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

**BRIEFING PAPER and committee report OF THE GOVERNMENTAL AFFAIRS DIVISION**

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October 22, 2020

**Oversight - Sourcing Local Personal Protective Equipment for the Next COVID-19 Wave or a Future Pandemic**

**PROPOSED INT. NO. 1980-A:** By Council Members Torres, Kallos and Chin

**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

1. **INTRODUCTION**

On October 22, 2020, the Committee on Contracts, together with the Committees on Economic Development and Governmental Operations, will hold a remote oversight hearing on: Sourcing Local Personal Protective Equipment for the Next COVID-19 Wave or a Future Pandemic. The Committees will also hear Proposed Introduction Bill Number 1980-A (Int. 1980-A), 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. The Committees have invited the Mayor’s Office of Contract Services (MOCS), the New York City Economic Development Corporation (NYCEDC), the Department of Citywide Administrative Services (DCAS), and other interested stakeholders to testify.

1. **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-2) As of October 14, 2020, COVID-19 has infected nearly 36 million people across 214 countries and territories, and has killed over one million people.[[2]](#footnote-3) In the United States alone, there have been over seven million infections and over 216,000 deaths.[[3]](#footnote-4) As of October 14, 2020, New York had over 465,000 infections and over 33,000 deaths,[[4]](#footnote-5) over 19,000 of which took place in New York City.[[5]](#footnote-6)

The ease with which this virus can spread initially created a global rush for personal protective equipment (PPE), which includes gloves, masks, face shields, and gowns. Since the original outbreak, the virus has been detected in virtually every country in the world, making accessing PPE incredibly difficult as each jurisdiction vies for limited supply. In this hearing, the Committees are seeking to uncover problems and successes in the City’s approach to procuring PPE during the pandemic, in order to ensure we are fully prepared for a potential second wave or future emergency.

1. **NYC Emergency Procurement During COVID-19**

***Emergency contracting power***

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.[[6]](#footnote-7) 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.[[7]](#footnote-8) The Mayor is delegated this authority pursuant to a provision of *GML 103* detailing exceptions to the standard procurement rules in case of emergencies.[[8]](#footnote-9)

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.”[[9]](#footnote-10) 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.[[10]](#footnote-11)

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.[[11]](#footnote-12) This assisted the City in the timely procurement of goods, especially critical PPE for the City’s frontline workers. As of October 14, 2020, the City has registered contracts for $742 million for PPE, $141 million for ventilators, $100 million for testing centers, and $249 million for other medical, surgical and lab supplies.[[12]](#footnote-13) For fiscal years 2020 and 2021, “the City has incurred or committed to $4.59 billion of COVID related spending”.[[13]](#footnote-14)

***Local Procurement Through NYCEDC***

As the COVID-19 pandemic swept the globe in March, NYCEDC prepared itself to act quickly to respond to the emergency. On March 18, its Executive Committee approved a resolution to authorize NYCEDC to enter into “any agreements … to respond to COVID-19 matters and to assist the City to prepare and/or respond to these matters,” and “any needed Funding Source Agreements.”[[14]](#footnote-15) It also authorized NYCEDC to make any expenditures needed in connection with responding to COVID-19.[[15]](#footnote-16) It authorized the use of “any procurement method allowed by NYCEDC’s annual contracts with the City … including, without limitation, the sole source and emergency procurement methods,” and the use of “any funds available to NYCEDC, including, without limitation, NYCEDC programmatic budget funds.”[[16]](#footnote-17)

At the time, the City had an urgent need to secure adequate hospital space and medical supplies to handle the expected surge of virus cases, and health care professionals were sounding the alarm that the City faced a dire shortage of PPE, including isolation gowns, face shields, and masks for its medical professionals.[[17]](#footnote-18) To meet this need, on March 31, NYCEDC approved the use of up to $50 million from its programmatic budget funds (anticipated to be reimbursed by the City and/or federal emergency funds, and the proceeds of resales to private hospitals) to purchase PPE deemed essential by the City’s Department of Health and Mental Hygiene (DOHMH) and the Health & Hospitals public hospital system (H&H) through sole source emergency procurement.[[18]](#footnote-19) It would then provide this PPE free of charge to H&H, and sell some of it to private hospitals, which would help it recoup some costs.[[19]](#footnote-20)

NYCEDC also set up a citywide portal to collect and vet the surge of offers to sell or donate medical supplies to the City that were coming in from across the country and around the globe.[[20]](#footnote-21) In coordination with City Hall and various City agencies working on COVID-19 response, including the Office of Emergency Management, DOHMH, MOCS, DCAS, and H&H, NYCEDC vetted offers using criteria including demand, medical-grade certifications, product specifications, access to raw material for production, price and ability to produce at scale, delivery time, validity of the offer, and payment upon delivery.[[21]](#footnote-22) It also worked with the U.S. Department of Commerce to help vet offers from China.[[22]](#footnote-23) Despite the thousands of leads that came through the portal, NYCEDC reported in mid-April that only about ten percent of incoming offers were meeting their vetting standards and current priority needs.[[23]](#footnote-24)

In addition to vetting and procuring medical supplies from around the world, NYCEDC also partnered with local businesses to manufacture PPE locally and supply it to hospitals and medical sites around the City.[[24]](#footnote-25) In March, NYCEDC put out a call for local businesses to manufacture PPE and reported that it received over 2,900 responses.[[25]](#footnote-26) At the Economic Development Committee’s June 24, 2020 oversight hearing, NYCEDC reported that it had partnered with 15 domestic manufacturers, nine of which are NYC-based, to produce over four million face shields.[[26]](#footnote-27) This face shield manufacturing supported 505 local jobs.[[27]](#footnote-28) In addition, NYCEDC said that it produced 3.2 million gowns from 14 local manufacturers,[[28]](#footnote-29) an effort that retained or created 2,181 jobs for local garment manufacturers, almost 60 percent of whom are qualified to register as M/WBEs.[[29]](#footnote-30) Among the organizations NYCEDC partnered with was the Broadway Relief Project, a coalition of over 700 Broadway costume designers and sewers who have teamed up to produce gowns and masks for public hospitals in the City.[[30]](#footnote-31) It also partnered with garment manufacturing businesses at manufacturing hubs across the City, including the Brooklyn Navy Yard, Manhattan’s Meatpacking and Garment Districts, and the Brooklyn Army Terminal.[[31]](#footnote-32)

In addition to a shortage of PPE, City hospitals also anticipated a severe shortage of ventilators, which are vital to treat severe cases of a respiratory disease like COVID-19.[[32]](#footnote-33) To meet this need, NYCEDC facilitated a public-private partnership that developed a low-cost “bridge” ventilator, a machine meant to help less critically ill patients breathe, in about a month – a process that normally could take a year or more.[[33]](#footnote-34) Upon recognizing the urgent need for ventilators, the City invested $100,000 for a research grant and nearly $10 million for an agreement to buy 3,000 bridge ventilators.[[34]](#footnote-35) Then a team of scientists, engineers, entrepreneurs, physicians and regulatory experts, led by New Lab, the technology center for researchers and startups based at the Brooklyn Navy Yard, went to work developing an affordable product that could get to market quickly.[[35]](#footnote-36) The FDA approved the new machine, called the Spiro Wave, in mid-April.[[36]](#footnote-37) While the City did not end up experiencing the severe ventilator shortage it had anticipated, the Spiro Wave is still a valuable tool to have on hand, and could expand access to treatment to other parts of the country as the pandemic spreads, and to developing countries in need of low-cost equipment.[[37]](#footnote-38)

In late April, NYCEDC’s Executive Committee approved an additional $50 million for PPE and medical equipment purchase orders, which would now include COVID-19 testing kits, another in-demand medical supply in the City.[[38]](#footnote-39) NYCEDC developed a testing kit supply chain with local biotech companies and small manufacturers to produce these kits.[[39]](#footnote-40) NYCEDC-procured testing kits went primarily to H&H, because H&H was running community testing sites across the City.[[40]](#footnote-41) At the time, the City sought to significantly ramp up COVID-19 testing, declaring on May 14 that the City aimed to test 20,000 New Yorkers per day by the week of May 25.[[41]](#footnote-42) It met this goal, testing 34,651 people on May 26, and continues to conduct a high volume of testing.[[42]](#footnote-43) At the June 24 Economic Development Committee hearing, NYCEDC reported that local manufacturers were producing 50,000 test kits per week and had delivered 175,000 testing kits to date.[[43]](#footnote-44) In late July, Mayor de Blasio announced that the City had met its new goal of testing 50,000 people per day.[[44]](#footnote-45) At its June 2 Executive Committee meeting, NYCEDC reported it had a target of producing 100,000 units per week, and up to two million kits in the coming months.[[45]](#footnote-46)

NYCEDC established a limited liability company (LLC) for purchasing these medical supplies and testing kits, because an LLC, combined with the liability protections of the federal Public Readiness and Emergency Preparedness (PREP) Act, would offer NYCEDC protection should any of the medical equipment procured be found defective.[[46]](#footnote-47) NYCEDC said its legal team, with some assistance from the City’s Law Department, handled putting together the legal agreements for every purchase order they made, and that on the whole, NYCEDC’s entire staff worked remarkably fast to ensure the procurement process moved as fast as possible.[[47]](#footnote-48) It also reported that it was not facing cash flow problems, but was working with the City to try to shorten the reimbursement period for COVID-19-related expenditures, which generally took about three weeks.[[48]](#footnote-49)

At the June 2, 2020 Executive Committee meeting, the Committee approved an additional $75 million for NYCEDC to continue purchasing and supporting the development of medical supplies, bringing the total funding for this effort to $175 million.[[49]](#footnote-50) NYCEDC anticipated that these expenses would ultimately be reimbursed by the City and/or federal funds, and by the proceeds of resales to private hospitals, and said that it would only spend up to the amount of federal or other funds approved by the NYC Office of Management and Budget.[[50]](#footnote-51)

NYCEDC has said it is committed to remaining vigilant to see the City through to the other side of the COVID-19 pandemic, and will continue to procure medical supplies, perhaps at a lower scale, to ensure that the City stays protected and New Yorkers remain employed.[[51]](#footnote-52)

***DCAS Procurement and Stockpiling***

DCAS is generally responsible for citywide procurement, awarding $1.7 billion in contracts in FY2019.[[52]](#footnote-53) Starting in March 2020, DCAS was responsible for the emergency procurement of critical supplies for all medical and non-medical essential City employees. Early on in DCAS’ emergency procurement efforts, pressure on the supply chain caused delays across the board. As a result, NYPD resorted to requesting masks from DOHMH rather than DCAS.[[53]](#footnote-54) In addition, DCAS initially prioritized medical-grade mask orders over non-medical masks to ensure that the City’s medical facilities were sufficiently outfitted.[[54]](#footnote-55) Accordingly, DCAS’ supply of PPE was limited and distribution was tightly controlled.[[55]](#footnote-56)

Once stress on the supply chain eased, DCAS provided more supplies to other agencies.[[56]](#footnote-57) By April, DCAS had to supply non-medical grade face coverings to all agencies performing essential functions after the Mayor ordered that employees of such agencies must wear face coverings when performing their duties while unable to maintain a distance of at least six feet.[[57]](#footnote-58) Since then, agencies have worked with their respective Deputy Mayors to ensure they have enough non-medical grade PPE, and DCAS has made monthly deliveries to agencies based on the orders received from the Deputy Mayors.[[58]](#footnote-59) At a May 20, 2020 Executive Budget hearing before the Committee on Governmental Operations, DCAS Commissioner Lisette Camilo testified that DCAS had procured over $800 million worth of supplies and equipment to support COVID-19 response.[[59]](#footnote-60)

At the Executive Budget Hearing, Commissioner Camilo also noted that DCAS was working with DOHMH and MOCS to develop a long-term stockpile strategy, as required by the Governor.[[60]](#footnote-61) Although DCAS could not speak to agencies’ current usage rates or future needs, Commissioner Camilo was confident that the City had two weeks’ worth of emergency supplies on hand as of May 20, 2020 and stated that the City would continue to work toward a 90-day stockpile.[[61]](#footnote-62) According to Commissioner Camilo, the 90-day stockpile would concern all “goods and commodities that hospitals need to be able to protect themselves while they are treating COVID patients,” including ventilators, face masks, N95 masks, gloves, isolation gowns, and bouffant caps.[[62]](#footnote-63)

On July 8, 2020, DCAS shared the following breakdown of COVID-19-related procurement with staff to the Committee on Governmental Operations:

|  |  |  |
| --- | --- | --- |
| **Critical Asset** | **Total Individual Units Ordered** | **Total Ordered Amount ($)** |
| Aprons | 700,000 | $3,555,000 |
| Bandanas | 3,797,800 | $3,688,112 |
| Bleach | 2,062,208 | $14,521,100 |
| Boot Covers | 11,000,000 | $11,020,000 |
| Bouffant Caps | 18,000,000 | $15,437,000 |
| Breathing Hose | 2,000 | $278,000 |
| Cleaning Supplies | 616,132 | $1,397,580 |
| Cots | 588 | $30,576 |
| Coveralls | 289,118 | $6,414,897 |
| Disinfectant Spray | 725,635 | $7,795,217 |
| Face Coverings-Non Medical | 100,000 | $480,000 |
| Face Masks-Other | 95,778,404 | $75,573,825 |
| Face Shields | 4,406,288 | $9,664,000 |
| Full Service Ventilators | 4,000 | $85,689,260 |
| Gloves | 284,206,770 | $31,531,517 |
| Gloves-Latex | 1,100,000 | $175,846 |
| Goggles | 1,084,200 | $2,536,928 |
| Hand Sanitizer | 9,918,420 | $29,867,905 |
| Hand Soap | 25,800 | $337,550 |
| Information Technology | 8,076 | $11,762,985 |
| Isolation Gowns L1 | 1,405,000 | $9,665,000 |
| Isolation Gowns L2 | 1,300,000 | $8,840,000 |
| Isolation Gowns L3 | 70,000,000 | $350,410,000 |
| Isolation Gowns-Other | 16,611,280 | $73,677,239 |
| Isopropyl Alcohol | 1,800 | $3,798 |
| KN95 Masks | 28,126,400 | $86,058,650 |
| Machine Accessories | 17,380 | $12,710,890 |
| Medical Supplies (S) | 20,000 | $228,100 |
| N95 Respirator Masks | 78,495,350 | $148,518,547 |
| No Touch Thermometer | 25,000 | $1,125,000 |
| Non Full Service Ventilators | 6,930 | $17,133,166 |
| Other | 1,185,468 | $33,734,537 |
| Other PPE, Healthcare | 12,684,000 | $208,335 |
| Other PPE, Non-Healthcare | 1 | $1,406 |
| Other Ventilator Accessories | 81,000 | $14,583,226 |
| Ponchos | 1,102,800 | $652,272 |
| Pulse Oximeter | 1,020,000 | $20,950,800 |
| Sanitizing Wipes | 1,362,751 | $1,315,545 |
| Surgical Masks | 129,754,000 | $76,237,380 |
| Swab Kit | 6,650,000 | $25,124,173 |
| Test Swab Vials | 9,100,000 | $23,141,000 |
| Test Swabs | 8,420,400 | $9,224,000 |
| Thermometer | 337,693 | $6,212,077 |
| Ventilator Filters | 28,700 | $85,633 |
| Ventilator- Proprietary Circuits | 10,000 | $93,010 |
| Ventilator- Universal Circuits | 27,200 | $103,105 |
| Vests | 2,100 | $17,745 |
| **Grand Total** | **801,600,692** | **$1,231,811,933** |

1. **Issues and concerns**

Although the suspension of the City’s procurement rules was necessary to facilitate the quick attainment of necessary supplies, the changes did create some problems. For instance, as states across the country competed for PPE and other medical supplies, the City’s contracting agencies were forced to offer payment to vendors before such equipment was delivered. Reporting from mid-April indicated that DCAS pre-paid for 34 million masks to be delivered between March 6, 2020 and April 11, 2020; however, as of April 17, 2020, the agency had only received 637,760 of these masks.[[63]](#footnote-64) During the same time, the City was also waiting on at least 2,000 ventilators, for which it had paid $9 million the month prior.[[64]](#footnote-65)

A review by journalists of 14 City contracts for N95 masks during this time -period showed that only one company had fully delivered their promised amount of masks.[[65]](#footnote-66) One other company had partially fulfilled the City’s order, while the remaining 12 vendors had delivered none of the N95 masks they had promised to the City.[[66]](#footnote-67) DCAS was also forced to cancel three contracts with vendors who were unable to supply $171 million worth of ventilators.[[67]](#footnote-68)

In total, between March 1, 2020 and May 1, 2020, the City awarded $1.6 billion in emergency contracts, which was above the amount spent during Hurricane Sandy.[[68]](#footnote-69) Additionally, three-quarters of that money went to contracts with new City vendors who have not been through the normal vetting process, as illustrated by the graph below.[[69]](#footnote-70)

**Value of Emergency Contracts[[70]](#footnote-71)**



This means that a large majority of these contractors did not undergo the City’s normal vetting and bidding processes. In one instance, vendor Donald Cariati was awarded a $14 million no-bid contract to deliver meals to needy New Yorkers. Two weeks prior to this award, however, Mr. Cariati pleaded guilty to “attempting to interfere with an Internal Revenue Service audit of his business, a felony punishable by up to three years in prison.”[[71]](#footnote-72) Although Mr. Cariati’s company had previously contracted with the City’s Department of Sanitation (DSNY) (most recently in 2012), if DSNY was aware of the felony, the contract could not have been awarded. According to an official from DSNY, “officials didn’t find it in searches of court and legal databases”.[[72]](#footnote-73) Instead, the Department relied on the company’s past contract performance and references provided by Mr. Cariati. The journalists covering this story revealed that they discovered the conviction through a Google search.[[73]](#footnote-74)

In another widely reported case, the City contracted with a first time vendor, whose owner also happened to be a donor to Mayor de Blasio’s political campaigns.[[74]](#footnote-75) The New Jersey-based computer business, Digital Gadgets, was originally awarded more than $119 million worth of contracts.[[75]](#footnote-76) A $91 million contract was to secure 2,000 Aeonmed VG70 ventilators ($41,000 each), plus 200,000 breathing kits ($45 each).[[76]](#footnote-77) This contract was eventually cancelled as the City decided to purchase a different model of ventilator, and the upfront money paid to Digital Gadgets was used to cover the purchase of masks.[[77]](#footnote-78) The City purchased two million N95 masks from Digital Gadgets, for $8 million ($4 each).[[78]](#footnote-79) According to a report from *The City*, “[a] day earlier, a different vendor, Illinois-based Medline Industries Inc., sold the city the same quantity of masks for $1.7 million, or 88 cents per mask.”[[79]](#footnote-80) A third contract between the City and Digital Gadgets, which was originally penned for $11.27 million to cover N95 and surgical masks, was increased the following day to $19.79 million.[[80]](#footnote-81)

These contracts were the first New York City contracts for Digital Gadgets and, because of the executive order suspending the normal procurement rules, the company avoided the traditional bidding process.[[81]](#footnote-82) Digital Gadgets was also not in the business of procuring or manufacturing medical supplies and normally acted as wholesalers for hover-boards and other electronic devices for shopping networks.[[82]](#footnote-83) The concerns regarding conflicts of interest also extend beyond the political campaign contributions as, one week after the $19 million mask contract was signed, Mayor de Blasio appointed Digital Gadget’s owner, Charles Tebele, to NYCEDC’s board.[[83]](#footnote-84) Meanwhile, in May, the Mayor appointed Mr. Tebele to the Small Business Sector Advisory Council, which was established to help guide how the City should respond to the COVID-19 pandemic.[[84]](#footnote-85)

At the Executive Budget hearing before the Committee on May 20, Commissioner Camilo shared that DCAS had contracted with approximately 20 vendors for masks, to mitigate risks of a supply chain breakdown, should reliance on one vendor cause the City to be without critical supplies. This strategy was utilized for different types of critical supplies, and served to explain why DCAS later cancelled multiple contracts for failure to deliver.[[85]](#footnote-86) When asked about the decisions made to cancel contracts for failure to fulfil orders, DCAS replied on July 8: “For vendors that fail to provide goods ordered by the City, DCAS has exercised its options to terminate the purchase orders on which vendors have failed to deliver. Purchase order terminations in these cases fall into two categories: purchase orders that are terminated ‘for convenience,’ and purchase orders terminated ‘for cause.’"[[86]](#footnote-87) MOCS’ role is to review emergency contract package for completion, notify the Comptroller and note approvals in the City’s Financial Management System for contract processing. DCAS has not yet provided the Committee with the breakdown of contracts, contract amounts, vendors and expected supplies that were cancelled, despite promising to do so at a hearing on May 20, 2020.

1. **Looking Ahead**

***Stockpiling Requirements***

At the peak of the outbreak, jurisdictions across the globe were struggling to source the PPE they needed. As a result, new mandates were issued to create local stockpiles of these items, with the hopes of preventing shortages should a second wave of the virus hit. On May 4, 2020, Mayor de Blasio announced that, once the City had an adequate 14 day reserve, the City would expand its resources and stockpile 90 days’ worth of emergency PPE for the City’s hospitals.[[87]](#footnote-88) Meanwhile, the State mandated that hospitals have a 90 day supply of PPE by September 30, 2020.[[88]](#footnote-89) The State stockpile is based both on guidelines from the Centers for Disease Control (CDC) and based on the “rate of usage equal to the average daily rate that PPE was used between April 13, 2020 and April 27, 2020.”[[89]](#footnote-90) The State has also mandated that nursing homes and long-term health facilities maintain a 60 day supply of PPE.[[90]](#footnote-91)

As the City moves through the pandemic, it is clear that stockpiles of these resources will be crucial, should a second-wave hit. Furthermore, given the type of local manufacturing that exists, it would be beneficial if City agencies had ready access to these additional vendors. The benefits of this partnership are threefold: 1. It would help secure the City’s PPE stockpiles; 2. It would mitigate the need to enter a national or global bidding war; and 3. It would support local manufacturing during an economic downturn.

***Sustainability***

At the peak of the COVID-19 outbreak, when jurisdictions across the globe were scrambling to secure all the PPE they could acquire, the environmental qualities of these items were, rightly, not at the forefront of decision makers. However, as we consider a potential second wave of COVID-19, or a future pandemic, the disposable nature of PPE, and the materials with which they are typically comprised of, deserves examination. In Wuhan, China, for example, where the virus was originally detected, their hospitals “produced more than 240 tons of single-use plastic-based medical waste (such as disposable face masks, gloves, and gowns) per day at the peak of the pandemic, 6 times more than the daily average before the pandemic occurred. PPE data use from other locations show a similar trend. If the increases observed in Wuhan hold true elsewhere, the United States could generate an entire year's worth of medical waste in 2 months.”[[91]](#footnote-92)

Compounding the unprecedented demand for PPE is the fact that little of this waste is being recycled. Even though only 15 percent of hospital waste in the United States is considered biohazardous, 85 percent is incinerated, and “25 percent of healthcare waste generated from United States’ facilities are clean, noninfectious plastics, amounting to one million tons per year of potential opportunity for valuable polymers to reenter the supply chain.”[[92]](#footnote-93)

Sustainable and reusable PPE items exist. In hospitals in Edmonton, Canada, for example, sterile, waterproof, reusable gowns were being used prior to the pandemic. Now, “[d]uring the pandemic, these gowns are now laundered, without sterilization, for use as a component of [health care providers] PPE. Reusable goggles and face-shields are also used and can be cleaned and decontaminated very easily.”[[93]](#footnote-94) Other devices, such as elastomeric respirators, can be reused and replace items such as single-use N95 masks.[[94]](#footnote-95) Such examples not only reduce the amount of waste being incinerated or sent to landfill, but it also reduced the demand for PPE. If New York City’s health care facilities had stockpiles of such items, it is possible that they would not require the same quantities of disposable PPE, and could avoid needing to engage in bidding wars. At the hearing, the Committees hope to hear whether there are local manufacturers that can produce sustainable PPE and how these items compare to traditional, disposable PPE.

1. **CONCLUSION**

The struggle to quickly procure necessary PPE at the beginning of the COVID-19 crisis provides an important lesson for the City moving forward. It is clear that, with adequate planning and collaboration, local manufacturers are able to contribute to the supply chain. However, the pace with which the City was required to act on procuring these items exposed the City to problematic vendors and other procurement challenges. The various problems uncovered by journalists tracking the emergency procurement highlights the need for more oversight, even during an emergency.

1. **Legislative analysis**

The proposed legislation would create a temporary special inspector of emergency contracts within the Department of Investigation. The special inspector would be appointed by the Commissioner of Investigation and would be responsible for monitoring the City’s emergency procurement contracts during the COVID-19 declared state of emergency. The special inspector would review contracts to identify monitoring and integrity deficiencies, and make recommendations for remedying such deficiencies in real-time within a publicly available online database. The database would include, for each contract: (1) the contract requirements; (2) the contract’s dollar value; (3) the vendor’s type of business; (4) the vendor’s inventory of contracted goods; (5) the timeline for delivery; (6) whether the vendor previously did business with the City; (7) whether the vendor previously provided the goods or services required by the contract; and (8) assessments of whether the contractor provided the contracted goods or services to the City.

The proposed legislation would be unconsolidated and the special inspector’s authority would remain in effect for one year after the conclusion of the declared state of emergency contained in mayoral executive order number 98 for the year 2020.

Proposed Int. No. 1980-A

By Council Members Torres, Kallos and Chin

..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.

JG/ARP

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1. World Health Organization “Rolling updates on coronavirus disease (COVID-19)”, last updated April 18, 2020, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>. [↑](#footnote-ref-2)
2. Worldometer “Countries where COVID-19 has spread”, updated October 6, 2020, available at: <https://www.worldometers.info/coronavirus/countries-where-coronavirus-has-spread/>. [↑](#footnote-ref-3)
3. Johns Hopkins University of Medicine, Coronavirus Resource Center, updated October 14, 2020, available at: <https://coronavirus.jhu.edu/>. [↑](#footnote-ref-4)
4. Johns Hopkins University of Medicine, Coronavirus Resource Center, “New York: State overview”, updated October 6, 2020, available at: <https://coronavirus.jhu.edu/region/us/new-york>. [↑](#footnote-ref-5)
5. NYC Health “COVID-19 data”, available at: <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>, updated October 14, 2020. [↑](#footnote-ref-6)
6. *See* N.Y. Gen. Mun. § 103 [↑](#footnote-ref-7)
7. *See* N.Y.C. Mayor Bill de Blasio “Emergency Executive Order 101”, March 17, 2020, available at: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-101.pdf>. [↑](#footnote-ref-8)
8. *See* N.Y. Gen. Mun. § 103(4) [↑](#footnote-ref-9)
9. N.Y. Gen. Mun. § 103(4) [↑](#footnote-ref-10)
10. N.Y.C. Charter § 315 [↑](#footnote-ref-11)
11. *See* N.Y. Gen. Mun. § 103 [↑](#footnote-ref-12)
12. NYC Comptroller Scott Stringer “New York by the numbers: Weekly economic and fiscal outlook”, October 19, 2020, available at: <https://comptroller.nyc.gov/newsroom/new-york-by-the-numbers-weekly-economic-and-fiscal-outlook-no-21-october-19-2020/>. [↑](#footnote-ref-13)
13. *Id*. [↑](#footnote-ref-14)
14. *See* March 18, 2020 NYCEDC Executive Committee minutes <https://edc.nyc/sites/default/files/2020-05/NYCEDC-Executive-Committee-Minutes-3-18-2020.pdf> [↑](#footnote-ref-15)
15. *See id.*  [↑](#footnote-ref-16)
16. *See id.*  [↑](#footnote-ref-17)
17. *See* Amanda Eisenberg “As supplies grow scarce in New York City, medical workers fear becoming patients themselves”, *Politico*, March 23, 2020 available at: <https://www.politico.com/states/new-york/albany/story/2020/03/23/as-supplies-grow-scarce-in-new-york-city-medical-workers-fear-becoming-patients-themselves-1268743>. [↑](#footnote-ref-18)
18. *See* March 31, 2020 NYCEDC Executive Committee minutes: <https://edc.nyc/sites/default/files/2020-05/NYCEDC-Executive-Committee-Minutes-3-31-2020.pdf> [↑](#footnote-ref-19)
19. *See id.*  [↑](#footnote-ref-20)
20. NYCEDC, “COVID-19 Emergency Supply Sourcing & Manufacturing” <https://edc.nyc/covid-19-emergency-supply-sourcing-manufacturing> (last visited October 8, 2020). [↑](#footnote-ref-21)
21. *See* NYCEDC April 16, 2020 webinar (*on file with committee staff*). [↑](#footnote-ref-22)
22. *See id.*  [↑](#footnote-ref-23)
23. *See id.*  [↑](#footnote-ref-24)
24. *See* NYCEDC “Five Ways NYCEDC is Supporting New York City’s COVID-19 Response”, May 4, 2020, available at: <https://edc.nyc/article/five-ways-nycedc-is-supporting-new-york-city-covid-19-response>. [↑](#footnote-ref-25)
25. *See id.*  [↑](#footnote-ref-26)
26. *See* James Patchett, NYCEDC “Testimony before the New York City Council Committee on Economic Development,” June 24, 2020. [↑](#footnote-ref-27)
27. *See* NYCEDC, “Weekly Update from NYCEDC”, Jun 19, 2020, (*email correspondence on file with committee* staff). [↑](#footnote-ref-28)
28. *See* James Patchett, NYCEDC “Testimony before the New York City Council Committee on Economic Development,” June 24, 2020. [↑](#footnote-ref-29)
29. *See* “Weekly Update from NYCEDC,” Jun 19, 2020, (*email correspondence on file with committee* staff). [↑](#footnote-ref-30)
30. *See* Christian Allaire “Broadway Costume Designers Are Making PPE for Healthcare Workers”, Vogue, May 13, 2020, available at: <https://www.vogue.com/article/broadway-costume-designers-ppe-healthcare-workers>. [↑](#footnote-ref-31)
31. *See* NYCEDC “Five Ways NYCEDC is Supporting New York City’s COVID-19 Response”, May 4, 2020, available at: <https://edc.nyc/article/five-ways-nycedc-is-supporting-new-york-city-covid-19-response>. [↑](#footnote-ref-32)
32. *See* Kevin McCoy & Dennis Wagner “Which coronavirus patients will get life-saving ventilators? Guidelines show how hospitals in NYC, US will decide”, *USA Today*, Apr. 4, 2020, available at: <https://www.usatoday.com/story/news/2020/04/04/coronavirus-ventilator-shortages-may-force-tough-ethical-questions-nyc-hospitals/5108498002/>. [↑](#footnote-ref-33)
33. *See* Steve Lohr “New York Needed Ventilators. So They Developed One in a Month”, *New York Times* Apr. 20, 2020, available at: <https://www.nytimes.com/2020/04/20/technology/new-york-ventilators-coronavirus.html>. [↑](#footnote-ref-34)
34. *See id.*  [↑](#footnote-ref-35)
35. *See id.*  [↑](#footnote-ref-36)
36. *See id.*  [↑](#footnote-ref-37)
37. *See id.*  [↑](#footnote-ref-38)
38. *See* April 21, 2020 NYCEDC Executive Committee minutes: <https://edc.nyc/sites/default/files/2020-05/NYCEDC-Executive-Committee-Minutes-4-21-2020.pdf> [↑](#footnote-ref-39)
39. *See* NYCEDC “Five Ways NYCEDC is Supporting New York City’s COVID-19 Response”, May 4, 2020, available at: <https://edc.nyc/article/five-ways-nycedc-is-supporting-new-york-city-covid-19-response>. [↑](#footnote-ref-40)
40. *See* May 19, 2020 NYCEDC Executive Committee minutes: <https://edc.nyc/sites/default/files/2020-07/EDC%20Executive%20Committee%20Minutes%205-19-2020%20-%20signed.pdf>. [↑](#footnote-ref-41)
41. *S*ee N.Y.C. Mayor Press Release “Test and Trace: City Expands Testing Criteria to Test More New Yorkers”, May 14, 2020, available at: <https://www1.nyc.gov/office-of-the-mayor/news/347-20/test-trace-city-expands-testing-criteria-test-more-new-yorkers>. [↑](#footnote-ref-42)
42. *See* NYC Health, “Daily Testing*,”* available at: <https://www1.nyc.gov/site/doh/covid/covid-19-data-testing.page>. (last visited October 8, 2020). [↑](#footnote-ref-43)
43. *See* Patchett, NYCEDC “Testimony before the New York City Council Committee on Economic Development,” June 24, 2020. [↑](#footnote-ref-44)
44. “Mayor says NYC can perform 50,000 coronavirus tests daily”, AP, July 23, 2020, available at: <https://apnews.com/b2f4038b85ceb3d7275248a36ec581e0>. [↑](#footnote-ref-45)
45. June 2, 2020 NYCEDC Executive Committee meeting notes, and minutes, available at: <https://edc.nyc/sites/default/files/2020-06/EDC%20Executive%20Committee%20Minutes%206-2-2020%20-%20DRAFT_0.pdf>. [↑](#footnote-ref-46)
46. *See* April 21, 2020 NYCEDC Executive Committee minutes: <https://edc.nyc/sites/default/files/2020-05/NYCEDC-Executive-Committee-Minutes-4-21-2020.pdf>. [↑](#footnote-ref-47)
47. *See* April 21, 2020 NYCEDC Executive Committee minutes: <https://edc.nyc/sites/default/files/2020-05/NYCEDC-Executive-Committee-Minutes-4-21-2020.pdf>. [↑](#footnote-ref-48)
48. *See* May 6, 2020 NYCEDC Executive Committee meeting minutes: <https://edc.nyc/sites/default/files/2020-07/EDC%20Executive%20Committee%20Minutes%205-6-2020%20-%20signed.pdf>. [↑](#footnote-ref-49)
49. *See* June 2, 2020 NYCEDC Executive Committee minutes: <https://edc.nyc/sites/default/files/2020-07/EDC%20Executive%20Committee%20Minutes%206-2-2020%20-%20signed.pdf>. [↑](#footnote-ref-50)
50. *See id.*  [↑](#footnote-ref-51)
51. *See* Patchett, NYCEDC “Testimony before the New York City Council Committee on Economic Development,” June 24, 2020. [↑](#footnote-ref-52)
52. Department of Citywide Administrative Services “Annual Report: 2019”, available at: <https://www1.nyc.gov/assets/dcas/downloads/pdf/about/dcas_annual_report_2019.pdf>. [↑](#footnote-ref-53)
53. *See* Commissioner Lisette Camillo, DCAS “Testimony before the New York City Council Committee on Finance and the Committee on Governmental Operations,” on May 20, 2020, Available at: <https://legistar.council.nyc.gov/View.ashx?M=F&ID=8641823&GUID=081AE1DD-9870-49A5-9887-9162CFC44C41>. [↑](#footnote-ref-54)
54. *See id.*  [↑](#footnote-ref-55)
55. *See id.* [↑](#footnote-ref-56)
56. *See id.* [↑](#footnote-ref-57)
57. *See id.* [↑](#footnote-ref-58)
58. *See id.* [↑](#footnote-ref-59)
59. *See id.* The chart below, shared on July 8, 2020, provides breakdown of supplies acquired. [↑](#footnote-ref-60)
60. *See id.* [↑](#footnote-ref-61)
61. *See id.* [↑](#footnote-ref-62)
62. *See id.* [↑](#footnote-ref-63)
63. Gabriel Sandoval “Millions of N95 masks NYC ordered weeks ago for public hospitals still MIA”, *The City*, April 17, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/17/21247094/millions-of-n95-masks-nyc-ordered-weeks-ago-for-public-hospitals-still-mia>. [↑](#footnote-ref-64)
64. Gabriel Sandoval “Millions of N95 masks NYC ordered weeks ago for public hospitals still MIA”, *The City*, April 17, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/17/21247094/millions-of-n95-masks-nyc-ordered-weeks-ago-for-public-hospitals-still-mia>. [↑](#footnote-ref-65)
65. Gabriel Sandoval “Millions of N95 masks NYC ordered weeks ago for public hospitals still MIA”, *The City*, April 17, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/17/21247094/millions-of-n95-masks-nyc-ordered-weeks-ago-for-public-hospitals-still-mia>. [↑](#footnote-ref-66)
66. Gabriel Sandoval “Millions of N95 masks NYC ordered weeks ago for public hospitals still MIA”, *The City*, April 17, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/17/21247094/millions-of-n95-masks-nyc-ordered-weeks-ago-for-public-hospitals-still-mia>. [↑](#footnote-ref-67)
67. Gabriel Sandoval “Millions of N95 masks NYC ordered weeks ago for public hospitals still MIA”, *The City*, April 17, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/17/21247094/millions-of-n95-masks-nyc-ordered-weeks-ago-for-public-hospitals-still-mia>. [↑](#footnote-ref-68)
68. Andrea Fuller and Joe Palazzolo “Overwhelmed by Coronavirus, New York City awards contracts to unproven vendors”, *Wall Street Journal*, May 6, 2020, available at: <https://www.wsj.com/articles/overwhelmed-by-coronavirus-new-york-city-awards-contracts-to-unproven-vendors-11588762803>. [↑](#footnote-ref-69)
69. *Id.*  [↑](#footnote-ref-70)
70. *Id.*  [↑](#footnote-ref-71)
71. *Id.* [↑](#footnote-ref-72)
72. *Id.* [↑](#footnote-ref-73)
73. *Id.* [↑](#footnote-ref-74)
74. Julia Marsh and Nolan Hicks “De Blasio donor scored $120M in city COVID-19 contracts, board seats”, *The Post*, August 20, 2020, available at: <https://nypost.com/2020/08/20/de-blasio-donor-scored-120m-in-covid-19-contracts-board-seats/>. [↑](#footnote-ref-75)
75. Gabriel Sandoval “Quest for COVID gear brings $119 million deal with de Blasio donor”, *The City*, April 8, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/8/21216828/quest-for-covid-gear-brings-119-million-deal-with-de-blasio-donor>. [↑](#footnote-ref-76)
76. *Id.* [↑](#footnote-ref-77)
77. Gabriel Sandoval “City cancels $91 million ventilator contract with de Blasio donor”, *The City*, May 13, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/5/13/21259524/city-cancels-91-million-ventilator-contract-with-de-blasio-donor>. [↑](#footnote-ref-78)
78. Gabriel Sandoval “Quest for COVID gear brings $119 million deal with de Blasio donor”, *The City*, April 8, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/8/21216828/quest-for-covid-gear-brings-119-million-deal-with-de-blasio-donor>. [↑](#footnote-ref-79)
79. *Id.* [↑](#footnote-ref-80)
80. *Id.* [↑](#footnote-ref-81)
81. Julia Marsh and Nolan Hicks “De Blasio donor scored $120M in city COVID-19 contracts, board seats”, *The Post*, August 20, 2020, available at: <https://nypost.com/2020/08/20/de-blasio-donor-scored-120m-in-covid-19-contracts-board-seats/>. [↑](#footnote-ref-82)
82. Gabriel Sandoval “Quest for COVID gear brings $119 million deal with de Blasio donor”, *The City*, April 8, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/8/21216828/quest-for-covid-gear-brings-119-million-deal-with-de-blasio-donor>. [↑](#footnote-ref-83)
83. Julia Marsh and Nolan Hicks “De Blasio donor scored $120M in city COVID-19 contracts, board seats”, *The Post*, August 20, 2020, available at: <https://nypost.com/2020/08/20/de-blasio-donor-scored-120m-in-covid-19-contracts-board-seats/>. [↑](#footnote-ref-84)
84. Gabriel Sandoval “City cancels $91 million ventilator contract with de Blasio donor”, *The City*, May 13, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/5/13/21259524/city-cancels-91-million-ventilator-contract-with-de-blasio-donor>. [↑](#footnote-ref-85)
85. Gabriel Sandoval “Millions of N95 masks NYC ordered weeks ago for public hospitals still MIA”, *The City,* April 17, 2020, available at: <https://www.thecity.nyc/coronavirus/2020/4/17/21247094/millions-of-n95-masks-nyc-ordered-weeks-ago-for-public-hospitals-still-mia>. [↑](#footnote-ref-86)
86. Communication on file with the Committee on Governmental Operations staff. [↑](#footnote-ref-87)
87. Office of the Mayor “Test, trace & prepare: City creates stockpile of personal protective equipment”, May 4, 2020, available at: <https://www1.nyc.gov/office-of-the-mayor/news/316-20/test-trace-prepare-city-creates-stockpile-personal-protective-equipment>. [↑](#footnote-ref-88)
88. NYS Department of Health “Hospital Personal Protective Equipment (PPE) Requirements”, available at: <https://regs.health.ny.gov/sites/default/files/pdf/emergency_regulations/Hospital%20Personal%20Protective%20Equipment%20%28PPE%29%20Requirements.pdf>. [↑](#footnote-ref-89)
89. *Id.* [↑](#footnote-ref-90)
90. Bernadette Hogan “Health Department mandates PPE supply for nursing homes ahead of ‘second wave’”, *New York Post*, August 21, 2020, available at: <https://nypost.com/2020/08/21/ny-health-department-mandates-ppe-supply-for-nursing-homes/>. [↑](#footnote-ref-91)
91. Tanveer M. Adyel “Accumulation of plastic waste during COVID-19”, *Science*, September 11, 2020, available at: <https://science.sciencemag.org/content/369/6509/1314>; Chloe Way “Healthcare is still hooked on single-use plastic PPE, but there are more sustainable options”, *The Conversation,*  August 6, 2020, available at: <https://theconversation.com/healthcare-is-still-hooked-on-single-use-plastic-ppe-but-there-are-more-sustainable-options-143940>. [↑](#footnote-ref-92)
92. Rachel A. Meidl “Pandemic, plastics and the continuing quest for sustainability”, *Forbes,* April 14, 2020, available at: <https://www.forbes.com/sites/thebakersinstitute/2020/04/14/pandemic-plastics-and-the-continuing-quest-for-sustainability/#173f071f77b4>. [↑](#footnote-ref-93)
93. Vivian Ip Timur Özelsel, Rakesh Sondekoppam, and Ban Tsui “COVID-19 pandemic: Is sustainability the answer to personal protective equipment (PPE) shortages?”, *American Society of Regional Anesthesia and Pain Medicine”*, available at: <https://www.asra.com/page/2934/covid-19-pandemic-is-sustainability-the-answer-to-personal-protective-equipment?_zs=OS9cX&_zl=AT162>. [↑](#footnote-ref-94)
94. Lisa M. Brosseau, Rachael M. Jones, and Robert Harrison “Elastomeric respirators for all healthcare workers”, *American Journal of Infection Control*”, September 21, 2020, available at: <https://www.ajicjournal.org/article/S0196-6553(20)30888-9/fulltext>. [↑](#footnote-ref-95)