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Hon. Julie Won, *Chair*

**Committee on Oversight & Investigations**

Hon. Gale Brewer, *Chair*

**October 25, 2022**

**Oversight: Maintaining Vendor Integrity Through the Pandemic**

**Int. No. 300:** By Council Members Won, Stevens, Williams, Yeger, Farías, Nurse and Velázquez

**Title:** A Local Law in relation to establishing a special inspector within the department of investigation to review contracts that were entered into in response to the 2019 novel coronavirus, and providing for the repeal of such provision upon the expiration thereof

**Int. No. 301:** By Council Members Won, Stevens, Williams, Yeger, Ayala, Farías, Restler, Nurse and Velázquez

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning city contracts

**Int. No. 453:** By Council Members Powers, Louis, Joseph, Hanif, Restler and Velázquez

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to requiring officers and employees of city contractors to report corruption and to cooperate with the department of investigation

# INTRODUCTION

On October 25, 2022, the New York City Council’s Committee on Oversight and Investigations, chaired by Council Member Gale Brewer, and the Committee on Contracts, chaired by Council Member Julie Won, will hold a hearing titled, “Maintaining Vendor Integrity Through the Pandemic.” The Committees will also hear several pieces of legislation including: Int. No. 300 in relation to establishing a special inspector within the department of investigation to review contracts that were entered into in response to the 2019 novel coronavirus, and providing for the repeal of such provision upon the expiration thereof; Int. No. 453 in relation to requiring officers and employees of city contractors to report corruption and to cooperate with the Department of Investigation; and Int. No. 301 in relation to the establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning city contracts. The committees expect to receive testimony from representatives of the Adams mayoral administration and other interested stakeholders.

# BACKGROUND

In late December of 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020, the World Health Organization declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International Concern.[[1]](#footnote-1) As of October 19, 2022, COVID-19 has caused more than 631 million cases across 228 countries and territories, and has killed over 6.5 million people.[[2]](#footnote-2) In the United States, there have been over 98 million cases and more than 1 million deaths. More than 6.1 million of those cases and 72,285 of those deaths occurred in the state of New York,[[3]](#footnote-3) while approximately 2.9 million of those cases and 42,217 of those deaths occurred in New York City.[[4]](#footnote-4)

The pandemic necessitated an unprecedented emergency response by the city, with agencies often turning to outside vendors on an emergency basis for large amounts of vital resources, services and equipment to address the public health crisis and help the city adapt. The large amounts of city dollars quickly flowing to outside vendors created a serious oversight challenge.

# NYC EMERGENCY PROCUREMENT DURING COVID-19

Contracting services out to public tender is traditionally a strictly-governed procedure in New York, regulated by the State’s *General Municipal Law § 103* (*GML 103*),which requires contracting agencies in most cases to award contracts to the “lowest responsible bidder” that responds to an agency solicitation for goods or services, and is typically selected via a competitive sealed bid.[[5]](#footnote-5) However, once the COVID-19 pandemic was declared a state emergency, Mayor de Blasio issued an executive order suspending many of the City’s procurement laws for the purpose of procuring essential materials and services in preparation for the impact of the pandemic upon the City.[[6]](#footnote-6) The Mayor is delegated this authority pursuant to a provision of *GML 103* detailing exceptions to the standard procurement rules in case of emergencies.[[7]](#footnote-7)

The emergency procurements provision of *GML 103* authorizes contracting agencies to forego the competitive sealed bidding process “in the case of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of a political subdivision or district therein, require immediate action which cannot await competitive bidding.”[[8]](#footnote-8) The City Charter also authorizes emergency procurements in cases of “unforeseen danger to life, safety, property or a necessary service,” and with the prior approval of the Comptroller and the Corporation Counsel.[[9]](#footnote-9)

The Mayor’s Executive Order authorized the use of emergency procurements and the bypassing of standard sealed competitive bidding rules, meaning that contracting agencies were no longer bound to select the lowest responsible bidder for many essential goods and services.[[10]](#footnote-10) This assisted the City in the timely procurement of goods, especially critical PPE for the City’s frontline workers. As of April 28, 2021, the last date for which the Comptroller published data, the city registered COVID-related contracts of $5.75 billion, including $736 million for PPE, $149 million for ventilators, $509 million for medical staffing, $709 million for vaccination related needs, and $379 million for other medical, surgical, and lab supplies.[[11]](#footnote-11) As of October 22, 2022, the city has $3.9 billion in active COVID-19 contracts registered through MOCS.[[12]](#footnote-12)

# VENDOR INTEGRITY MONITORING AGREEMENTS

The city’s contracting rules are intended to insure only “responsible” firms are awarded procurement contracts, meaning those firms with “the business integrity and reliability that assure good faith performance.”[[13]](#footnote-13) However, the city sometimes has no choice but to enter into contracts with companies who might not otherwise meet procurement criteria, due to the nature of a given contract, the lack of responsive vendors, or sheer size of a project. Since 1996, the Department of Investigation has administered the Integrity Monitor Program, which provides an extra layer of oversight necessary to continue working with those companies who might not be deemed “responsible.”

Under the Integrity Monitor program, these companies may be awarded City contracts if they agree to be monitored by an outside, independent monitor that reports to DOI, and to take other steps to ensure they have the requisite business integrity. For example, companies may be required to adopt and implement a Code of Ethics, an ethics training program for employees, and to submit periodic certifications to DOI concerning the business responsibility of the company and its subcontractors. Integrity monitors also work proactively on particularly large construction projects such as the Rapid Repairs Program implemented after Hurricane Sandy.[[14]](#footnote-14)

Under the Integrity Monitor Program, the vendors in question pay for a third party monitor, typically staffed by former auditors, investigators and prosecutors, to ensure they comply with DOI’s additional conditions, as part of a deferred prosecution deal with state or federal law enforcement, or of their own volition should they become aware of internal breaches of ethics.

***The History of The Integrity Monitor Program***

The program was created in 1996 to tackle organized crime in New York City’s construction industry, which had affected many city capital projects. US Senate hearings suggested “mafia" groups drove public construction costs to astronomical levels, discouraging maintenance and new investment.[[15]](#footnote-15) At the same time, the city had dire physical capital needs, and there was concern that anti-corruption efforts could hamstring the city and gut the construction industry. The Integrity Monitor program was created to allow firms to get back into the city’s good graces without accepting poor vendor integrity.

Reconstruction from the 9/11 attacks accelerated the adoption of integrity monitors. The city’s vast demolition, hauling, and reconstruction needs would potentially open the floodgates of public money to corrupt firms. DOI worked closely with the Department of Design and Construction to oversee the effort. According to a 2006 Congressional report, the effort “identified a number of contractors with ties to organized crime which were subsequently removed from the site, found trucks cooping while on the clock, flagged several attempted frauds that were referred for prosecution, recovered $47 million in over-billing by contractors and subcontractors, and saved immeasurably more money by deterring fraud.”[[16]](#footnote-16) DOI also massively expanded the use of integrity monitors for information technology contractors following the CityTime scandal during the Bloomberg administration.[[17]](#footnote-17) ***The Declining Use of Integrity Monitors***

City data shows that use of integrity monitors peaked in FY 2013 and has steadily declined since. In FY 2021, following the pandemic, monitoring agreements reached their lowest number in more than a decade, though they rebounded slightly the following year.[[18]](#footnote-18) This is despite the huge number of emergency contracts issued by the city and the Department’s past experience using integrity monitors proactively in emergencies requiring lots of outside vendors. The Department of Investigation lost 53 staff positions to budget cuts since the COVID-19 pandemic, and will likely lose more following cuts in the Adams administration’s budget, over the objection of his own commissioner.[[19]](#footnote-19)

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# OTHER RECENT VENDOR INTEGRITY ISSUES

***NYCHA Micro-purchase Corruption***

In September 2021, Brooklyn District Attorney Eric Gonzalez charged nine contractors for bribery schemes to secure micro-purchase agreements with NYCHA. Micro-purchases are not subject to competitive bidding rules like larger contracts. In 2018 and 2019, multiple contractors offered bribes to NYCHA employees of less than $1,000, attracting the attention of DOI. Investigators posed undercover as superintendents at Red Hook Houses and Lafayette Gardens, recording the contractors in question offering more bribes. The nine vendors in question had already received $20 million in micro-purchase contracts from NYCHA.[[20]](#footnote-20) The micro-purchase program had been previously flagged for corruption issues: a 2019 report found that one vendor run by a former NYCHA superintendent had secured micro-purchase payments for work that was actually performed by NYCHA staff.[[21]](#footnote-21)

***DOE Meat Procurement Bribes***

Eric Goldstein, former CEO of the DOE’s Office of School Support Services from 2008 to 2018, was charged in federal court with bribery in September 2021 along with three other co-conspirators. Goldstein is alleged to have solicited bribes for food services contracts. He also operated his own meat import business which received DOE contracts and facilitated the payment of kickbacks. The food provided by Goldstein’s company was substandard, with parents and students complaining that foreign objects like pieces of plastic and metal could be found in food.[[22]](#footnote-22)

***Health and Hospitals Director of Contracts***

Last year, a director of contracts for five Health and Hospitals was charged with soliciting bribes from several vendors. Eugene Roberson received free parking from one hospital vendor and deposited rent checks from a hospital café into his personal bank account. DOI said that it would work with HHH to develop stronger concession payment controls.[[23]](#footnote-23)

***New York City Water Board***

This September, a vendor contracted to provide pipe repair to New York City homeowners pled guilty to accepting bribes from subcontractors. George Djurasevic was awarded a multimillion dollar contract to sell warranties covering the repairs, and then received $500,000 over five years from subcontractors who then overbilled or got paid for work not done.[[24]](#footnote-24)

# LEGISLATIVE ANALYSIS

**Int. 300**

Int. 300 (Won) would require the Commissioner of DOI to appoint a special inspector responsible for monitoring procurement contracts entered into in response to the Covid-19 pandemic. The special inspector would be required to collect and review the details of such contracts with the cooperation of MOCS and the relevant city agency.

In addition, no more than 30 days after the bill goes into effect, the special inspector would be required to report information about any contracts reviewed in a publicly available online database. The special inspector would be required to continually review such contracts to identify potential or actual deficiencies in monitoring and integrity, and would be required to notify MOCS and the relevant city agency of any such deficiencies and provide recommendations for remedying them going forward.

The online database would be required to include the following information regarding each contract: the requirements of the contract; the dollar value of the contract; the type of business in which the vendor engages; the vendor’s inventory of any goods included in the contract; the timeline for delivery of the agreed upon goods or services to the city; whether the vendor has a record of previously doing business with the city; whether the vendor has a record of providing the goods or services required by the contract; whether the contractor has provided the agreed upon goods or services to date to the city; and any other information that the mayor or commissioner of investigation may require.

This bill would take effect 30 days after becoming law and would expire and be deemed repealed 1 year after the declaration of a state of emergency contained in mayoral executive order number 98 for the year 2020, as extended, has expired.

**Int. 301**

Int. 301 (Won) would require the City’s Chief Procurement Officer (CPO), in consultation with the Conflicts of Interest Board (COIB) and DOI, to establish conflict of interest standards and procedures to be used by any contractor that has a “covered contract” with the City. For this purpose, a “covered contract” is any contract with the City that, by itself or when aggregated with all other city contracts awarded to such contractor during the past 12 months, has a value in excess of $100,000. Such standards and procedures would be used by the contractor to determine any conflict of interest, whether set forth in section 68 of the Charter or otherwise, between: (i) a city employee and an officer or employee of such contractor; or (ii) a city employee and an officer or employee of any subcontractor of such contractor. This bill would also require the CPO, in consultation with COIB and DOI, to establish standards and procedures regarding corruption, criminal activity, gross mismanagement or abuse of authority to be used by any contractor that has a covered contract with the City.

All standards and procedures established pursuant to this bill would need to be submitted to the Mayor and Speaker of the Council within seven days of being established.

City agencies would be required to include the standards and procedures developed pursuant to this bill into the terms of any covered contract. When entering into a covered contract, the contractor would be required to submit a certification to MOCS certifying that such contractor has complied with the standards and procedures established pursuant to this bill and that no conflict of interest, corruption, criminal activity, gross mismanagement or abuse of authority that concerns such covered contract exists with respect to its officers and employees and to officers and employees of its subcontractors.

On July 1 of each year, beginning in 2023, the CPO would be required to submit a report on certifications submitted by contractors pursuant to this bill during the past 12 months. Such report would include: (i) a summary of all certifications submitted during the relevant 12 month period; (ii) the number of such certifications; and (iii) a description of any conflict of interest or misconduct in connection with a covered contract discovered by MOCS during such period.

This bill would take effect 120 days after becoming law.

**Int. 453**

The City’s Whistleblower Law, or section 12-113 of the Administrative Code, protects certain employees of city contractors from retaliation for reporting misconduct by the contractor to local officials. The Law does not, however, affirmatively require such employees to report such misconduct. Int. 453 (Powers) would add such requirement and also require such employees to cooperate with DOI investigations related to city contracts.

Section one and two of this bill would make a number of technical changes to sections 7-805 and 12-113 of the Administrative Code in order to conform with city bill drafting conventions and update cross-references.

Section three of this bill would require officers and employees of city contractors (including subcontractors) with contracts valued in excess of $100,000 to report misconduct by such contractor to local officials. Such report would be made to one of the following officials: the Commissioner of DOI; a Council Member, the Public Advocate, the Comptroller, the Special Commissioner of Investigation, the CPO, the chief contracting officer of the relevant agency, or the head or commissioner of the relevant agency. Every officer and employee of a covered contractor or subcontractor would be required to fully cooperate with any investigation or inquiry conducted by DOI of the Special Commissioner of Investigation for the New York City School District. In the event a city agency becomes aware that an officer or employee has failed to report misconduct or cooperate as required by this legislation, the bill would authorize the agency to take such actions as it deems appropriate consistent with the remedies available under the contract or subcontract.

Section three of this bill would also clarify that city officials who receive a report of misconduct pursuant to this bill must make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making the report. Section four of this bill makes a technical change to section 12-113 of the Administrative Code by adding back language deleted by section three. The combined effect of this deletion and addition is to move the relevant language to a new paragraph.

Section five of the bill provides that the misconduct reporting and investigation cooperation requirements imposed by this bill would not apply to contracts executed or renewed prior to the effective date of the bill. Section six of the bill provides that the bill would take effect 120 days after becoming law.

Int. No. 300

By Council Members Won, Stevens, Williams, Yeger, Farías, Nurse and Velázquez

..Title

A Local Law in relation to establishing a special inspector within the department of investigation to review contracts that were entered into in response to the 2019 novel coronavirus, and providing for the repeal of such provision upon the expiration thereof

..Body

Be it enacted by the Council as follows:

Section 1. Special inspector of contracts in relation to COVID-19. a. The commissioner of investigation shall appoint a special inspector who shall monitor emergency procurement contracts that, in the judgment of such special inspector, are or were entered into by any agency or contracted entity in response to the COVID-19 pandemic. The special inspector shall collect and review the details of such procurement contracts with the cooperation of the agency or agencies, or contracted entity, executing such contracts, and the mayor’s office of contract services. For the purposes of this local law, the term “agency” has the same meaning as such term is defined in section 1150 of the New York city charter, and the term “contracted entity” has the same meaning as such term is defined in section 22-821 of the administrative code.

b. Within 30 days of the effective date of the local law that added this section, and continuing in real-time thereafter until this local law expires, the special inspector shall report in a publicly available online database about the city emergency procurement contracts the special inspector has reviewed pursuant to subdivision a of this section. The special inspector shall continually evaluate such contracts to identify potential or actual deficiencies in monitoring and integrity, and shall notify the affected agency, agencies or contracted entity, and the mayor’s office of contract services, of any such deficiencies along with recommendations for remedying them going forward, in addition to publishing such deficiencies and recommendations in the online database.

c. Such online database shall also include, but not be limited to, the following information:

1. The requirements of the contract;

2. The dollar value of the contract;

3. The type of business in which the vendor engages;

4. The vendor’s inventory of any goods included in the contract;

5. The timeline for delivery of the agreed upon goods or services to the city;

6. Whether the vendor has a record of previously doing business with the city;

7. Whether the vendor has a record of providing the goods or services required by the contract;

8. Whether the contractor has provided the agreed upon goods or services to date to the city; and

9. Any other information that the mayor or commissioner of investigation may require.

§ 2. This local law takes effect 30 days after it becomes law, except that the commissioner of investigation may take such measures as are necessary for its implementation before such date. This local law remains in effect until 1 year after the declaration of a state of emergency contained in mayoral executive order number 98 for the year 2020, as extended, has expired, at which time this local law expires and is deemed repealed.

Session 12

JTB

LS #8698

4/8/2022

Session 11

JG/ARP

LS #14643

S11-Int 1980-A

Int. No. 301

By Council Members Won, Stevens, Williams, Yeger, Ayala, Farías, Restler, Nurse and Velázquez

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring the establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning city contracts

..Body

Be it enacted by the Council as follows:

Section 1. Title 6 of the administrative code of the city of New York is amended by adding a new section 6-147 to read as follows:

§ 6-147 Conflicts of interest and misconduct concerning city contracts. a. As used in this section, the following terms have the following meanings:

City chief procurement officer. The term “city chief procurement officer” means the individual to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement, and who is the head of the mayor’s office of contract services.

Contract. The term “contract” means any written agreement, purchase order or instrument by which the city is committed to expend or does expend funds in return for an interest in real property, work, labor, services, supplies, equipment, materials, construction, construction-related service or any combination of the foregoing, and includes a subcontract between a contractor and a subcontractor. Such term does not include a contract or subcontract resulting from an emergency procurement or that is a government-to-government procurement.

Contractor. The term “contractor” means a person, including but not limited to any natural person, sole proprietorship, partnership, joint venture or corporation, that enters into a contract with an agency or the council.

Covered contract. The term “covered contract” means a contract entered into on or after the effective date of the local law that added this section by a contractor and an agency or the council, that by itself or when aggregated with all contracts awarded to such contractor by any agency or the council during the immediately preceding 12 months has a value in excess of $100,000.

Mayor’s office of contract services. The term “mayor’s office of contract services” means the office of contracts established within the office of the mayor by mayoral executive order number 114, dated April 13, 1988, as continued, amended or succeeded by executive order thereafter.

Subcontractor. The term “subcontractor” means a person, including but not limited to any natural person, sole proprietorship, partnership, joint venture or corporation, that is a party or a proposed party to a contract with a contractor.

b. 1. In consultation with the conflicts of interest board and the department of investigation, the city chief procurement officer shall establish standards and procedures to be used by a contractor that is a party to a covered contract for determining the existence of any conflict of interest:

(a) As set forth in chapter 68 of the charter, that may exist between a city employee and any officer or employee of such contractor that concerns such covered contract;

(b) As set forth in chapter 68 of the charter, that may exist between a city employee and any officer or employee of a subcontractor of such contractor that concerns such covered contract;

(c) That may exist otherwise for any officer or employee of such contractor that concerns such covered contract; and

(d) That may exist otherwise for any officer or employee of a subcontractor of such contractor that concerns such covered contract.

2. In consultation with the department of investigation, the city chief procurement officer shall also establish standards and procedures to be used by a contractor that is a party to a covered contract for determining the existence of any conduct involving corruption, criminal activity, gross mismanagement or abuse of authority that concerns such covered contract by any officer or employee of such contractor or by any officer or employee of a subcontractor of such contractor.

3. Within 7 days after the establishment of the standards and procedures pursuant to paragraphs 1 and 2 of this subdivision, the city chief procurement officer shall submit copies of such standards and procedures to the mayor and the speaker of the council.

c. The mayor’s office of contract services shall require an agency that is a party to a covered contract, or the council as a party to a covered contract, to include the standards and procedures established by the city chief procurement officer pursuant to paragraphs 1 and 2 of subdivision b of this section in such covered contract.

d. A contractor shall submit a certification to the mayor’s office of contract services when entering into a covered contract that such contractor has complied with the standards and procedures established by the city chief procurement officer pursuant to paragraphs 1 and 2 of subdivision b of this section and included in such contract pursuant to subdivision c of this section, and that no conflict of interest, corruption, criminal activity, gross mismanagement or abuse of authority that concerns such covered contract exists with respect to its officers and employees and to officers and employees of its subcontractors.

e. Not later than July 1, 2023, and by July 1 annually thereafter, the city chief procurement officer shall post publicly online and submit to the mayor and the speaker of the council a report on certifications submitted by contractors pursuant to subdivision d of this section during the past 12 months, including but not limited to (i) a summary of all such certifications submitted during such period, including but not limited to the parties to and subject matter of the covered contracts for which such certifications were submitted; (ii) the number of such certifications submitted during such period as compared to the total number of covered contracts that took effect during such period and (iii) a description of any conflict of interest or conduct involving corruption, criminal activity, gross mismanagement or abuse of authority discovered by the mayor’s office of contract services during such period in connection with a covered contract for which a contractor submitted such a certification.

§ 2. This local law takes effect 120 days after it becomes law, provided that it only applies to contract solicitations that occur on and after its effective date, and except that the procurement policy board shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

Session 12

JTB

LS #8699

4/8/2022

Session 11

JK/JJ

LS #4

S11-Int 2285

Int. No. 453

By Council Members Powers, Louis, Joseph, Hanif, Restler and Velázquez

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring officers and employees of city contractors to report corruption and to cooperate with the department of investigation

..Body

Be it enacted by the Council as follows:

Section 1. Paragraph 1 of subdivision a of section 7-805 of the administrative code of the city of New York, as added by local law number 53 for the year 2005, is amended to read as follows:

1. Any officer or employee of the city [of New York] who believes that [he or she] such officer or employee has been the subject of an adverse personnel action, as such term is defined in [paragraph one of] subdivision a of section 12-113 [of the administrative code of the city of New York]; or

§ 2. Subdivision a of section 12-113 of the administrative code of the city of New York, as amended by local law number 33 for the year 2012, and paragraph 11 of such subdivision, as added by local law number 9 for the year 2021, is amended to read as follows:

a. Definitions. For purposes of this section, the following terms have the following meanings:

[1. “Adverse personnel action” shall include] Adverse personnel action. The term “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

[2. “Remedial action” means an appropriate action to restore the officer or employee to his or her former status, which may include one or more of the following:

(i) reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action, or, as appropriate, to an equivalent position;

(ii) reinstatement of full seniority rights;

(iii) payment of lost compensation; and

(iv) other measures necessary to address the effects of the adverse personnel action.

3. “Commissioner” shall mean the commissioner of investigation.

4. “Child” shall mean] Child. The term “child” means any person under the age of [nineteen] 19, or any person ages [nineteen] 19 through [twenty-one] 21 if such person receives instruction pursuant to an individualized education plan.

Commissioner. The term “commissioner” means the commissioner of investigation.

[5. “Educational welfare” shall mean any aspect of a child's education or educational environment that significantly impacts upon such child's ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.

6. “Superior officer” shall mean an agency head, deputy agency head or other person designated by the head of the agency to receive a report pursuant to this section, who is employed in the agency in which the conduct described in such report occurred.

7. “Contract” shall mean] Contract. The term “contract” means any written agreement, purchase order or instrument having a value in excess of [one hundred thousand dollars] $100,000 pursuant to which a contracting agency is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, and [shall include] includes a subcontract between a covered contractor and a covered subcontractor. Such term [shall] does not include contracts or subcontracts resulting from emergency procurements or that are government-to-government procurements.

[8. “Contracting agency” shall mean] Contracting agency. The term “contracting agency” means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

[9. “Covered contractor” shall mean] Covered contractor. The term “covered contractor” means a person or business entity who is a party or a proposed party to a contract with a contracting agency valued in excess of [one hundred thousand dollars] $100,000, and the term “covered subcontractor” [shall mean] means a person or entity who is a party or a proposed party to a contract with a covered contractor valued in excess of [one hundred thousand dollars] $100,000.

Educational welfare. The term “educational welfare” means any aspect of a child’s education or educational environment that significantly impacts upon such child’s ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.

[10. “Officers or employees of an agency of the city” shall be deemed to include] Officers or employees of an agency of the city. The term “officers or employees of an agency of the city” is deemed to include officers or employees of local development corporations or other not-for-profit corporations that are parties to contracts with contracting agencies and the governing boards of which include city officials acting in their official capacity or appointees of city officials. Such officers and employees [shall not be] are not deemed to be officers or employees of a covered contractor or covered subcontractor.

[11. “Special commissioner of investigation” shall mean the position of deputy commissioner of investigation for the city school district of the city of New York, as established by mayoral executive order number 11 for the year 1990, as amended, or any success or to the duties of such officer.]

Remedial action. The term “remedial action” means an appropriate action to restore the officer or employee to the former status of such officer or employee, which may include one or more of the following:

1. Reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action or, as appropriate, to an equivalent position;

2. Reinstatement of full seniority rights;

3. Payment of lost compensation; and

4. Other measures necessary to address the effects of the adverse personnel action.

Special commissioner of investigation. The term “special commissioner of investigation” means the position of deputy commissioner of investigation for the city school district of the city of New York, as established by mayoral executive order number 11 for the year 1990, as amended, or any successor to the duties of such officer.

Superior officer. The term “superior officer” means an agency head, deputy agency head or other person designated by the head of the agency to receive a report pursuant to this section, who is employed in the agency in which the conduct described in such report occurred.

§ 3. Paragraphs 2, 3 and 4 of subdivision b of section 12-113 of the administrative code of the city of New York, as amended by local law number 9 for the year 2021, are amended to read as follows:

2. (a) Every officer and employee of a covered contractor or covered subcontractor shall without undue delay report any information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of such contractor or subcontractor, which concerns a contract with a contracting agency, (i) to the commissioner, (ii) to a council member, the public advocate, the comptroller, the special commissioner of investigation, the city chief procurement officer, the agency chief contracting officer, or the agency head or commissioner of the contracting agency.

(b) Every officer and employee of a covered contractor or covered subcontractor shall cooperate fully with any investigation or inquiry conducted by the commissioner or special commissioner of investigation which concerns a contract with a contracting agency.

(c) No officer or employee of a covered contractor or covered subcontractor shall take an adverse personnel action with respect to another officer or employee of such contractor or subcontractor in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of such contractor or subcontractor, which concerns a contract with a contacting agency, to the commissioner, a council member, the public advocate, the comptroller, the special commissioner of investigation, the city chief procurement officer, the agency chief contracting officer, or the agency head or commissioner of the contracting agency. Such report shall be referred to the commissioner unless such conduct is within the jurisdiction of the special commissioner of investigation, in which case such report shall be referred to the special commissioner.

3. Every contract or subcontract in excess of [one hundred thousand dollars] $100,000 shall contain a provision detailing the provisions of paragraph [two] 2 of this subdivision and of paragraph [two] 2 of subdivision e of this section. If a contracting agency determines that there has been a violation of subparagraphs (a) and (b) of paragraph 2 of this subdivision, including, but not limited to, the knowing failure to report information or interference with, or obstruction of, an investigation conducted by the commissioner, such contracting agency shall take such action as it deems appropriate and consistent with the remedies available under the contract or subcontract.

4. Upon request, the commissioner, council member, public advocate, comptroller, special commissioner of investigation [or], corporation counsel, city chief procurement officer, agency chief contracting officer or agency head or commissioner of the contracting agency receiving the report of [alleged adverse personnel action] information concerning conduct that an officer or employee referenced in this subdivision knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.

§ 4. Subdivision c of section 12-113 of the administrative code of the city of New York is amended by adding a new paragraph 3 to read as follows:

3. Upon request, the commissioner, special commissioner of investigation or corporation counsel receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.

§ 5. The requirements imposed by subparagraphs (a) and (b) of paragraph 2 of subdivision b of section 12-113 of the administrative code of the city of New York do not apply to any contract between a contracting agency and a covered contractor or any subcontract between a covered contractor and a covered subcontractor that is executed or renewed prior to the effective date of the local law that added this section. For purposes of this section, the terms “contract,” “contracting agency,” “covered contractor” and “covered contractor” have the meanings ascribed to such terms in subdivision a of section 12-113 of such code.

§ 6. This local law takes effect 120 days after it becomes law, except that the commissioner of investigation, special commissioner of investigation for the city school district and the city chief procurement officer may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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Session 11

MHL

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