Committee on Contracts

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**THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION**

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**COMMITTEE ON CONTRACTS**

Hon. Benjamin Kallos*, Chair*

Hon. Justin Brannan, *Chair Emeritus*

**April 16, 2019**

**PROPOSED INT. NO. 1238-A:**  By Council Members Rosenthal, Kallos and Ulrich

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring additional disclosure of large contract modifications

**ADMINISTRATIVE CODE:** Amends § 6-133

**INT. NO. 1311:**  By Council Members Rosenthal, Ayala and Kallos

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring immediate disclosure of certain large contract modifications

**ADMINISTRATIVE CODE:** Amends § 6-133

**INT. NO. 1448:**  By Council Members Brannan, Holden and Kallos

**TITLE:** A Local Law to amend the New York city charter, in relation to expediting the inter-agency oversight review process of certain unregistered contracts

**CITY CHARTER:** Adds § 335(c)

**INT. NO. 1449:**  By Council Members Brannan, Rosenthal, Holden and Kallos

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the provision of bridge loans to contractors

**ADMINISTRATIVE CODE:** Adds § 22-825

**INT. NO. 1450:**  By Council Members Brannan, Levin, Holden, Rosenthal and Kallos

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to interest to be paid on late contract payments to non-profit contractors

**ADMINISTRATIVE CODE:** Adds § 6-143

1. **INTRODUCTION**

 On April 16, 2019, the Committee on Contracts, co-chaired by Council Members Benjamin Kallos and Justin Brannan, will hold a hearing on the following legislation: Proposed Introductory Bill Number 1238-A (“Int. No. 1238-A”) a local law to amend the administrative code of the city of New York, in relation to requiring additional disclosure of large contract modifications; Introductory Bill Number 1311 (“Int. No. 1311”) a local law to amend the administrative code of the city of New York, in relation to requiring immediate disclosure of certain large contract modifications; Introductory Bill Number 1448 (“Int. No. 1448”) a local law to amend the administrative code of the city of New York, in relation to expediting the inter-agency oversight review process of certain unregistered contracts; and Introductory Bill Number 1449 (Int. No. 1449”) a local law to amend the administrative code of the city of New York, in relation to the provision of bridge loans to contractors; and Introductory Bill Number 1450 (“Int. No. 1450”) a local law to amend the administrative code of the city of New York, in relation to the interest paid on late contract payments to non-profit contractors. Those intended to testify include the Mayor’s Office of Contract Services (“MOCS”), the New York City Economic Development Corporation (“NYCEDC”) and members of the public.

1. **LATE PAYMENTS**

City agencies are responsible for the procurement of goods, services, and managing contracts with vendors.[[1]](#footnote-1) While all city agencies have an internal protocol by which invoices are accepted and reviewed, their processes generally follow a linear path for expense contracts.[[2]](#footnote-2) Vendors typically submit invoices in a paper format for services they have provided or goods they delivered, agencies then inspect the delivery or work, and after a review the agency works with the vendor to make any necessary revisions and approves the invoice.[[3]](#footnote-3) The agency then manually enters the payment information into the City’s Financial Management System (“FMS”) as a Payment Request.[[4]](#footnote-4) Finally, the City Comptroller releases the payment and an electronic funds transfer (“EFT”) or check is then issued to disburse payment to the vendor.[[5]](#footnote-5) The City is required by law to pay vendors it contracts with for goods and services electronically if those contracts are valued over $25,000.[[6]](#footnote-6) Vendors that meet this threshold must enroll in the Vendor Payment Direct Deposit Program.[[7]](#footnote-7)

The Procurement Policy Board Rules (“PPB”) established guidelines to simplify, clarify, and modernize the laws governing procurement by the City of New York.[[8]](#footnote-8) Pursuant to section 4-06 of the PPB rules, the City is required to process contract payments “efficiently and expeditiously” to assure payment in a timely manner to firms and organizations that contract with the City.[[9]](#footnote-9) If City agencies fail to make timely payments of an invoice, based on the “invoice received and acceptance date” an interest penalty begins to incur.[[10]](#footnote-10) The PPB rules also provide circumstances for which vendors are ineligible to receive interest on late invoice payments.[[11]](#footnote-11) Vendors are ineligible to receive interest payments if: a) the payment is delayed because of a disagreement between an agency and a vendor over the amount due, and/or issues concerning compliance with the terms of the contract; b) failure to make the contract payments is as a result of a lien, attachment, or other legal process against the vendor; c) amounts are temporarily withheld in accordance with the contract; or d) the amount in interest payment is less than 25 dollars.[[12]](#footnote-12)

While the PPB provides guidelines for which City agencies must pay vendors promptly, payment delays are common and occur for a myriad of reasons. While prompt payment standards are enforced by FMS, it relies solely on data entered manually by agencies.[[13]](#footnote-13) Agencies enter the date that the invoice was received as well as the date the goods/services procured were accepted.[[14]](#footnote-14) The system tracks the later of these dates in order to assess whether or not an agency is late in issuing a payment.[[15]](#footnote-15) On November 15, 2018, the Committee held a hearing in relation to late payments where the administration testified that, when fully launched, the Procurement and Sourcing Solution Portal (“PASSport”)[[16]](#footnote-16) a new online portal that aims to make procurement easier for agencies and vendors, will increase accountability and transparency.

The legislation being heard today seeks to address the issues of late payments in lieu of the pending full roll-out of PASSport.

1. **COST OVERRUNS**

The City’s management of large contracts, particularly technology projects, has often resulted in significant cost overruns – where the ultimate project costs have vastly exceeded original budget projections. The Council has held several oversight hearings to address issues related to cost overruns, including hearings on two notable over-budget technology projects, CityTime and the Emergency Communications Transformation Program. CityTime, launched in 2007, was an information technology initiative designed to provide an automated system of timekeeping and payroll for municipal employees originally budgeted at $63 million and ultimately cost well over $700 million.[[17]](#footnote-17) The Department of Investigation (“DOI”) found that $600 million was fraudulently allocated,[[18]](#footnote-18) and after the DOI investigation the City was ultimately reimbursed for 80% of the cost.[[19]](#footnote-19)

The Emergency Communications Transformation Program (“ECTP”) is an on-going project that was launched in 2004 to modernize and consolidate the City’s 911 emergency communication system, originally projected to cost $600 million for construction and $8 million per year for maintenance. The ECTP project has already exceeded $2 billion dollars and continues to grow. During a joint oversight hearing with the Technology Committee, DOI testified that their investigations of both CityTime and ECTP revealed “shortcomings in the way the City managed these contracts.”[[20]](#footnote-20) DOI acknowledged that IT contracts, by their nature, have particular complexities distinct from other kinds of city contracts that may need additional safeguards.[[21]](#footnote-21) The City has implemented many of the recommendations that have come out of both investigations, and DOI, MOCS, and the Department of Information and Telecommunications (“DoITT”) have worked collaboratively to explore the best ways to address concerns related to large technology contracts.[[22]](#footnote-22)

In recent years, both the Council and the Administration have taken proactive steps to address cost overruns by expanding oversight and improving deficiencies in management and procurement.[[23]](#footnote-23) Historically, the Council’s ability to scrutinize expenditures for projects was hindered by the limited information provided by City agencies. The Council often received opaque project data, which obscured the problems until projects had veered significantly off-course and agencies expended vast resources.[[24]](#footnote-24) This made it difficult for the Council to intervene in a timely fashion. The Council passed Local Law 18 in March of 2012 to address this issue, requiring the disclosure of certain cost increases in construction and service contracts associated with projects in the capital budget of $10 million or more.[[25]](#footnote-25) Specifically, Local Law 18 requires the Mayor to report to the Council on project cost increases at two stages.[[26]](#footnote-26) First, the Council receives notice whenever such a contract is extended or modified in a manner that increases the cost of the contract by 20% or more.[[27]](#footnote-27) Second, once such an extension or modification has taken place, the Council is notified regarding any additional contract extensions or modifications that result in a 10% cost increase above the revised contract value.[[28]](#footnote-28) Pursuant to Local Law 18, all notifications must include explanations about the basis and anticipated scope of the cost increase, and be sorted by project in the quarter following contract registration with the Comptroller.[[29]](#footnote-29)

The legislation being heard today seeks to further expand the disclosures pursuant to Local Law 18.

1. **LEGISLATIVE ANALYSIS OF PROPOSED INT. NO. 1238-A:**

Proposed Int. No. 1238-A would amend the cost overruns report currently required by *Local Law 18 of 2012*[[30]](#footnote-30) by requiring additional reporting for capital contract modifications for revisions of 20% or more of the original value of contracts over ten million dollars. This additional reporting would include detailed explanatory language regarding the nature of such contract modifications, including the total number of proposals submitted prior to awarding the original contract and whether the selected vendor’s other contracts with city agencies were similarly delayed, if applicable. The secondary report required by *Local Law 18 of 2012[[31]](#footnote-31)* would now be triggered for subsequent contract modifications of the lower of: (i) ten percent of the revised value or (ii) ten million dollars or more. Agencies would also be required to provide notification of modifications or extensions of 20% or more to the City Council at the time such modifications or extensions are submitted to the Comptroller for registration.[[32]](#footnote-32)

1. **LEGISLATIVE ANALYSIS OF INT. NO. 1311:**

Int. No. 1311 would amend the cost overruns report currently required by *Local Law 18 of 2012*[[33]](#footnote-33) by requiring agencies to notify the City Council immediately when large contract modifications exceed the original contract expenditures by 20% or more.

1. **LEGISLATIVE ANALYSIS OF INT. NO. 1448:**

Int. No. 1448 would create a division within the Mayor’s Office of Contract Services or any other agency designated by the mayor, dedicated to coordinating, facilitating and supporting the inter-agency oversight review process of unregistered contracts toward the goal of registering contracts before their start dates. The division would be charged with continuous review of the oversight review process and with reporting its findings and recommendations no less than quarterly to the Council, the Mayor and the Procurement Policy Board.

1. **LEGISLATIVE ANALYSIS OF INT. NO. 1449:**

Int. No. 1449 would require that a local development corporation or other not-for-profit corporation, a majority of whose members are appointed by the mayor and that contracts with the city to provide or administer economic development benefits on behalf of the city to offer bridge loans to contractors who have contracts with such corporation that are valued at no more than $500,000 and who are not receiving payments in a timely manner.

1. **LEGISLATIVE ANALYSIS OF INT. NO. 1450:**

Int. No. 1450 would require interest to be paid on late payments on city contracts with non-profit organizations. Non-profit contractors would not be eligible to receive the interest if such contractors received a no-interest and no-service-fee loan issued or authorized by a city agency to cover expenses in relation to those contracts.

Proposed Int. No. 1238-A

By Council Members Rosenthal, Kallos and Ulrich

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring additional disclosure of large contract modifications

..Body

Be it enacted by the Council as follows:

Section 1. Section 6-133 of Chapter 1 of title 6 of the administrative code of the city of New York is amended to read as follows:

                     § 6-133.  Notification of project cost increases.

a. For the purposes of this section, "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.

b. If an agency that has entered into a contract for construction and/or services with a maximum expenditure of more than ten million dollars in connection with a project included in the capital budget enters into a contract modification or extension that results in a total revised maximum expenditure that exceeds the original contract maximum expenditure by twenty percent or more, the mayor shall notify the council of such contract modification or extension, including a detailed explanation of the reasons for such modification or extension which shall include but need not be limited to:

i. a detailed breakdown [details of the basis for and scope] of the [estimated] additional costs and a detailed explanation of the changes in the scope of work set forth in the original contract;

ii. the reasons for such additional costs and changes in scope including why such additional costs and changes in scope were not anticipated when the original contract was awarded, and whether such additional costs and changes in scope were the result of contractor design errors or omissions; and whether such additional costs and changes in scope were caused by the agency that entered into the contract;

iii. whether the contractor has entered into other contracts with city agencies which were subject to modifications or extensions; and

iv. the total number of proposals that were submitted prior to awarding the original contract.

c. Once such notification has been provided for a contract, any additional modifications or extensions of such contract that increase the maximum expenditure by the lower of more than ten percent over the total revised maximum expenditure or by ten million dollars or more, shall trigger new notification to the council.

d. Notifications pursuant to this section shall be provided on a quarterly basis sorted by project within forty-five days of the end of the calendar quarter within which the comptroller registered such contract action, except that notification for contract modifications or extensions that exceed the original contract maximum expenditures by twenty percent or more shall be provided to the council at the same time as such contract modifications or extensions are submitted to the comptroller for registration.

§2. This local law takes effect 60 days after it becomes law.

Int. No. 1311

By Council Members Rosenthal, Ayala and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to requiring immediate disclosure of certain large contract modifications

Be it enacted by the Council as follows:

Section 1. Subdivision d of section 6-133 of Chapter 1 of title 6 of the administrative code of the city of New York is amended to read as follows:

 d. Notifications pursuant to this section shall be provided on a quarterly basis sorted by project within forty-five days of the end of the calendar quarter within which the comptroller registered such contract action, except that notifications for contract modifications or extensions that exceed the original contract maximum expenditures by twenty percent or more shall be provided to the council immediately.

§2. This local law takes effect 120 days after it becomes law.

Int. No. 1448

By Council Member Brannan, Holden and Kallos

..Title

A Local Law to amend the New York city charter, in relation to expediting the inter-agency oversight review process of certain unregistered contracts

..Body

Be it enacted by the Council as follows:

Section 1. Section 335 of the New York city charter is amended by adding a new subdivision c to read as follows:

c. The mayor’s office of contract services or any other agency designated by the mayor to perform the functions set forth in subdivision a of this section shall have a division dedicated to expediting the inter-agency oversight review of contracts or agreements valued at $1,000,000 or more that may be implemented pursuant to section 328. The duties of the division shall include:

1. Coordinating, facilitating and supporting the oversight review efforts of all agencies, including, but not limited to, those of the corporation counsel, the department of investigation, the office of management and budget, the division of labor services within the department of small business services and the comptroller, as well as any agency chief contracting officer, with respect to any contract or agreement valued at $1,000,000 or more that has not been registered by the comptroller or for which 30 days have not elapsed from the date of filing with the comptroller;

2. Continuously reviewing the oversight review process to identify opportunities within and among agencies to improve such process toward the objective of ensuring that contracts or agreements valued at $1,000,000 or more and that may be implemented pursuant to section 328 are filed with the comptroller no later than 30 days prior to their start dates; and

3. No less frequently than quarterly, reporting any findings and recommendations that are the result of such review to the speaker of the council, the mayor and the procurement policy board.

§ 2. This local law takes effect 120 days after it becomes law.

Int. No. 1449

By Council Members Brannan, Rosenthal, Holden and Kallos

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the provision of bridge loans to contractors

..Body

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 8 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-825 to read as follows:

§ 22-825 Loans for city contractors. a. Definitions. For purposes of this section, the following terms have the following meanings:

Eligible contract. The term “eligible contract” means any written agreement, purchase order or instrument valued at no more than $500,000 whereby the city is committed to expend or does expend funds in return for work, labor or services.

Contractor. The term “contractor” means a person or entity who is a party to an eligible contract.

b. In each covered contract with a contracted entity executed on or after the effective date of this section, the commissioner shall require that, unless prohibited by applicable law, such contracted agency provide a bridge loan to each contractor:

1. Who properly requests in writing such a bridge loan;

2. Whose eligible contract is pending registration pursuant to section 328 of the charter at the time the contractor requests such a bridge loan; and

3. Who has not or is not reasonably expected to receive payments on the scheduled payment dates specified in the applicable eligible contract.

c. The amount of such bridge loan shall be no more the amount due to be paid to such contractor under the terms of the applicable eligible contract.

§ 2. This local law takes effect immediately.

Int. No. 1450

By Council Members Brannan, Levin, Holden, Rosenthal and Kallos

..Title

A Local Law to amend the administrative code of the city of New York, in relation to interest to be paid on late contract payments to non-profit contractors

..body

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-143 to read as follows:

§ 6-143 Interest Payments. a. Definitions. For purposes of this section, the following terms have the following meanings:

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.

Non-profit contractor. The term “non-profit contractor” means a non-profit organization that is a party to a contract with a contracting agency that was awarded after the effective date of the local law that added this section.

b. A non-profit contractor shall be entitled to interest payments on the amount of money due to be paid to such non-profit contractor under the terms of the contract with the contracting agency, calculated from the date such amount was scheduled to be paid, as specified in such contract until the date such amount is actually paid.

c. The applicable interest rate for such interest payments shall be the rate set by the commissioner of taxation and finance for corporate taxes pursuant to paragraph (1) of subsection (e) of section 1096 of the tax law.

d. If any interest payment required pursuant to this section is made from amounts appropriated for program purposes such that it reduces the amount available to be spent on the program, the contracting agency shall notify the council in writing of the amount of such reduction and the reason why other funding could not be used for such interest payment.

e. A non-profit contractor shall not be eligible to receive an interest payment pursuant to this section if such non-profit contractor has received an interest-free and service fee-free loan issued or authorized by any agency to cover the expenses of the non-profit contractor in relation to the subject contract.

f. The interest payment shall not reduce the amount of money otherwise payable to the non-profit contractor under the terms of the relevant contract.

§ 2. This local law takes effect 60 days after it becomes law.

1. City of New York, Mayor’s Office of Contract Services, *Agency Procurement Indicators: Fiscal Year 2016* (2016) *available* *at* <http://www1.nyc.gov/assets/mocs/downloads/pdf/IndicatorsReport/2016AgencyProcurementIndicators.pdf> pg. 5 [↑](#footnote-ref-1)
2. City Comptroller of New York “Request for Information (RFI) Electronic Contract Invoicing Solutions” December 2014 available at <http://comptroller.nyc.gov/wp-content/uploads/2014/12/Electronic-Invoicing-Solutions-RFI.pdf> [↑](#footnote-ref-2)
3. *Id. See* “Current State of Contract Invoicing” at 4. [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *See* City of New York, Department of Finance, “Doing Business with NYC: Getting Paid” *available at* <http://www1.nyc.gov/site/finance/about/doing-business-with-nyc-getting-paid.page> [↑](#footnote-ref-6)
7. *See* City of New York, Department of Finance, “Enroll in the Vendor Payment Direct Deposit Program” *available at* <http://www1.nyc.gov/site/finance/about/doing-business-with-nyc-direct-deposit-program.page> [↑](#footnote-ref-7)
8. *See* City of New York, Procurement Policy Board Rules *available at* [http://home2.nyc.gov/html/mocs/ppb/downloads/pdf/PPB\_Final\_Updated\_5\_12\_14%20(3).pdf](http://home2.nyc.gov/html/mocs/ppb/downloads/pdf/PPB_Final_Updated_5_12_14%20%283%29.pdf) [↑](#footnote-ref-8)
9. *Id* at § 4-06(a). [↑](#footnote-ref-9)
10. *See* id. at § 4-06. [↑](#footnote-ref-10)
11. *See id.* [↑](#footnote-ref-11)
12. *See* *id.* at § 4-06(d). [↑](#footnote-ref-12)
13. City Comptroller of New York “Request for Information (RFI) Electronic Contract Invoicing Solutions” December 2014 *available at* <http://comptroller.nyc.gov/wp-content/uploads/2014/12/Electronic-Invoicing-Solutions-RFI.pdf> [↑](#footnote-ref-13)
14. *See id.*  [↑](#footnote-ref-14)
15. *See id.*  [↑](#footnote-ref-15)
16. City of New York, Mayor’s Office of Contract Services “PASSport Overview” <https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page> [↑](#footnote-ref-16)
17. *See* New York City Department of Investigation, “New York City Department of Investigation CityTime Investigation: Lessons Learned & Recommendations to Improve New York City Management of Large Information Technology Contracts,” July 2014, *available at* <http://www1.nyc.gov/assets/doi/reports/pdf/2014/2014-07-25-Pr13citytime.pdf> [↑](#footnote-ref-17)
18. *See id.*  [↑](#footnote-ref-18)
19. Michael M. Grynbaum, “Contractor Strikes $500 Million Deal in City Payroll Scandal” N.Y. Times, March 14 2012 *available at* <http://www.nytimes.com/2012/03/15/nyregion/contractor-in-citytime-payroll-scandal-to-pay-record-500-million.html>. [↑](#footnote-ref-19)
20. Testimony of Mark G. Peters, Commissioner, New York City Department of Investigations, December 15, 2014 *available at* <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2077084&GUID=8D473135-9A47-4EB7-9917-DF6032B2FD9A&Options=&Search>= [↑](#footnote-ref-20)
21. Testimony of Mark G. Peters, Commissioner, New York City Department of Investigations December 15, 2014 *available at* <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2077084&GUID=8D473135-9A47-4EB7-9917-DF6032B2FD9A&Options=&Search>= [↑](#footnote-ref-21)
22. *See id.*  [↑](#footnote-ref-22)
23. *See* Testimony of Deputy Mayor for Operations Caswell Holloway, *Oversight: Managing New York City Government IT Contracts*, Oct. 31, 2011, Committees on Contracts and Technology, at 8. [↑](#footnote-ref-23)
24. *See id.*  [↑](#footnote-ref-24)
25. *See* N.Y.C. Admin. Code § 6-133 [↑](#footnote-ref-25)
26. *See* N.Y.C. Admin. Code § 6-133 (b)-(c). [↑](#footnote-ref-26)
27. *See* N.Y.C. Admin. Code § 6-133 (b) [↑](#footnote-ref-27)
28. *See* N.Y.C. Admin. Code § 6-133 (c). [↑](#footnote-ref-28)
29. *See* N.Y.C. Admin. Code § 6-133 (d). [↑](#footnote-ref-29)
30. *See* N.Y.C. Admin. Code § 6-133(b). [↑](#footnote-ref-30)
31. *See* N.Y.C. Admin. Code § 6-133(c). [↑](#footnote-ref-31)
32. *See* N.Y.C. Admin. Code § 6-133(d). [↑](#footnote-ref-32)
33. *See id.* [↑](#footnote-ref-33)