may lead to lay offs of City employees in the future. As evidenced by the sudden down turn in the economy, a lot can happen in four years. To give a blanket representation that no City employee will be displaced by this type of contract can only be explained as an attempt by DHS to avoid the public scrutiny afforded under Charter 312(a), which mandates that the Agency perform a cost-benefit analysis subject to City Council review.

If that process had been followed, we believe the City Council would have uncovered some significant financial and legal problems with the Agency's decision to fire all its painters and supervisors and contract out for painting services. As I mentioned earlier, because Labor Law 220 requires the Agency to pay the prevailing rate of pay and benefits for the labor, painting performed by in-house painters will always be less expensive than contracting out for these services. The cost-benefit analysis required under the City Charter would have clearly shown that in these hard economic times, the City would have been better off keeping the work in-house. Also, because all painters and supervisors are New York City residents, the loss of jobs will result in lost tax revenue for the City and additional costs associated with providing benefits for unemployed workers. Giving this job to a New Jersey company, employing many non-residents, makes no economic sense for an administration that has been preaching the need for cost efficiency.

Second, and equally alarming, is that had the Charter been followed, the City Council would have had an opportunity to inquire as to why the winning bid was so low compared to the other bids. The Council would have had a forum to raise questions regarding the contractor's intent to follow Labor Law 220. For example, Riverdale was the lowest bid at \$2,237,920.00.

The second lowest bidder was \$1,157,080.00 higher than Riverdale; the third lowest bidder came in at \$1,538,880.00 higher than Riverdale; and the fourth lowest bidder came in at \$1,650,280.00 higher than Riverdale. Given that the labor cost pursuant to Labor Law Section 220 would be equal, the huge disparity in bids should have set off alarms at DHS. The winning bid begs the question as to whether Labor Law 220 was actually going to be followed. Instead, it appears that DHS blindly awarded the contract to Riverdale and, thereafter, 14 hard working New York City employees lost their jobs. The approximately \$2.2 million spent paying the outside contractor could have been used to save my members' jobs and save the City money.

Representatives from DHS indicated to us that there was no violation of Section 312(a) because at the time DHS made its certification, there was no displacement of workers due to the outside contract. This argument does not pass muster, however, DHS' use of an "on call" contract spanning four years is a blatant attempt to circumvent the spirit and intent of Local Law 35. An "on call" contract permits the agency to use, or not use, the services of the painting contractor during the four-year term. So while it may have been the case in 2007 that the agency was not planning on laying off painters, it nevertheless needed to think more prospectively as the contract was for four years. DHS evaded the scrutiny of the City Council, even though the contract with Riverdale most certainly did result in the elimination of all City painters at that agency.

Local 1969 is fully aware of the economic pressures the City has faced; however, these pressures cannot foreclose the operation of Charter Section 312(a), and instead aggressive enforcement is of critical importance. The welfare of the City, the taxpayer, and public sector employees is at issue. If DHS had followed the law, any fair and impartial analysis would have

shown that contracting out all painting services at DHS is far more expensive to the City than using in-house personnel. I am asking the City Council to aggressively compel the City to comply with Section 312(a) and to reinstate my fired painters and supervisor painters.

As we told DHS and the Office of Labor Relations, my union is ready, willing and able to sit down and discuss ways to save the City money. We cannot, however, tolerate the lack of transparency and integrity on the part of DHS when applying Local Law 35. DHS' behavior has resulted in every DHS painter and supervisor of painters being laid off, while outside New Jersey contractors profit. We can do better as a City.

Thank you for your time and attention.

American Federation of State, County & Municipal Employees, AFL-CIO

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Testimony of Lillian Roberts, Executive Director, District Council 37 before the Joint Hearing of the City Council Committees on Contracts and Civil Service and Labor October 15, 2009

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Good Morning and thank you for allowing me to address the City Council on this issue of contracting out. My name is Henry Garrido and I am speaking for Lillian Roberts, Executive Director of DC 37 representing over 125,000 employees and 80,000 retirees.

It has been brought to our attention that the Department of Homeless Services recently contracted out painting services while at the same time has laid off painters from union Local 1969. Our union has vigorously campaigned against contracting out of services normally performed by public employees. It has been and always will be a cornerstone of this union to protect the integrity of the civil service system.

DC37 has been in the forefront of this endeavor. In 1994, the union worked with the City Council to draft Section 312 of the City Charter – what many of us refer to as Local Law 35. Clearly, the intent was not only to preserve union jobs. Local Law 35 was and remains a good government measure meant to require agencies to approach contracting for personnel, consultant and technical services in a prudent manner which will ensure that the best services are delivered and that the effects of displacement of city employees will be thoroughly reviewed and analyzed – not only by the agency which seeks the contract, but by the Council and Comptroller as well.

Associate Director

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What is at stake here is not just who is doing the work but the accountability and oversight over public service work. The civil service system guarantees that people hired by the city meet certain merit and fitness standards, thereby ensuring that they have been shown capable of performing the work. Moreover, prior to appointment, candidates are further vetted to demonstrate their honesty and integrity. While on the job, civil servants are



continuously held accountable and may be disciplined for incompetence or misconduct.

What our union sees in examining hundreds of contracts is the use of a faulty procurement system that allows the City to contract out personnel services without regard to any of the virtues held important by the civil service system. In many cases contractors are not vetted and they employ people with questionable backgrounds. The ability to keep track of the work performed and the quality of the work is lost. And worst of all, the City provides only a scant analysis, if any, of the cost savings that is supposed to be realized by contracting out. In many cases we found that contracting out cost much more and provided a lot less in terms of quality and overall quantity of work to the City.

In our White papers we have detailed numerous scenarios in which the contracting out of services cost much more than it would have cost if permanent public employees performed the work. We feel that the City should have to justify each and every contract with a thorough costing out analysis. In this time of great financial need we believe a great deal of money can be saved by contracting in the work. By having civil service employees do this work we are keeping the jobs, and the wages, in New York City and at the same time keeping the profit margins in the City Treasury and out of the pockets of greedy out of state contractors.

Thank you for your time and I am happy to answer any questions you may have.

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