



Legislation Text

File #: Int 1067-2013, **Version:** *

Int. No. 1067

By Council Members Mealy and James (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to contract management and a contractor responsibility data base and to the definition of “business dealings with the city” in connection with campaign financing.

Be it enacted by the Council as follows:

Section 1. Section 6-116.2 of the administrative code of the city New York, as added by local law number 52 for the year 1987, subdivision a, the opening paragraph of paragraph i of subdivision b, and subdivisions c, d, e, f, and i as amended, and paragraph vii of subdivision b and subdivisions j and k as added by local law number 44 for the year 1992, paragraphs 7 and 8 of subdivision a as separately amended and paragraph 9 of subdivision a as added by local law number 34 for the year 1992, subdivision b as added by local law number 5 for the year 1991, subparagraph 1 of paragraph i of subdivision b as amended by local law number 21 for the year 1992, subparagraph 22 of paragraph i of subdivision b as amended and subparagraph 23 of paragraph i of subdivision b as added by local law number 49 for the year 1992, paragraphs ii, iv and v of subdivision b as amended by local law number 13 for the year 1991, paragraph vi of subdivision b as amended by local law number 64 for the year 1993, subdivision g as relettered and amended by local law number 5 for the year 1991, subdivision h as amended by local law number 22 for the year 2004, is amended to read as follows:

§ 6-116.2 Contract management and contractor responsibility data bases

a. The comptroller and the mayor shall jointly maintain, at the financial information services agency, a computerized data base. Such data base shall contain information for every franchise and concession

and every contract or subcontract for goods or services involving the expenditure of more than [ten] twenty thousand dollars [or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars,] entered into by an agency, New York city affiliated agency, elected official or the council, including, but not limited to:

(1) the name, address, and federal taxpayer's identification number of the contractor [,franchisee or concessionaire] or subcontractor where available in accordance with applicable law;

(2) the dollar amount of each contract including original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures;

(3) the type of goods or services to be provided pursuant to the contract;

(4) the term of the contract, or in the case of a construction contract the starting and scheduled completion date of the contract and the date final payment is authorized;

(5) the agency, New York city affiliated agency, elected official or the council that awarded the contract[, franchise or concession] or subcontract and the contract registration number, if any, assigned by the comptroller;

(6) the manner in which the contractor[, franchisee or concessionaire] or subcontractor was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure, and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder; and

(7) the date of any public hearing held with respect to the contract and the date and agenda number of action taken with respect to a concession or franchise by the franchise and concession review

committee; and

(8) Reserved

(9) the contract budget category to which the contract is assigned, where applicable.

[b. (i) The mayor and comptroller shall be responsible for the maintenance of a computerized data system which shall contain information for every contract, in the following manner: the mayor shall be responsible for operation of the system; the mayor and the comptroller shall be jointly responsible for all policy decisions relating to the system. In addition, the mayor and the comptroller shall jointly review the operation of the system to ensure that the information required by this subdivision is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. This system shall have access to information stored on other computerized data systems maintained by agencies, which information shall collectively include, but not be limited to:

(1) the current addresses and telephone numbers of:

A. the contractor's principal executive offices and the contractor's primary place of business in the New York city metropolitan area, if different,

B. the addresses of the three largest sites at which it is anticipated that work would occur in connection with the proposed contract, based on the number of persons to be employed at each site,

C. any other names under which the contractor has conducted business within the prior five years, and

D. the addresses and telephone numbers of all principal places of business and primary places of business in the New York city metropolitan area, if different, where the contractor has conducted business within the prior five years;

(2) the dun & bradstreet number of the contractor, if any;

(3) the taxpayer identification numbers, employer identification numbers or social security numbers of the contractor or the division or branch of the contractor which is actually entering into the contract;

(4) the type of business entity of the contractor including, but not limited to, sole proprietorship, partnership, joint venture or corporation;

(5) the date such business entity was formed, the state, county and country, if not within the United States, in which it was formed and the other counties within New York State in which a certificate of incorporation, certificate of doing business, or the equivalent, has been filed within the prior five years;

(6) the principal owners and officers of the contractor, their dates of birth, taxpayer identification numbers, social security numbers and their current business addresses and telephone numbers;

(7) the names, current business addresses and telephone numbers, taxpayer identification numbers and employer identification numbers of affiliates of the contractors;

(8) the principal owners and officers of affiliates of the contractor and their current business addresses and telephone numbers;

(9) the principal owners and officers of every subcontractor;

(10) the type, amount and contract registration number of all other contracts awarded to the contractor, as reflected in the database maintained pursuant to subdivision a of this section;

(11) the contract sanction history of the contractor for the prior five years, including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon the contractor's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(12) the contract sanction history for the prior five years of affiliates of the contractor including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon such entity's business conduct, declarations of default on any contract made by any governmental entity, determinations of

ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(13) the name and telephone number of the chief contracting officer or other employee of the agency, elected official or the council responsible for supervision of those charged with day-to-day management of the contract;

(14) judgments or injunctions obtained within the prior five years in any judicial actions or proceedings initiated by any agency, any elected official or the council against the contractor with respect to a contract and any such judicial actions or proceedings that are pending;

(15) record of all sanctions imposed within the prior five years as a result of judicial or administrative disciplinary proceedings with respect to any professional licenses held by the contractor, or a principal owner or officer of the contractor;

(16) whether city of New York income tax returns, where required, have been filed for the past five years;

(17) outstanding tax warrants and unsatisfied tax liens, as reflected in the records of the city;

(18) information from public reports of the organized crime control bureau and the New York state organized crime task force which indicates involvement in criminal activity;

(19) criminal proceedings pending against the contractor and any principal owner or officer of such contractor;

(20) record of all criminal convictions of the contractor, any current principal owner or officer for any crime related to truthfulness or business conduct and for any other felony committed within the prior ten years, and of any former principal owner or officer, within the prior ten years, for any crime related to truthfulness or business conduct and for any other felony committed while he or she held such position or status;

(21) all pending bankruptcy proceedings and all bankruptcy proceedings initiated within the past

seven years by or against the contractor and its affiliates;

(22) whether the contractor has certified that it was not founded or established or is not operated in a manner to evade the application or defeat the purpose of this section and is not the successor, assignee or affiliate of an entity which is ineligible to bid or propose on contracts or against which a proceeding to determine eligibility to bid or propose on contracts is pending;

(23) the name and main business address of anyone who the contractor retained, employed or designated to influence the preparation of contract specifications or the solicitation or award of this contract.

(ii) When personnel from any agency, elected officials or their staff, or members of the council or council staff learn that the certification required by subparagraph twenty-two of paragraph (i) may not be truthful, the appropriate law enforcement official shall be immediately informed of such fact and the fact of such notification shall be reflected in the data base, except when confidentiality is requested by the law enforcement official.

(iii) Information required from a contractor consisting of a contractor's social security number shall be obtained by the agency, elected official or the council entering into a contract as part of the administration of the taxes administered by the commissioner of finance for the purpose of establishing the identification of persons affected by such taxes.

(iv) In the event that procurement of goods, services or construction must be made on an emergency basis, as provided for in section three hundred fifteen of the charter, on an accelerated basis as provided for in section three hundred twenty-six of the charter, or expedited action is required due to urgent circumstances, or in such other circumstances as may be determined by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement, where it is not feasible to submit the information required by subdivision b prior to contract award, the required information may be submitted after award of the contract. However, all of the information required by subdivision b herein shall be submitted no later than thirty days from the date of the award. A contractor or subcontractor who fails to provide such

information as required by this paragraph shall be ineligible to bid or propose on or otherwise be awarded a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(v) Where a contractor or subcontractor becomes obligated to submit information required by this subdivision by reason of having been awarded a contract or subcontract, the value of which, when aggregated with the value of all other contracts or subcontracts awarded to that contractor or subcontractor during the immediately preceding twelve-month period, is valued at one hundred thousand dollars, or more, such information shall be submitted no later than thirty days after registration of the contract which resulted in the obligation to submit such information. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(vi) For the calendar year commencing on January 1, 1992, subcontractors shall be required to provide the information required by subparagraph nine of paragraph i and on or after June 30, 1994, subcontractors shall be subject to paragraph i in its entirety.

(vii) This subdivision shall not apply to any New York city affiliated agency, except that such New York city affiliated agency shall report cautionary information and the name and telephone number of the employee responsible for responding to inquiries concerning such information.]

b. (i) The mayor and the comptroller shall be responsible for the maintenance of a computerized data system which shall contain business integrity and responsibility information for contractors and subcontractors. The mayor shall be responsible for operation of the system; the mayor and the comptroller shall be jointly responsible for all policy decisions relating to the system, including the promulgation of any rules deemed necessary in relation to such policy decisions. In addition, the mayor and the comptroller jointly shall

periodically review the operation of the system to ensure that the information required by this subdivision is maintained in a form that will enable the mayor and the comptroller, along with all agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties.

(ii) This system shall contain information about contractors holding contracts for the provision of goods, services or construction, or franchise or concession agreements, that have a value that, when aggregated with the values of all other contracts or subcontracts held by the same contractor during the immediately preceding twelve-month period, exceeds two hundred fifty thousand dollars. The system shall also contain information for direct subcontractors holding contracts or subcontracts with an aggregated value during the immediately preceding twelve-month period exceeding five hundred thousand dollars and for indirect subcontractors holding contracts or subcontracts with an aggregated value during the immediately preceding twelve-month period exceeding two million dollars. The procurement policy board, where applicable, or, for franchises and concessions, the franchise and concession review committee may adopt rules allowing the mayor to alter the dollar amount set forth in this paragraph.

(iii) This system shall contain the information set forth below, which shall be obtained by means of required submissions from contractors, subcontractors, prospective contractors and prospective subcontractors. In the case of any required submission about officers, a non-profit entity shall submit such information with respect to at least one member of its board of directors in addition to its officers. The mayor and the comptroller may jointly by rule alter or supplement the information to be requested from contractors, subcontractors, prospective contractors or prospective subcontractors pursuant to this subdivision. In addition, the system may contain any other information relevant to the business integrity and responsibility of contractors.

(1) The name and federal taxpayer's identification or social security number of the contractor or subcontractor, together with any other names and/or identification numbers under which the contractor or subcontractor has conducted business within the prior three years, if any;

(2) The address and telephone number of the contractor's or subcontractor's principal offices and/or principal places of business within the prior three years, and the contractor's or subcontractor's website address, if any;

(3) Organizational status information including, but not limited to, the type of business entity, stock exchange listings, and entity formation information, regarding the contractor or subcontractor;

(4) The names and identification information of the principal owners and/or officers of the contractor or subcontractor and the name and identification information, including the email address, of the individual responsible for supervision and management of the contractor's or subcontractor's contracts, subcontracts, as applicable;

(5) Information concerning any loans, guarantees, security or other financial contributions made by such individuals to the contractor or subcontractor,

(6) A list of the affiliates of the contractor or subcontractor, by name and federal taxpayer's identification or social security number where applicable, together with a list of all entities for which any of the contractor's or subcontractor's current principal owners or officers have also been a principal owner or officer within the prior three years;

(7) Information regarding all other contracts or subcontracts awarded to the contractor or subcontractor, as reflected in the database maintained pursuant to subdivision a of this section;

(8) Information regarding the contract sanction history of the contractor or subcontractor and its affiliates for the prior five years with respect to any provision of goods, services, or construction or any franchise or concession with any government agency, New York city affiliated agency, elected official or council, relevant to the contractor's or subcontractor's current or prospective contracts or subcontracts, with the city. The phrase "contract sanction history" shall include but is not limited to, all cautions, suspensions, debarments, non-responsibility determinations, pending sanctions, cancellations of a contract or subcontract based upon the contractor's or subcontractor's business conduct, declarations of default on any contract made

by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(9) Criminal proceedings pending against the contractor or subcontractor and any principal owner or officer of such contractor or subcontractor;

(10) Judgments or injunctions obtained, or any settlements reached, within the prior five years in any judicial actions and/or proceedings initiated by any government agency or official against the contractor or subcontractor with respect to the provision of goods, services, or construction or any, franchise or concession and any such judicial actions or proceedings that are pending;

(11) Information regarding any sanctions pending or imposed, or any settlements reached, within the prior five years as a result of any judicial and/or administrative proceeding with respect to any professional licenses held by the contractor or subcontractor or a principal owner or officer of the contractor or subcontractor;

(12) Whether the contractor or subcontractor or its affiliates, or any of its principal owners or officers, where required, has filed city of New York income tax returns within the prior five years; together with information regarding outstanding tax warrants and unsatisfied tax liens relating to tax obligations to the city of New York, state of New York, and/or United States government;

(13) With respect to the contractor or subcontractor and its affiliates and any of its current or former principal owners, officers or senior managers, information regarding criminal proceedings currently pending, information regarding any criminal or governmental investigation currently pending, and/or any felony convictions or other convictions for any crime related to truthfulness or business conduct within the past ten years;

(14) Information regarding any pending bankruptcy proceedings and any bankruptcy proceedings initiated within the prior seven years by and/or against the contractor or subcontractor and/or any of its affiliates;

(15) A certification from the contractor or subcontractor that it was not founded or established and is not operated in a manner to evade the application or defeat the purpose of this section and is not the successor, assignee or affiliate of an entity which is ineligible to bid or propose on contracts or against which a proceeding to determine eligibility to bid or propose on contracts is pending; and

(16) With respect to the contractor or subcontractor and any of its current principal owners, officers, and senior managers, and with respect to any individuals who are now serving, or who have served within the past three years, in a consulting capacity providing any services related to the solicitation, negotiation, operation and/or administration of contracts which the contractor or subcontractor holds to the contractor or subcontractor, information regarding any service within the past three years:

(A) as an elected or appointed public official;

(B) as a paid or unpaid officer in any political party organization;

(C) as a full- or part-time employee of any agency or New York city affiliated agency; or,

(D) as a consultant or advisor to any agency or New York city affiliated agency if such service as a consultant or advisor relates or related to contracts which the contractor or subcontractor holds or held with an agency or New York city affiliated agency.

(iv) In the event that procurement of goods, services or construction must be made on an emergency basis, as provided for in section three hundred fifteen of the charter, on an accelerated basis as provided for in section three hundred twenty-six of the charter, or expedited action is required due to urgent circumstances, or in such other circumstances as may be determined by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement, or, for franchises and concessions, rule of the franchise and concession review committee, where it is not feasible to submit the information required by subdivision b prior to contract award, the required information may be submitted after award of the contract. However, all of the information required by subdivision b herein shall be submitted no later than thirty days from the date of the award. A contractor or subcontractor who fails to provide such information as required by

this paragraph shall be ineligible to bid or propose on or otherwise be awarded a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement or, for franchises and concessions, rule of the franchise and concession review committee.

(v) Where a contractor or subcontractor becomes obligated to submit information required by this subdivision by reason of having been awarded a contract or subcontract, the value of which, when aggregated with the value of all other contracts or subcontracts awarded to that contractor or subcontractor during the immediately preceding twelve-month period, is valued at more than the applicable dollar amounts set forth in paragraph ii of subdivision b of this section or the applicable dollar amounts adopted pursuant to rules promulgated under the authority of such paragraph, such information shall be submitted no later than thirty days after registration of the contract which resulted in the obligation to submit such information. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement or, for franchises and concessions, rule of the franchise and concession review committee.

(vi) When personnel from any agency, elected officials or their staff, or members of the council or council staff learn that the certification required by subparagraph fifteen of paragraph (iii) of this subdivision may not be truthful, the appropriate law enforcement official shall be immediately informed of such fact and the fact of such notification shall be reflected in the data base, except when confidentiality is requested by the law enforcement official.

(vii) Information required from a contractor or subcontractor consisting of a contractor's or subcontractor's social security number shall be obtained for this system as part of the administration of the taxes administered by the commissioner of finance for the purpose of establishing the identification of persons

affected by such taxes.

(viii) Information required for this system shall be provided by contractors or prospective contractors in a form prescribed by the mayor. No submissions to this system may be required from contractors or prospective contractors concerning categories of information not specifically described in this subdivision or by rule promulgated by the mayor and the comptroller, provided, however, that this paragraph shall not limit an agency's ability to make inquiries about any information submitted pursuant to this subdivision and to require the submission of information in response to such inquiries. Failure of a firm to provide information specifically requested by a contracting agency, elected official or the council may be grounds for a determination of non-responsiveness or non-responsibility, as applicable.

(ix) Any non-profit entity that adheres to the requirements of section 501(c) of the United States internal revenue code and files its Form 990 with the internal revenue service in a timely fashion as required by law shall not be required to provide the city with information already available through a filed Form 990, provided, however, that such Form 990 must contain current and accurate information and the entity shall provide such Form 990 to the city. Notwithstanding the provisions of this paragraph, the department of investigation may require a non-profit entity that holds or is seeking to obtain any contract, subcontract, with an agency, elected official or the council, to comply with all or part of the disclosure requirements of this subdivision, in connection with any investigation of said entity.

(x) Any publicly-traded corporation that enters into a contract, subcontract, with any agency, New York city affiliated agency, elected official or the council, along with any publicly-traded affiliate or principal owner entity, that adheres to the quarterly and annual filing requirements of section 78a et seq. of title 15 of the United States code and files required 10-K and 10-Q Forms with the securities and exchange commission in a timely fashion as required by law will not be required to provide the city with information already available through these filings, provided, however, that the corporation shall provide such forms to the city. Notwithstanding the provisions of this paragraph, the department of investigation may require any publicly

-traded corporation that holds or is seeking to obtain a contract, subcontract, franchise or concession with an agency, elected official or the council, to comply with all or part of the disclosure requirements of this subdivision, in connection with any investigation of said corporation.

(xi) This subdivision shall not apply to any New York city affiliated agency, except that such New York city affiliated agency shall report cautionary information and the name and telephone number of the employee responsible for responding to inquiries concerning such information.

c. Except for submissions to elected officials or to the council, contractors or subcontractors may only be required to submit information required under subdivision b of this section to a single agency, and any such submission shall be applicable to all contracts or subcontracts or bids or proposals for such agreements, of that contractor or subcontractor with any agency. Any contractor or subcontractor that has submitted the information required to be provided in accordance with subdivision b of this section to any agency, elected official or the council, shall be required to update that information only at three-year intervals, provided however that, except as provided in paragraph iv or v of subdivision b, during such three-year interval no new contract, direct subcontract or indirect subcontract valued at more than the applicable dollar amount set forth in paragraph ii of subdivision b of this section or the applicable dollar amount adopted pursuant to rules promulgated under the authority of such paragraph, shall be awarded or approved and no such existing agreement shall be renewed, unless the contractor or subcontractor has certified that information previously submitted as to those requirements is correct as of the time of the new award or renewal. The contractor or subcontractor shall update such previously submitted information to the extent that it is no longer correct. The contractor or subcontractor may only be required to submit such updated information to a single agency and such submission shall be applicable to all contracts, subcontracts, or bids or proposals for such agreements, of that contractor or subcontractor with any agency. The mayor and comptroller may jointly by rule provide for exceptions to this subdivision.

[c.] d. The information maintained pursuant to subdivision b shall be made accessible to the

computerized data system established pursuant to subdivision a of this section in a form or format [agreed] decided upon by the mayor and the comptroller. The information contained in these computerized data systems shall be made available to [any other data retrieval system maintained by an agency] agencies, New York city affiliated [agency] agencies, elected [official] officials or the council for the purpose of providing information regarding contracts [, franchises and concessions] and subcontracts awarded and the contractors [, franchisees and concessionaires] and subcontractors to which they were awarded. The information concerning the past performance of contractors that is contained in a computerized data base maintained pursuant to section 6-116.1 of this code for such purposes shall be made available to these data systems.

[d.] e. [All of the] The information as required by subdivisions a and b contained in these computerized data bases shall be made available on-line in read-only form to personnel from any agency or New York city affiliated agency, elected officials, members of the council and council staff, and shall be made available to members of the public, in accordance with sections three hundred thirty four and one thousand sixty four of the charter and article six of the public officers law.

[e.] f. (i) No contract for goods [or], services or construction involving [the] an expenditure of more than [ten thousand dollars] twenty thousand dollars, or in the case of [construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars,] a franchise or concession, anticipated revenue, greater than twenty thousand dollars shall be let or renewed by an agency, elected official or the council, unless the contract manager or other person responsible for making the recommendation for award has certified that these computerized data bases and the information maintained pursuant to section 6-116.1 of this code as well as other reasonably available and accurate sources of information related to contractor responsibility, have been examined. [This] No subcontract involving the expenditure of more than the applicable dollar amount set forth in paragraph ii of subdivision b of this section or the applicable dollar amount adopted pursuant to rules promulgated under the authority of such paragraph, in connection with any such contract, shall be approved unless the contract manager or other person responsible for making such

approval has certified that these computerized data bases and the information maintained pursuant to section 6-116.1 of this code, as well as other reasonably available and accurate sources of information related to contractor responsibility, have been examined. These certifications shall be in addition to any certifications required by chapter thirteen of the charter, the rules of the procurement policy board, [where applicable, or] any rules of the council relating to procurement, or the rules of the franchise and concession review committee, as applicable.

(ii) In connection with any contracts or subcontracts, the contract manager or other person responsible for making the recommendation for award or subcontract approval shall determine whether the award, renewal or subcontract would cause the aggregated value of the contracts or subcontracts with the same contractor or subcontractor to exceed the applicable dollar amount set forth in paragraph ii of subdivision b of this section or the applicable dollar amount adopted pursuant to rules promulgated under the authority of such paragraph, in which case the contractor or subcontractor shall be required to supply or update the information required under subdivision b.

g. [f.] Not later than January thirtieth following the close of each fiscal year, the comptroller shall publish a summary report setting forth information derived from the data base maintained pursuant to subdivision a of this section and the following information for each franchise, concession or contract or subcontract for goods or services having a value of more than [ten] twenty thousand dollars [or in the case of construction, having a value of more than fifteen thousand dollars], including, but not limited to:

(1) the types and dollar amount of each contract, subcontract, franchise or concession entered into during the previous fiscal year;

(2) the registration number assigned by the comptroller, if any;

(3) the agency, New York city affiliated agency, elected official or the council entering into the contract, subcontract, franchise or concession;

(4) the [vendor] contractor entering into the contract, franchise or concession and the

subcontractors engaged pursuant to each contract;

(5) the reason or reasons why the award of each such contract was deemed appropriate pursuant to subdivision a of section 312 of the charter, where applicable; and

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder. For franchises, this information shall also include whether the authorizing resolution of the council was complied with.

h. [g.] Nothing in this section shall be deemed to require the disclosure of information that is confidential or privileged or the disclosure of which would be contrary to law.

[h. Except for submissions to elected officials or to the council, contractors or subcontractors may only be required to submit information required under subdivision b of this section to a single agency, and any such submission shall be applicable to all contracts or subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. Any contractor or subcontractor that has submitted to any agency, elected official or the council, the information required to be provided in accordance with subdivision b of this section shall be required to update that information only at three-year intervals, and except as provided in paragraph iv or v of subdivision b, no contract or subcontract shall be awarded unless the contractor or subcontractor has certified that information previously submitted as to those requirements is correct as of the time of the award of the contract or subcontract. The contractor or subcontractor may only be required to submit such updated information to a single agency and such submission shall be applicable to all contracts or

subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. The procurement policy board may, by rule, provide for exceptions to this subdivision.]

i. Except as otherwise provided, for the purposes [of subdivision b] of this section,

[(1)] “affiliate” shall mean an entity doing business or operating within the United States in which the parent entity of the contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor or subcontractor also owns more than fifty per cent of the voting stock;

[(2)] “cautionary information” shall mean, in regard to a contractor or subcontractor, any adverse action by any [New York city affiliated] governmental agency or official, including but not limited to poor performance evaluation, default, non-responsibility determination, debarment, suspension, withdrawal of prequalified status, or denial of prequalified status;

[(3)] “contract” shall mean and include any agreement between an agency, New York city affiliated agency, elected official or the council and a contractor, [or any agreement between such a contractor and a subcontractor,] which [(a)] is for the provision of goods, services or construction [and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at one hundred thousand dollars or more; or (b) is for the provision of goods, services or construction, is awarded to a sole source and is valued at ten thousand dollars or more; or (c) is a concession and has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more; or (d) is a franchise. However, the amount provided for in clause a herein may be varied by rule of the procurement policy board, where applicable, or rule of the council relating to procurement, or, for franchises and concessions, rule of the franchise and concession review committee, as that amount applies to the information required by paragraphs 7, 8, 9 and 12 of subdivision b of this section, and the procurement policy board, where applicable, or the council, or, for

franchises and concessions, the franchise and concession review committee, may by rule define specifically identified and limited circumstances in which contractors may be exempt from the requirement to submit information otherwise required by subdivision b of this section, but the rulemaking procedure required by chapter forty-five of the charter may not be initiated for such rule of the procurement policy board or franchise and concession review committee less than forty-five days after the submission by the procurement policy board or, for franchises and concessions, the franchise and concession review committee, to the council of a report stating the intention to promulgate such rule, the proposed text of such rule and the reasons therefor;] or which memorializes a franchise or concession.

[(4)] “contractor” shall mean and include all individuals, sole proprietorships, partnerships, joint ventures [or], corporations, or other business entities who enter into a contract [, as defined in paragraph three herein,] with an agency, New York city affiliated agency, elected official or the council, provided however, that the term “contractor” shall not include governmental agencies;

[(5)] "officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;]

“entity formation information” shall mean the date such business entity was formed, the state, county and country, if not within the United States, in which it was formed and such other information related to the formation of the entity as may be requested;

“identification information” shall mean date of birth or social security number and such other information as is necessary for identification purposes;

“investigation” shall mean any inquiry by any prosecutorial, investigative or regulatory entity concerning the business practices or activities of a contractor, subcontractor, prospective contractor, or prospective subcontractor and/or of any of its affiliates, and/or of the principal owners or officers thereof, including but not limited to: any appearance or requests for appearance by any of such entities or persons and/or of their respective representatives or employees before a grand jury; any issuance or receipt of any

subpoena requiring testimony by any of such entities or persons and/or of their respective representatives or employees, and/or any issuance or receipt of any subpoena for the production of documents by any of such entities or persons, and/or of their respective representatives or employees in a criminal proceeding or criminal investigation or in connection with any inquiry by any prosecutorial, investigative or regulatory entity; any execution of any search warrant at any location occupied or used by any of such entities or persons and/or of their respective representatives or employees; receipt of notice that any of the communications or activities of any of such entities or persons and/or of their respective representatives or employees have been monitored under a court order, and/or that any of such entities or persons and/or of their respective representatives or employees are the subject or target of any investigation; any questioning by any prosecutorial, investigative or regulatory agency of any of such entities or persons and/or of their respective representatives or employees that relates to the possible commission of any act or acts that could expose such entities or persons to either criminal or civil liability or subject them to civil actions; and any inquiry regarding compliance with prevailing wage laws or regulations; provided, however, that background investigations for employment, agency contacts or communications relating to performance or routine aspects of an existing contract and/or relating to constituent complaints, shall not constitute inquiries or investigations within the meaning of this section;

[(6)] “New York city affiliated agency” shall mean any entity the expenses of which are paid in whole or in part from the city treasury and the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, but shall not include any entity established under the New York city charter, this code or by executive order, any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility;

“officer” shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;

[(7)]_“parent entity” shall mean an individual, partnership, joint venture or corporation which

owns more than fifty percent of the voting stock of a contractor;

[(8)] “principal owner” shall mean [an] a parent entity, and any other individual, partnership, joint venture or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor;

“sanction” shall mean any fine, penalty, judgment, injunction, violation, debarment or suspension;

“senior manager” shall mean anyone who, either by job title or actual duties, has substantial discretion and oversight regarding the solicitation, letting or administration of any contract on behalf of a contractor, subcontractor, proposed contractor or proposed subcontractor;

[(9)] “subcontract” shall mean any [contract, as defined in paragraph three herein,] agreement between a subcontractor and a contractor in connection with a contract said contractor holds or is seeking to obtain with an agency, New York city affiliated agency, elected official or the council for the performance of services or construction pursuant to such contract (“direct subcontract”), and shall also include any ensuing agreement between a subcontractor and other subcontractors, for the performance of services or construction pursuant to a contract with an agency, New York city affiliated agency, elected official or the council (“indirect subcontract”), provided that the phrase “indirect subcontract” shall not include a contract with an entity that performs work solely ancillary to the work of a contract; and

[(10)] “subcontractor” shall mean an individual, sole proprietorship, partnership, joint venture [or], corporation [which is engaged by a contractor pursuant to], or other business entity that enters into a [contract] subcontract [, as defined in paragraph three herein.] with a contractor (“direct subcontractor”) or with another subcontractor (“indirect subcontractor”) for the performance of services or construction, in connection with a contract a contractor holds or is seeking to obtain with an agency, New York city affiliated agency, elected official or the council, provided that the phrase “indirect subcontractor” shall not include an entity that performs work solely ancillary to the work of a contract.

[j. Notwithstanding any other provisions of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be submitted in a form or format and on a schedule to be determined by the mayor and the comptroller. In no event shall New York city affiliated agencies be required to submit such information prior to the award of any contract.]

j. Except as otherwise provided by rule of the mayor, submissions shall be filed electronically in such form and manner as the mayor may determine. For good cause, the mayor may waive the requirement of electronic filing and may permit an application to be filed in another manner.

k. The procurement policy board, where applicable or, for franchises and concessions, the franchise and concession review committee, may by rule define specifically identified and limited circumstances in which contractors or subcontractors may be exempt from the requirement to submit information otherwise required by subdivision b of this section. The mayor and the comptroller may also, jointly by rule, authorize the city chief procurement officer to exempt any vendor, on a contract-by-contract basis, from the provision of some or all of the required information for this section in the best interests of the City.

[k.] 1. Notwithstanding any other provision of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be required only as to contracts funded in whole or in part with city funds, although nothing shall preclude New York city affiliated agencies from submitting information on contracts funded by other than city funds.

§2. Paragraph (a) of subdivision 18 of section 3-702 of the administrative code of the city of New York, as amended by local law 67 for the year 2007, is amended to read as follows:

a. The term “business dealings with the city” shall mean (i) [any contract] one or more contracts (other than an emergency contract or a contract procured through publicly-advertised competitive sealed bidding) [which is] with a single person or entity for the procurement of goods, services or construction that [is] are in effect or that were entered into [or in effect] within the preceding twelve-month period with the city of

New York or any agency or entity affiliated with the city of New York and [is valued] have a total value at or above [the dollar value defined in subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code] \$100,000, or, with respect to [a contract] contracts for construction, at or above five hundred thousand dollars, or an emergency contract awarded pursuant to section 315 of the charter, and shall include any contract for the underwriting of the debt of the city of New York or any agency or entity affiliated with the city of New York and the retention of any bond counsel, disclosure counsel or underwriter's counsel in connection therewith; or (ii) any acquisition or disposition of real property (other than a public auction or competitive sealed bid transaction or the acquisition of property pursuant to the department of environmental protection watershed land acquisition program) with the city of New York or any agency or entity affiliated with the city of New York; or (iii) any application for approval sought from the city of New York pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to the provisions of section 197-c of the charter, and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter; provided, however, that for purposes of this clause, with respect to section 195 an applicant shall include the lessor of an office building or office space, and with respect to section 197-c an applicant shall include a designated developer or sponsor of a project for which a city agency or local development corporation is the applicant and provided, further, however, that owner-occupants of one, two and three family homes shall not be considered applicants pursuant to this clause; or (iv) [any concession] one or more concessions (other than a concession awarded through publicly-advertised competitive sealed bid) [or any franchise] or one or more franchises with a single person or entity that are in effect or that were entered into within the preceding twelve-month period from the city of New York or any agency or entity affiliated with the city of New York which [has an] have a total estimated annual value at or above [the dollar value defined in subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code] \$100,000; or (v) [any grant that is valued] one or more grants made to a single person or entity that are in effect or that were entered into within the preceding twelve-month period that have a

total value at or above [the dollar value defined in subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code] \$100,000, received from the city of New York or any agency or entity affiliated with the city of New York; or (vi) any economic development agreement entered into or in effect with the city of New York or any agency or entity affiliated with the city of New York; or (vii) any contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants. In addition, for purposes of this chapter a lobbyist as defined in section 3-211 of this title shall be deemed to be engaged in business dealings with the city of New York during all periods covered by a registration statement. For purposes of clauses (i), (iv) and (v) of this subdivision, all contracts, concessions, franchises and grants that are five thousand dollars or less in value shall be excluded from any calculation as to whether a contract, concession, franchise or grant is a business dealing with the city. For purposes of clauses (ii) and (iii) of this subdivision, the department of city planning, in consultation with the board, may promulgate rules to require the submission by applicants to the city of information necessary to implement the requirements of subdivisions 1-a and 1-b of section 3-703 of this chapter as they relate to clauses (ii) and (iii) of paragraph (a) of this subdivision for purposes of inclusion in the doing business database established pursuant to subdivision 20 of this section. For purposes of this subdivision, “agency or entity affiliated with the city of New York” shall mean the city school district of the city of New York and any public authority, public benefit corporation or not for profit corporation, the majority of whose board members are officials of the city of New York or are appointed by such officials. The department of housing preservation and development shall promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing shall and shall not constitute business dealings with the city of New York for purposes of this subdivision. The department shall consider the significance of the affordable housing program and the degree of discretion by city officials in determining which actions, transactions and agreements shall and shall not constitute such business dealings. Notwithstanding any provision of this subdivision, a housing assistance payment contract between a landlord and the department of housing preservation and development or the New

York city housing authority relating to the provision of rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, 42 USC 1437 et., seq., shall not constitute business dealings with the city of New York for the purposes of this subdivision.

§3. This local law shall take effect forty-five days after it shall have become a law.