

New York City Council Committee on Contracts
Proposed Amendments to the Administrative Code and City Charter
Testimony: Intros 1238, 1448, 1449, 1450

Good morning Chair Kallos, Chair Brannan and members of the Contracts Committee. My name is Dan Symon and I am the New York City Chief Procurement Officer and Director of the Mayor's Office of Contract Services (MOCS). Thank you for inviting me to discuss proposed items which aim to increase transparency and accountability, as well as strengthen oversight in procurement.

As I have previously shared with this Committee, MOCS agrees with goals to overhaul any inefficient processes which bring about hardships. We are devoting resources to bringing greater sunlight to the entire procurement process by establishing a shared digital platform and a rational set of steps which will be readily known to all users. This approach has already helped to reduce the time it takes to vet vendors, enhanced communication between agencies, and improved the quality of data used in daily operations or by managers who are responsible for continuous quality improvement.

Specifically, through the Procurement and Sourcing Solutions Portal (PASSPort), a cloud-based, off-the-shelf technology solution, vendors now submit and update disclosure filings online instead of handling hefty paper packages. Agencies leverage information gathered by other agency staff, reducing the need for redundant questions sent to vendors. Information about regulatory filings, such as business tax status or liens, are also readily available. Streamlined data collection and sharing has reduced vendor submission times, and agency Responsibility Determinations, which took an estimated seven weeks prior to PASSPort's Release 1 launch in August 2017, now typically take seven days.

Agency managers and oversights have monitored progress since launch using real-time workflow tracking or system-generated reports. This transparency has pushed everyone to find efficiencies and has led to increased accountability. Vendors also have greater insight into processing statuses, timeframes, and can escalate when necessary, increasing the incentive for timely task completion.

We expect more encouraging results in the months after the launch of Release 2 of PASSPort; this next release will focus on streamlining agency purchasing of goods and services from established citywide requirements contracts. Release 2 establishes a citywide approval framework for purchase requests, enabling more detailed reporting on items acquired, specifications, and costs. We will be better positioned to make strategic decisions about the utilization of these contracts and to monitor both agency approver and citywide oversight performance. Vendors will have easy access to order data, will be able to manage their catalog of offerings, and can track receipts and invoices at a more granular level related to purchase orders submitted by agencies.

Our experience with the first two releases of PASSPort lays the foundation for the most comprehensive overhaul of sourcing and contract management activities to date. This spring and summer will be used to learn from implementation of Release 2 and solidify design of, and protocols for, Release 3. Release 3 addresses many of the most persistent points of frustration related to the structuring and release of solicitations, management of proposals and evaluation, processing of awards, tracking and submission of packages for registration, as well as amendments, change orders and renewals of contracts. Vendors and agencies will be onboarded over the course of the launch period, in addition to the phasing in of standardized invoicing and payment.

This Council's drive to address challenges experienced by vendors is clearly shared by this administration. We seek a comprehensive and sustainable solution and are working to ensure that our shared vision is truly realized. The intent of Intro 1450 reinforces the importance of efforts to achieve timely registration and implement policies that responsibly put resources in the hands of providers at the start of programs. For example, this administration's new 25% advance policy. In FY18, roughly \$1 Billion of advance payments were disbursed to providers at the start of the fiscal year creating cash flow when providers need it most.

For human services providers, fast electronic invoice processing times are documented once contracts are registered. With PASSPort, we expect similar results, given the approach we take – using standardized budget and invoice templates between agencies and vendors, creating flexibility for task assignment at agencies, making statuses visible to vendors, and error proofing data submission through multiple levels of approvals in agencies. Prior passage of this Council's legislation to support electronic invoicing will help us make progress beyond human services once the financials modules are made available through PASSPort. We would like to learn more about the intent of Intro 1450 and how it may be aligned with current contracting practice, budget and invoice structures, and prompt payment guidance; it is worth noting that payments for human services contracts are typically based on line item reimbursements for incurred costs. While we share the goal of ensuring on-time payments, we do not believe that backwards-looking interest requirements are the right tool to do so. We believe the best way to do so is through transforming the procurement system itself and that is where our focus is.

Intro 1449 also seeks to bring financing relief to vendors. It does not appear to differ much in its proposed scope and operations from the Department of Small Businesses Services' (SBS) existing Contract Financing Loan Fund. We encourage further discussion with SBS.

The Council's interest in management of contracts under the authority of agencies has helped make reported information clearer for oversight and public review. In the case of Intro 1238-A's proposed expansion of Local Law 18 of 2012's reporting requirements, there has been progressive improvement in the descriptions of project cost increases. We continue to work with agencies to document their management decisions when scope and associated costs increase. A contract modification does not always indicate contract mismanagement. Agencies may change scope due to many factors, including citywide policy changes and field conditions discovered after a project's start. It would require tremendous effort to immediately, efficiently and usefully report in detail on all unrelated contract amendments associated with a vendor that appears on the revised LL18 report. Further discussion is needed with regard to submission timeframes and the information sought by Council.

Finally, Intro 1448 focuses on central procurement issues. In the current landscape, there are numerous actors with varying responsibilities. Accordingly, it is challenging to strictly assign responsibility and enforce penalties for delays to either vendors, agencies or oversights since tasks are interdependent and milestone status is not objectively documented. When we move beyond the paper world we can achieve our goals and enable real transparency and accountability. We will make relevant data, progress milestones, and responsible parties viewable on screen, ensure system reports can quickly pin-point

bottlenecks for line managers, and help executives make decisions. Lastly, we will continue to maintain PASSPort and guide staff and vendors to maximize its use via our help desk, training and change management offerings.

Given the diversity of policy goals and operations across agencies, MOCS has necessarily evolved from traditional oversight to building and deploying scalable tools that will make it easier for everyone to execute tasks efficiently and build situational awareness to manage more efficiently. We are working to make data more readily available, understandable, and actionable. This will help oversights, this committee, and the public fully participate in building a high-performance procurement ecosystem. Fostering this approach and maintaining these tools create the conditions for real accountability. And this is not just a role for one division at MOCS, it is core to our mission to achieve fair, responsible, and timely procurement. We execute our duties in collaboration with other oversights and senior leaders in agencies – convening partners and sharing data to address emerging issues – but as procurement transforms, MOCS must remain nimble, scrappy, and able to reorganize divisions as new needs emerge.

We are lucky to have a committee that is as passionate about reforming procurement as we are – none of us are satisfied with the status quo, and we share the sense of urgency you bring to these matters. Concerns expressed today simply seek to highlight existing initiatives or bring attention to issues which might limit impact without full digital transformation. We remain committed to acting now and are doing so with vendors and agencies as we tackle backlogs and establish renewal policies which encourage timeliness. We look forward to co-designing scalable and sustainable solutions with this Committee, and look forward to meeting with the new Chair and others soon. Before I conclude, I want

to thank Council Member Brannan for his service to the committee, and express my thanks for his efforts while he was Chair.

Thank you for the opportunity to testify. I am joined by Ryan Murray, First Deputy Director, Victor Olds, General Counsel, and Anne Meredith, Deputy General Counsel. We are happy to take any questions you may have.



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Good Afternoon

Members of the City Council Contracts Committee

My name is Alan Wolinetz. I am the Chief Financial Officer of Catholic Charities of Brooklyn and Queens. For those of you that might not be familiar with our agency, I'll give you a very brief profile. We are a not for profit entity, run under the auspices of the Diocese of Brooklyn. In 2018, we serviced close to a quarter of a million clients throughout Brooklyn and Queens. We provide our services to some of the most vulnerable residents of the City; the poor, the elderly and the immigrant populations. These services are provided regardless of a person's race, ethnicity, or religion. Specifically our programs revolve around integrated health and wellness, which include behavioral health clinics and services, family services including senior centers and early childhood programs, and we are a major provider of affordable housing in the city.

I am here today to lend our support for the three bills that are currently before your Committee. The issues that are dealt with in the bills; expediting city contracts valued at more than



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one million dollars, requiring agencies to provide bridge loans on an as needed basis, and requiring the city to pay interest

on late contract payments are all vital to an agency like ours that currently has 60 city contracts with a value of 57 million dollars. By definition there is no profit margin in these numbers. The 57 million is spent in its entirety in providing the contract services to our clients. Any gaps between funding and meeting our financial obligations clearly create a hardship for the agency. There is no leeway to the agency in meeting its payroll to the employees charged with servicing clients. I am sure the Committee understands that managing cash flow in a not for profit is by nature a very difficult process. These three bills take very substantive steps towards creating a more formalized methodology for streamlining the flow of funds between city agencies and its contracted providers. We at Catholic Charities of the Diocese of Brooklyn appreciate that these bills are on for a hearing today and hope that they will soon be passed by the full Council.

Respectfully submitted,

Alan Wolinetz
Chief Financial Officer
Catholic Charities of Brooklyn and Queens



**New York City Council
Committee on Contracts
Council Member Justin Brannan, Chair
April 16, 2019**

LiveOn NY is a nonprofit membership organization representing 100 community-based organizations that serve more than 600,000 older New Yorkers annually through senior centers, congregate and home-delivered meals, NORCs, affordable senior housing and other services. LiveOn NY also administers a citywide outreach program that educates, screens and assists with benefit enrollment including SNAP, SCRIE and others benefits. Our team also administers the Rights and Information for Senior Empowerment (RISE) program to ensure all New Yorkers have the information needed to advocate for themselves and thrive in their later years.

LiveOn NY thanks Chair Brannan and the Contracts Committee for the opportunity to testify on the importance of timely payments to nonprofits.

LiveOn NY strongly supports Intro. 1450, sponsored by Chair Brannan, which require interest to be paid on late payments under city contracts with nonprofit organizations and **Intro. 1448**, also sponsored by Chair Brannan, which creates a team within the Mayor's Office of Contract Services dedicated to expediting the review process of unregistered contracts so that these contracts are registered before their start dates. LiveOn NY is appreciative of this measure as an important step to compel the City to make timely payments to providers while making them accountable for any delays. Delays in registration, as well as a complex contracting process overall, exacerbate contracting issues, and there needs to be immediate attention and resources devoted to solving these concerns.

LiveOn NY would also like to take this opportunity to thank Speaker Johnson and all of City Council for including \$106 million to bring indirect funding rates up to 12 percent in your budget response, which is crucial funding to help close the gap between what it costs to run programs and what the City pays. The nonprofit human services sector suffers from cash flow problems and chronic underfunding largely due to the fact that government contracts rarely cover true operating costs—and payment is often late and unpredictable. Contracts and grants must fully cover indirect costs such as information technology, compliance, building maintenance, program evaluation, accounting, human resources, and employee training. Further, contracts should include cost escalation clauses that accommodate increases in the cost of doing business and/or allow for the surrender of contracts when they become unsustainable due to unforeseen circumstances. The City must work closely with the sector to determine what it actually costs to run a successful program. The new Health and Human Services Cost Policies

and Procedures Manual, which was developed as part of the Nonprofit Resiliency Committee lays out standardized indirect costs for our sector. However, without increased funding to address the gaps this manual displays in our contracts, the fiscal crisis we are facing remains unaddressed. Based on numbers provided by the Office of Management and Budget, \$250 million would cover the costs to fully implement this manual and we greatly appreciate the Council's first step towards this goal.

It's important to emphasize that delayed and underfunded contracts have a detrimental effect on both the organizations themselves and the communities served - as time and energy worrying how to make payroll are finite resources that could be better spent bolstering our communities. Further, with 89% of human services contracts arriving at the Comptroller's office after the start date, providers are forced to consider a risky situation of starting the work without a registered contract and payment, or delay in starting the contract, affecting the community's most dependent on the services.

What are the services that late contracts are putting at risk? Within the Department for the Aging the majority of these contracts go directly to neighborhood senior centers, meaning unjust contracting practices affect the thousands of older adults that attend these centers regularly. The main service provided by these senior centers is meals - meals which for the majority of the attendees, make-up ½ or more of their daily food intake and nutrients for the day. Hunger affects 1 in 6 seniors nationwide, and the risk of hunger is not equal among all populations, as seniors with disabilities, African Americans, and other minorities are more at risk. **When we speak of late and underfunded contracts, this, these vital nutrition services, is what the city is truly putting at risk - and it is a risk that the non-profit community can no longer bear the burden of shouldering.**

LiveOn NY looks forward to supporting efforts such as Intro 1450, Intro 1448, and the \$106-million-dollar investment in indirect rates outlined in the Council's preliminary budget response, each which has the ability to better ensure the long-term viability of New York's entrusted community-based service providers.

Thank you for the opportunity to testify today and your continued partnership on these issues.

¹ Annual Analysis of NYC Agency Contracts, 2019

² New York City Contract Delays: The Facts, 2018

³ Department for the Aging, Annual Plan Summary, 2019

TESTIMONY TO THE CITY COUNCIL COMMITTEE ON CONTRACTS, APRIL 16, 2019

JOHN MACINTOSH, MANAGING PARTNER, SEACHANGE CAPITAL PARTNERS

I'M JOHN MACINTOSH, MANAGING PARTNER OF SEACHANGE CAPITAL PARTNERS. SEACHANGE MAKES LOANS TO NONPROFITS, HELPS THEM UNDERSTAND AND MANAGE THEIR RISKS, AND IS OFTEN CALLED IN WHEN THEY ARE DISTRESSED. WE HAVE SEEN FIRST-HAND THE ENORMOUS DIFFICULTY THAT EVEN THE BEST RUN ORGANIZATIONS HAVE IN MANAGING THEIR CASH FLOW GIVEN THE CITY'S GENERALLY LATE, AND ALWAYS UNPREDICABLE, CONTRACT REGISTRATION AND PAYMENT PROCESS.

AS A RESULT, WE SUPPORT THE BILLS UNDER CONSIDERATION THAT WOULD EXPEDITE THE INTER-AGENCY OVERSIGHT PROCESS OF LARGE CONTRACTS; PROVIDE BRIDGE LOANS TO CONTRACTORS, AND REQUIRE THAT INTEREST BE PAID. WE ALSO SUPPORT THE COMPTROLLER'S RECOMMENDATION THAT EACH AGENCY HAVE A FIXED DEADLINE TO COMPLETE ITS PROCESSES AND FOR A PUBLICLY AVAILABLE TRACKING SYSTEM.

I CAN'T EMPHASIS THE IMPORANT OF WHAT YOU ARE DOING. LAST YEAR, BASED ON FISCAL 2017 DATA, SEACHANGE ANALYZED THE FINANCIAL BURDEN CREATED BY LATE REGISTRATION. WE HAVE JUST COMPLETED AN UPDATE BASED ON FISCAL 2018 WHICH SHOWED THAT THINGS ARE NOT ANY BETTER.

IN 2018, THE 2,534 CONTRACTS REGISTERED BY HE CITY'S SOCIAL SERVICE AGENCIES WERE AN AVERAGE OF 221 DAYS LATE (UP FROM 210); 11% WERE REGISTERED ON TIME (UP FROM 9%); ORGANIZATIONS HAD TO WAIT 369 DAYS TO BE PRETTY SURE (I.E. 80%) THAT THEIR CONTRACTS HAD BEEN REGISTERED (UP FROM 356) AND 623 DAYS TO BE REALLY SURE (IE 95%) UP FROM 511. WE ESTIMATE THE TOTAL BURDEN AT \$744 MILLION, UP FROM \$675 MILLION.

I'D LIKE TO SPEND A MOMENT ON THREE THINGS WHICH OUR ANALYSIS SUGGEST ARE VITAL TO MAKING LASTING CHANGE TO PROCUREMENT: DISCRETIONARY CONTRACTS, RENEWALS AND "BATTLESHIP" ORGANIZATIONS.

DISCRETIONARY CONTRACTS

ABOUT 40% OF THE CONTRACTS REGISTERED IN FISCAL 2018 WERE DISCRETIONARY CONTRACTS THOUGH THEY REPRESENTED ONLY 3% OF THE TOTAL VALUE BECAUSE THEY ARE VERY SMALL WITH A MEDIAN VALUE OF ONLY \$78,000. BUT THEY REPRESENTED CLOSE TO 20% OF THE FINANCIAL BURDEN BECAUSE THEY ARE SO LATE: ONLY 10% WERE REGISTERED WITHIN SIX-MONTHS; THE TYPICAL WAIT WAS 304 DAYS BUT NONPROFITS HAD TO WAIT ALMOST TWO YEARS TO BE "REALLY SURE" THAT AN AWARD HAD BEEN REGISTERED. TO BE HONEST, I USED TO THINK THAT THE BEST THING TO DO WOULD BE TO SIMPLY GET RID OF THESE TINY NUISANCE AWARDS BUT HAVING LOOKED AT THE DATA I'VE CHANGED MY VIEW. DISCRETIONARY AWARDS ARE THE ONLY WAY THAT THE CITY TOUCHES MANY NONPROFITS (OF THE 553 ORGANIZATIONS RECEIVING AWARDS, 382 – ALMOST 70% - DID NOT RECEIVE ANY OTHER CONTRACTS). AND ROUGHLY HALF OF THESE ORGANIZATIONS ARE UNDER \$1.0 MILLION VERSUS LESS THAN 10% FOR NON-DISCRETIONARY AWARDS. SO THE AWARDS ARE CRITICAL TO THESE SMALL GROUPS WHICH IS WHAT MAKES IT ALL THE MORE GALLING THAT THEY HAVE TO WAIT SO LONG TO GET THE MONEY SINCE MOST DO NOT HAVE ACCESS TO FINANCING, AND EVEN A GROUP LIKE SEACHANGE FINDS IT HARD TO LEND AGAINST THE AWARDS SINCE THEY ARE SO SMALL AND SO LATE. AT THE SAME TIME, I AM SYMPATHETIC TO THE AGENCIES SINCE THE AWARDS ARE ONLY DECIDED JUST BEFORE THE FISCAL YEAR BEGINS AND DESPITE THEIR SMALL SIZE THE AGENCIES STILL NEED TO NEGOTIATE A SCOPE OF WORK FOR EACH WHICH, QUITE REASONABLY, THEY SEE AS A LOWER PRIORITY THAN OTHER THINGS. SO WE RECOMMEND THAT THE CITY LEND AGAINST ALL SMALL – 90% ARE LESS THAN \$250,000 – DISCRETIONARY AWARDS, THAT IT REQUIRE THAT THESE AWARDS BE MADE AGAINST A SMALL NUMBER OF PRE-AGREED MODEL CONTRACTS, AND THAT IT EVEN CONSIDER SETTING-UP A SEPARATE UNIT TO HANDLE PROCUREMENT OR, BETTER YET, OUTSOURCE IT TO A THIRD-PARTY, THESE WOULD LEAVE THE AGENCIES FREE TO FOCUS THEIR PROCUREMENT RESOURCES ON THE LARGER CONTRACTS THAT THEY ACTUALLY AWARDED.

RENEWALS

IT MAY BE NO SURPRISE THAT RENEWALS WERE MOST LIKELY TO BE REGISTERED ON TIME (36%) AND HAD A MEDIAN DELAY OF ABOUT THREE WEEKS. THIS IS GREAT THOUGH AT THE SAME TIME, IT CAN STILL BE TWO MONTHS OR MORE TO BE "PRETTY SURE" AND NINE-MONTHS TO BE "REALLY SURE" WHICH MEANS THAT RENEWALS STILL IMPOSED A BURDEN OF ALMOST \$130 MILLION ON NONPROFITS. AND WHILE WE HAVE SEEN AN INCREASING NUMBER OF TOUGH-MINDED ORGANIZATIONS DELAY SERVICES UNDER NEW CONTRACTS UNTIL THEY HAVE BEEN REGISTERED, THIS IS IMPOSSIBLE FOR RENEWALS SINCE IT WOULD REQUIRE STOPPING ON-GOING SERVICES TO VULNERABLE NEW YORKERS WHICH EVEN IF THEY WERE WILLING TO DO IT, YOU WOULD NOT WANT THEM TO. SO WE PROPOSE THAT THE CITY CONSIDER MAKING AN ADVANCE PAYMENT OF 25% OF THE FIRST-YEAR CONTRACT VALUE FOR ANY RENEWAL THAT HAS NOT BEEN REGISTERED BY THE START DAY PROVIDED THAT THE NONPROFIT IS PROVIDING SERVICES.

BATTLESHIPS

FINALLY, I'D LIKE TO HIGHLIGHT THE IMPORTANCE OF THE CITY'S "BATTLESHIP" NONPROFIT PARTNERS. THE TRUTH IS THAT THE VAST MAJORITY – ROUGHLY 85% - OF SOCIAL SERVICE SPENDING COMES IN THE FORM OF NON-DISCRETIONARY CONTRACTS WITH ROUGHLY 100 ORGANIZATIONS MOST OF WHICH DO LARGE VOLUMES OF BUSINESS WITH THE CITY YEAR IN AND YEAR OUT. IN FACT, THE AVERAGE CONTRACT AMOUNT FOR EACH OF THE TOP 100 – ROUGHLY \$48 MILLION - IS GREATER THAN THE 600 SMALLEST DISCRETIONARY AWARDS COMBINED. THE CITY SHOULD FOCUS MORE OF ITS RESOURCES ON EVALUATING THE ORGANIZATIONAL CAPACITY OF THESE "BATTLESHIPS" AND CORRESPONDINGLY LESS ON THE MINUTIAE OF THEIR INDIVIDUAL CONTRACTS. THIS IS NOT TO SUGGEST THAT THE CITY SHOULD HAVE A PREFERENCE FOR THESE GROUPS WHEN AWARDING CONTRACTS, BUT RATHER THAT THE PROCESS SHOULD BE DIFFERENT ONCE A CONTRACT HAS BEEN AWARDED. THE CITY SHOULD WORK TO

ASSURE ITSELF THAT EACH OF THESE "BATTLESHIPS" IS WELL-GOVERNED, FREE FROM CONFLICTS-OF-INTEREST, AND HAS ROBUST ACCOUNTING, FINANCIAL, AND QUALITY ASSURANCE PROCESSES IN PLACE. FOR THOSE THAT ARE DEEMED TO HAVE THESE, THE CITY SHOULD CONSIDER INSTITUTING MORE FLEXIBLE MASTER CONTRACTS AND/OR OTHERWISE REDUCING THE CONTRACT-LEVEL PROCUREMENT BURDEN. ALTHOUGH THIS WOULD REQUIRE INTER-AGENCY COORDINATION AND CULTURE CHANGE, IT WOULD LEAD TO BETTER RESULTS FOR THE CITY, FOR ITS MOST IMPORTANT NONPROFIT SOCIAL SERVICE PARTNERS, AND FOR THE VULNERABLE PEOPLE THEY SERVE.

IN CONCLUSION

NEW YORK CITY NEEDS HEALTHY NONPROFIT PARTNERS MORE THAN EVER; BUT THESE PARTNERS CANNOT BE HEALTHY WITHOUT TIMELY AND PREDICTABLE PAYMENTS. WHILE HOW MUCH TO PAY NONPROFITS IS A THORNY POLITICAL ISSUE – THERE IS ONLY SO MUCH MONEY TO GO AROUND – PAYING PROMPTLY AND PREDICTABLY WOULD SEEM MUCH MORE STRAIGHTFORWARD. I AM PLEASED TO HAVE BEEN GIVEN THE OPPORTUNITY TO TESTIFY TODAY AND OPTIMISTIC THAT THE CURRENT DISCUSSIONS AROUND PROCUREMENT REFORM CAN LEAD TO REAL CHANGE.



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**Chinese-American Planning Council, Inc.
Testimony at the New York City Council Contracts Committee
April 16th, 2019**

Good afternoon. My name is Carlyn Cowen and I am Chief Policy and Public Affairs Officer at the Chinese American Planning Council. I would like to thank Chair Brannan and the members of the Committee for the opportunity to testify before you today and for your leadership on issues that deeply impact human service organizations here in New York City.

The mission of the Chinese-American Planning Council, Inc. (CPC) is to promote social and economic empowerment of Chinese American, immigrant, and low-income communities.

CPC was founded in 1965 as a grassroots, community-based organization in response to the end of the Chinese Exclusion years and the passing of the Immigration Reform Act of 1965, which brought waves of Asian immigrants to New York City. Initially a provider of counseling services to low-income families referred by local schools, CPC has continued to expand its program offerings over the years to become the largest Asian American social service organization in the U.S., providing vital resources to more than 60,000 people per year through more than 50 programs at over 30 sites across the boroughs of Manhattan, Brooklyn, and Queens. Our revenue is approximately half New York City funding.

CPC now employs a team of over 700 staff members, many of whom come from the same neighborhoods we serve. With the firm belief that social service can incite social change, CPC strives to empower our constituents as agents of social justice, with the overarching goal of advancing and transforming communities.

CPC offers holistic services that target both individual and family needs. Our programs are available for community members of all ages and backgrounds, and span five key service areas:

- **Early Childhood Education:** child care for children of ages 1-5 and workshops for parents.
- **School-Age Child Care Services:** after-school programming for children in grades K-5.
- **Education & Career Services:** ESOL classes, youth development, and workforce trainings.
- **Senior Services:** wellness, recreation, meals, and workshops for adults aged 60 and older.
- **Community Services:** family resources, public benefits, counseling, advocacy, and referrals.

Our affiliate, CPC Home Attendant Program, also offers care for homebound individuals

We thank the City Council for your commitment to the human services sector and ensuring that contracted human services are adequately funded to run their programs. Last year saw an important investment in human services provider organizations that hold City contracts. With your help, we secured \$300m of our \$500m ask to help nonprofit provider organizations cover the cost of delivering essential services to New Yorkers.

These investments will better allow for human services workers across the city to provide critical services to New Yorkers in need. In particular, CPC will now be able to address the gap between our senior center programs costs and reimbursement rate through the model budget process. We have also received a 2% increase in several contracts' indirect rates, which will help us close the gap. However, there is still 7%

gap between our indirect rate and the average reimbursement we receive from the city, which means that we have to make up approximately \$1 million in indirect each year. CPC received a notification of an increase on indirect rates from some of our DFTA contracts, but have not received notification on the status of increasing the indirect cost rate the remainder of our contracts. We have seen no actual disbursement of indirect rate increases. The delay in disbursing indirect funds has required CPC to delay planned hiring of mission-critical staff as well as some key technological upgrades that would allow more efficient programming. At a time when federal uncertainty has led to a sharp increase in demand for our services, chronic underfunding of city contracts and delay in disbursement of increases has led to us being unable to meet that demand.

We want to thank the Council for including \$106 million to bring indirect funding rates up to 12 percent in your budget response, which is crucial funding to help close the gap between what it costs to run programs and what the City pays for. The nonprofit human services sector suffers from cash flow problems and chronic underfunding largely because government contracts and philanthropic grants rarely cover operating costs—and payment is often late and unpredictable. Contracts and grants must fully cover indirect costs such as information technology, compliance, building maintenance, program evaluation, accounting, human resources, and employee training. Contracts should include cost escalation clauses that accommodate increases in the cost of doing business and/or allow for the surrender of contracts when they become unsustainable due to unforeseen circumstances. The City should work closely with the sector to determine what it actually costs to run a successful program. The new Health and Human Services Cost Policies and Procedures Manual, which was developed as part of the Nonprofit Resiliency Committee lays out standardized indirect costs for our sector. However, without increased funding to address the gaps this manual displays in our contracts, the fiscal crisis we are facing remains unaddressed. Based on numbers provided by the Office of Management and Budget, \$250 million should cover the costs to fully implement this manual and we greatly appreciate the Council including indirect investment in their response.

Finally, the City must clean up the backlog of all contract action registrations and ensure a transparent and timely registration system going forward. Human services contracts are registered late by city agencies 89% of the time, forcing organizations to make impossible decisions to bridge massive gaps in their funding. This is important because providers are paid once the contracts are registered, creating a risky situation where we have to start the work without a registered contract and payment, or delay in starting the contract, which affects the communities dependent on the services of providers. Many of the late contracts are also renewals, so there isn't really an option to suspend services while we wait for a registered contract; the City's delays cost us real money and jeopardize the quality of services by diverting funds away from programs to pay interest on lines of credit. As of today, we are waiting for approximately \$1 million from the city in late payments. Last year, CPC paid \$157,000 in interest in loans taken out to cover late payments. These payments are not reimbursed by the city agencies that held up our money in the first place.

We are grateful to the City Council for supporting this package of legislation that would make it easier for CPC and other contracted human services agencies to provide critical services to New Yorkers.

If you have any questions, please contact Carlyn Cowen at ccowen@cpc-nyc.org



TESTIMONY

New York City Council
Committee on Contracts
Tuesday, April 16, 2019

Submitted by:

Michelle Jackson
Deputy Executive Director
Human Services Council of New York

Introduction

Good afternoon, Chairperson Brannan, and members of the New York City Council Committee on Contracts. My name is Michelle Jackson and I am the Deputy Executive Director of the Human Services Council. Thank you for the opportunity to testify regarding the five proposed legislations on contracts. HSC serves our membership as a coordinating body, advocate, and an intermediary between the human services sector and government. We take on this work so our members can focus on running their organizations and providing direct support to New Yorkers. These are the nonprofits that support our City's children, seniors, those experiencing homelessness, people with disabilities, individuals who are incarcerated or otherwise involved in the justice system, immigrants, and individuals coping with substance abuse and other mental health and behavioral challenges. We strive to help our members' better serve their clients by addressing matters such as government procurement practices, disaster preparedness and recovery, government funding, and public policies that impact the sector.

The nonprofit human services sector plays an essential role in the daily lives of millions of New Yorkers. These vital community services, ranging from homeless services, senior care, to employment training, assist approximately 2.5 million New Yorkers annually. Nonprofits are government's partner in delivering services to New Yorkers from all walks of life, and the procurement process, substantially defined in the New York City Charter, is the prime mechanism for creating, funding, and awarding contracts to human services providers. The contracting system is complex, and a lack of collaboration and transparency in the development of request for proposals, coupled with this complex process creates an inadequately funded set of programs and extensive delays in contract registration and payment.

We want to thank the Council for including \$106 million to bring indirect funding rates up to 12 percent in your budget response, which is crucial funding to help close the gap between what it costs to run programs and what the City pays for. The nonprofit human services sector suffers from cash flow problems and chronic underfunding largely because government contracts and philanthropic grants rarely cover operating costs—and payment is often late and unpredictable. Contracts and grants must fully cover indirect costs such as information technology, compliance, building maintenance, program evaluation, accounting, human resources, and employee training. Contracts should include cost escalation clauses that accommodate increases in the cost of doing business and/or allow for the surrender of contracts when they become unsustainable due to unforeseen circumstances. The City should work closely with the sector to determine what it actually costs to run a successful program. The new *Health and Human Services Cost Policies and Procedures Manual*, which was developed as part of the Nonprofit Resiliency Committee lays out

standardized indirect costs for our sector. However, without increased funding to address the gaps this manual displays in our contracts, the fiscal crisis we are facing remains unaddressed. Based on numbers provided by the Office of Management and Budget, \$250 million should cover the costs to fully implement this manual and we greatly appreciate the Council including indirect investment in their response.

We need this core investment this year and to work with the Council to create a better partnership for the procurement of human services, where providers are trusted as experts who have worked for decades in their communities and are brought into the room from the start on contracts to ensure they create the most cost-effective and impactful programs.

Delays in Procurement

We recognize that the contracting system is complex and that real changes take time to implement, and the NRC has been working on improving systems; both HHS Accelerator and PASSPort are significant improvements in the human services contracting process. The New York City Comptroller's report, *Still Running Late: An Analysis of NYC Agency Contracts* demonstrates that much more needs to be done - and quickly - to improve the timeliness of human services contract registration.

This is the second report, and overall contracts are registered late 80 percent of the time across the City, and human services contracts are registered late 89 percent of the time, with the percentage going down slightly when discretionary awards are removed. I am sure every industry could tell the Commission how delays adversely affects them, and what I can tell you is that there is a real, detrimental impact on providers. First, providers cannot wait to begin services, like other contractors. A construction project could potentially be delayed until documents are in order, but a summer youth program has to start in the summer, and parents rely on a particular start date. For contract renewals, which are also delayed, providers cannot close a program while waiting for renewal documents; closing a domestic violence shelter for 2-3 months each year would be extremely problematic. This means providers take enormous fiscal and legal risks by signing leases, hiring staff, and starting programs without a contract, or continuing to operate services on the verbal agreement that things will get sorted out. Retroactivity also creates cash flow issues for providers, who have to put off paying vendors, take out lines of credit that they must pay interest on or utilize the loan fund, because providers cannot get paid until the contract is registered.

The consistent delays in government procurement, late payments, unattainable programmatic goals, and lack of collaboration with providers on program design and budget have a detrimental effect on the nonprofits and the communities that they serve. These issues create additional administrative and financial burdens, which affect the operational and financial sustainability of the human services sector. To help address these challenges, the Human Services Council has created GovGrader, the country's first online scorecard for human services providers to share their feedback on government procurement and contract management processes. This is the second year of implementing GovGrader and the results show that overall, the City scored a lower grade than last year. Nonprofits are mission-driven organizations that provide essential services to the communities that they serve and they should not be inconvenienced by the government procurement process. Yet, government contracting agencies continue to provide substandard contract management experiences for vendors. This is shown in the overall user experience category of GovGrader where the City scored a C+. The City should work in collaboration with providers to develop best practices and procedures and create a streamlined process to mitigate the financial, administrative and operational burdens of the procurement process.

There are organizations that paid over \$100,000 of interest on a line of credit or had to secure bridge financing to prevent layoffs due to contract delays. Delays in payment have even forced providers to use

other programmatic grants to pay regular bills. Since many contracts do not allow funds to be rolled over to the next fiscal year, when payments are delayed, organizations try to spend as much of the funding as possible and leave money on the table, but are framed for being underutilized. While the ultimate goal is that no contracts should ever start before payments are made, nonprofits should not bear the cost of any late payments. Current City policies around the payment of interest simply do not work; providers are almost never granted interest for late payments. Therefore, we support Councilman Brannan's legislation to take firm action on late payments to nonprofits, especially requiring City agencies to pay interest on late payments. This will compel the City to make timely payments to nonprofits.

The City and its residents ultimately bear the brunt of these problems, when highly qualified providers cannot afford to take on City contracts, or when those providers must close programs or go out of business altogether because of the financial strains imposed by the City's late payments. The result is that communities lose access to cherished neighborhood institutions and essential services, and the City is unable to carry out its human services programs.

Transparency and Accountability

The Council and Administration have made important investments in the sector in FY19, as well as expanded program investments, while also tackling systems issues through the Nonprofit Resiliency Committee. This work is applauded by the sector, but when nonprofits see new requests for proposals with low rates and experience significant delays in contract registration and renewal, while still waiting on contract amendments for FY19 funding, it is clear that more must be done, and it must be done immediately.

In regards to current funding allocations, providers have experienced lags in getting contract amendments for the investments made in FY19, and as we near the end of the year this is creating cash flow issues as well as making it difficult for providers to finalize their budgets for the new fiscal year starting July 1, 2019.

As noted in the Comptroller's recent report, human services contracts experience significant delays and late registration. This creates administrative nightmares for providers, real cash flow issues, and can cost organizations money if they have to take out a line of credit to cover late payments by the City agency. This needs immediate attention and so we support Councilman Brannan's legislation on creating a team to expedite the review of contracts to break up the vicious cycle of delays and clean up the backlog, both in registration and pending amendments for FY19 investments. Delays in registration, as well as a complex contracting process overall, exacerbate the other concerns outlined above, and there needs to be immediate attention and resources devoted to solving these issues. In the longer term, there needs to be a tracking system, centralized at MOCS, to better track registration, City agencies should have to give regular updates to the Deputy Mayors about contract registration, and MOCS should be given the authority to make process changes at City agencies to streamline the process.

Chronic Underfunding of the Sector

Nonprofits provide a myriad of services on behalf of the government - many of them mandated - and the sector is able to leverage private and philanthropic dollars and funding from the City, State, and federal government, to create dynamic programs at a bargain. Providers are experts who are uniquely qualified to create cost-effective and impactful programs directly catered to their communities. But elected officials must not take that knowledge for granted or keep trying to cut back costs by refusing to listen to providers and undervaluing the services they provide.

The City is not getting a deal by chronically underfunding homeless shelters, foster care agencies, food pantries, and senior centers; it is directly harming those who rely on government for help. These issues must be addressed:

1. Contracts are generally underfunded for the program, asking for an outright match from providers, or with a low rate per service unit, where providers must make up the difference.
2. Contracts do not provide an appropriate indirect cost reimbursement rate. The Stanford Innovation Fund estimates that the average nonprofit indirect cost rate is between 15-25 percent – still substantially lower than the private sector, where the lowest rates start at 30 percent – but the City pays around ten percent, and that new rate and investment to ten percent has only recently been put in to place.
3. Contracts neither provide for cost escalations on the OTPS (other-than-personal services) side, nor cost-of-living increases on the PS (personnel services) side. Contracts with government are often for five to seven year terms, and even longer when RFPs are delayed, but providers are unable to account for unforeseen rising costs, such as a spike in electricity and water prices or an exceptionally cold winter, nor is there a mechanism to accommodate rising rent, health insurance, or other costs when contracts need to be extended.

These are not new issues, nor is government unaware that these are real concerns with which nonprofits grapple each month. A string of recent reports outlines this underfunding clearly, with survey data, anecdotal information from the sector, and by looking at the numbers in actual contracts and financial reports.

One of the most alarming pieces of information comes from the *SeaChange Capital Partners/Oliver Wyman* report, which found that 18 percent of New York City human services providers are insolvent, based solely on IRS 990 data.ⁱ This means that their liabilities exceed their assets, and many have less than a month of cash on hand. Fifty percent of New York City human services nonprofits have less than two months of cash on hand and operating reserves, meaning that one late payment can impact payroll, and one unforeseen event can put the provider out of business. Government relies on these providers to ensure that our communities have programs that promote wellbeing.

The *SeaChange* report also points out that the financial health of the sector is government's problem. Eighty percent of the largest human services organizations have budgets that are 90 percent or more dependent on government funding. The largest five percent of nonprofits provide almost 50 percent of services in New York City, and are also mostly dependent on government funding. If these organizations fail, it will be difficult for the network of providers to pick up these contracts; government is uniquely responsible for the fiscal viability of these organizations.

Providers report that underfunded contracts are the main driver of their financial struggles. Fifty-two percent of New York nonprofits report that local contracts do not cover the full cost of the services they are required to provide, and 56 percent report receiving indirect rates at 9 percent or less, with 91 percent reporting receiving 15 percent or less.ⁱⁱ

In the child welfare sector, a study of over 80 child welfare providers in New York offers a stark picture that resonates across the full human services sector.

“Ninety-five percent of respondent organizations reported receiving a government contract that fails to pay the full cost of providing the contracted services. Eighty-six percent of respondents stated that they use their private fundraising to offset the deficits

their government contracts create. In addition, 83% report that they cut program costs to make up the deficits of government contracts. Even while taking these measures, 69% of the organizations in our sample stated that they simply run these programs at a deficit; presumably, they are hoping they will be able to raise necessary private funds eventually and are loathe to cut off their needy clients. Finally, the organizational impact of running chronic program deficits is both widespread and widely acknowledged among New York's child welfare nonprofits: 67% report they anticipate a year-end organizational deficit that can only be made up with private fundraising.ⁱⁱⁱ

With a number of high profile nonprofits merging or closing in recent years, the sector itself came together in the *Call to Action* report, citing government underfunding as the main obstacle in planning for risk, and finding that government contracts were themselves a great risk to human services providers. The report drew upon the experience of sector leaders, and concluded that the underfunding of government contracts, including inadequate overhead, lack of cost-escalators, and low rates per unit, were main drivers to unstable organizations.^{iv}

Cross-Sector Program Collaboration

Government-funded programs intended to build human potential and social welfare are too often developed without consulting the human services providers who will be responsible for implementing them, resulting in ineffective and unworkable programs. The Nonprofit Resiliency Committee has developed a Guide to Collaborative Communication with Human Services Providers which outlines the many ways City Agencies can solicit feedback and collaborate with providers in the development of an RFP. We would like to see this guide incorporated in to the planning process of every RFP, so that there is real collaboration before the RFP is released. The City should leverage the on-the-ground experience of service providers—who truly know their communities—when creating programs and developing performance metrics. It is imperative that there are partnerships among the public sector, private funders, and human services providers to develop effective programs.

Conclusion

Providers play the essential role in the City's complex human services delivery system, and they face many challenges in the contracting process. They operate in the context of a broken contracting system. Only if we address the underlying causes of contractor instability—problems at the government level—will we be able to ensure a robust nonprofit community that can continue to deliver quality services to our community.

The City leans on our sector's programs and expertise both in times of economic crisis and in times of growth, but the fiscal health of these important institutions has been overlooked. We cannot wait another year for investments, and also for fundamental changes to fix decades of underfunding. This year we are asking for an investment in indirect funding to coincide with the new Health and Human Services Cost Policies and Procedures Manual. This is a crucial investment in the sector millions of New Yorkers rely on every day, and also essential for this manual to appropriately address the indirect issues the sector has raised.

We look forward to continuing our work with the City Council to address the decades old systems and practices that result in underfunded programs and slow processes that do a disservice to our communities and limited resources.

Thank you for your continued support and providing me with this opportunity to testify about the state of the human services sector.

Michelle Jackson
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ⁱ <http://seachangep.org/wp-content/uploads/2016/03/SeaChange-Oliver-Wyman-Risk-Report.pdf>

ⁱⁱ <http://survey.nonprofitfinancefund.org/>

ⁱⁱⁱ https://www.researchgate.net/publication/269103151_A_Deficit_Model_of_Collaborative_Governance_Government-Nonprofit_Fiscal_Relations_in_the_Provision_of_Child_Welfare_Services?enrichId=rgreq-e79c7ca8a17894b9c2034939bf6a8ed0-

XXX&enrichSource=Y292ZXJQYWdlOzI2OTEwMzE1MTtBUzoxNzU3NTI5NzY4MDU4OTBAMTQxODkxNDE4MzEONQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf

^{iv} <http://www.humanservicescouncil.org/Commission/HSCCommissionReport.pdf>



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**Testimony of Catherine Trapani, Executive Director, Homeless Services United, Inc.
Before the NYC Council Committee on Contracts
April 16, 2019**

My name is Catherine Trapani, and I am the Executive Director of Homeless Services United (HSU). I would like to express my gratitude to the New York City Council's Committee on Contracts, particularly Chair Brannan for calling this hearing today and, I'd also like to thank Council Member Levin for his steadfast support of the homeless services sector. Thank you for providing me with the opportunity to testify.

HSU is a coalition of approximately 50 non-profit agencies serving homeless and at-risk adults and families in New York City. HSU provides advocacy, information, and training to member agencies to expand their capacity to deliver high-quality services. HSU advocates for expansion of affordable housing and prevention services and for immediate access to safe, decent, emergency and transitional housing, outreach and drop-in services for homeless New Yorkers.

Homeless Services United's member agencies operate hundreds of programs including shelters, drop-in centers, food pantries, HomeBase, and outreach and prevention services. The bulk of our work is funded by government contracts. It is via the nonprofit sector that the City is able to uphold the right to shelter for thousands of homeless New Yorkers and it is via the work of our sector that we have successfully brought over 2,000 individuals off of the streets via outreach efforts.

We have been seeking support from DHS and testifying before this Council since at least 2015 regarding the harmful impact of delayed contract registration and payments to nonprofits.

In response to this crisis, HSU established a joint committee with our members and leadership from the Department of Social Services (DSS) Finance and Department of Homeless Services (DHS) Budget teams to workshop bottlenecks in the registration process and take responsibility for providers' role in ensuring cooperation with the contracting process and appropriately managing our workflow. The committee has proven extremely helpful in resolving major cash flow issues for individual members in real time, as well as helping members struggling with close-outs, invoicing, and audit concerns. I want to thank DSS and DHS for their partnership and for the progress that we have made to date.

We had hoped that partnering with DHS to implement process improvements could help to rectify delays, but our patience is wearing thin; despite our best efforts, 98.9% of all DHS contracts were registered retroactively in fiscal year 2018.

Compounding the challenges associated with delayed registration is the inability to register amendments because of the backlog. This has added additional financial pressures to nonprofits. When a contract is not registered, the City cannot add the funding necessary to implement new initiatives to improve services. The provider must wait until their underlying contract for baseline services is registered before monies can be added for new initiatives touted by the City as part of the Turning the Tide Against Homelessness plan. Examples include the model budget

Catherine Trapani Testimony p.2

initiative from FY 2018 which was meant to bolster social services, improve shelter conditions and appropriately compensate staff. Because the amendments needed to pay for those enhancements are still not registered many nonprofits are in the position where they are fronting money to pay for these initiatives like implement COLAs, hire social workers in family shelters, improve maintenance and the like, without any compensation from the City for months and in some cases, years. In other cases, the nonprofit has delayed implementing the announced improvements for lack of funding and, services to clients and provider performance have suffered as a result.

The good news is we are in a substantially better position in the current fiscal year compared to last. Still, DHS data indicates that as of 1/30/2019, which marked the halfway point of the fiscal year, 10% of FY2019 contracts were still not registered. The last progress update HSU received on amendment registrations in early October was even less promising. At that time DHS reported that over 400 contract amendments were still pending. **This lag in registering contract amendments means service providers continue to rely upon lines of credit to meet expenses, in many cases nonemergency repairs remain incomplete and, hiring and retaining staff has remained a challenge.** Until the full backlog of contract amendments is addressed, conditions and services are not likely to markedly change.

The City had informed the sector that they aimed to clear the backlog by May of this year. However, **we have heard from our partners at the Mayor's Office of Contract Services (MOCS) and the Nonprofit Resiliency Committee that DHS continues to lag behind its sister agencies in terms of progress towards clearing the backlog and achieving timely registration in FY20.** At a recent Nonprofit Resiliency Committee meeting contracting officers from several City agencies presented on the status of their efforts to ensure all human services contracts for FY20 were registered on time. DHS had only sent out 20% of the upcoming fiscal year's contracts to providers by the target date MOCS set – a key metric of whether or not they have given themselves enough runway to get agreements back from providers in time to conduct necessary due diligence to ensure registration process prior to the start of the next fiscal year. All other agencies reporting were substantially further along. The next lowest progress report noted the agency had sent out 50% of their contracts compared to DHS's 20% and, most others were at or near 100%. **It continues to be of grave concern that DHS has been unable to resolve the backlog despite concerted efforts of our community to do so.**

It is therefore HSU's belief that additional tools are necessary to ensure timely contract registration. In the event that timely registration cannot be achieved, additional support for the nonprofit community is also necessary to help providers appropriately bridge the gap in government funding and continue to provide the quality services on which our clients rely. DHS has committed to providers that all of this funding will be in place soon as the procurement schedule normalizes and they are able to better plan for future fiscal years. We are hopeful that once these baseline budget needs are in place, the fiscal health of the sector will improve enough to allow for investments in more comprehensive service-rich programming that will enable our clients to recover from homelessness more quickly and support their transition to permanency. In the meantime, we are thankful to the Council for your advocacy and support in helping us get there. Specifically, we appreciate the spirit in which you offer Intro 1448, 1449 and 1450 calling for increased oversight, access to loans and funding for interest payments resulting from delayed contract registration.

Nonprofits cannot continue to shoulder the burden of subsidizing the City by providing core services without compensation. We look forward to continued work with the Council and the Administration to improve the procurement process. Thank you for providing me with this opportunity to testify. I am happy to answer any questions you may have.

**Testimony of Denise Richardson, Executive Director
General Contractors Association of New York, Inc.
Committee on Contracts
Hearing on Intro 1238-A
City Hall, Council Committee Room
Tuesday, April 16, 2019, 1:00pm**

Thank you, Chairman Kallos and members of the Committee on Contracts, for the opportunity to submit testimony today in response to Intro 1238-A. I am Denise Richardson, Executive Director of the General Contractors Association of New York. The GCA represents the heavy civil construction industry in New York City whose members build New York's roads, bridges, transit and water systems, parks, schools and building foundations.

Providing transparency in the City's procurement process and understanding the reasons for delays and changes in projects is important and will help with data analytics on the cause of delays and, hopefully, lead to process city changes that will minimize project delays. The goal of a contractor is to work on a well-designed project that can be built efficiently with no or minimal changes.

Unfortunately, the underlying premise of Intro 1238 seems to be that the contractor is the driving force behind contract changes and cost overruns. This is incorrect. Projects that involve many change orders are difficult to progress and are often financial losers for a contractor. The City often directs the contractor to perform work prior to the execution of a change order thereby requiring the contractor to finance the work and hope that they get paid for the cost of the work and the overhead to manage it. The goal of a contractor is to get in, build the project with as few changes as possible, and get out. Whether or not a contractor has worked on projects that involve contract modifications for the same agency or different agencies has nothing to do with the quality of the contractor. The contractor simply builds what it is included in the contract documents and drawings.

New York City contracts are design-bid-build procurements, meaning the City hires a consultant to design the project, oversees that design and then puts the completed design out to bid to a contractor who builds the project. Any design errors or omissions are the responsibility of the designer, not the contractor.

In addition to design errors and omissions there are a variety of other factors that may lead to contract changes. These include unit item overruns or underruns, scope changes, and unforeseen/existing conditions. Many of the City's infrastructure projects are unit item bids where the contractor bids a price for each of the units in the contract. The bid documents specifically instruct the bidders that the units are for bidding purposes only and that actual

conditions in the field may be different. This is done because it is impossible, without disruptive testing, to determine exact conditions prior to the work actually starting. Thus, the units of work may exceed or underrun the bid unit items, resulting in a contract change to increase or decrease the amount paid to the contractor. As drafted, the legislation will attribute change orders of this nature to the contractor's job performance, which is both factually inaccurate for the public and detrimental to the contractor's reputation.

Contact scope changes may be the result of change in policy direction by the City, changes to address community concerns, or additional work requested by the City. Change orders may also be required to address changed conditions or unforeseen conditions not in the original plans and specifications. Other changes may be due to required modifications to the maintenance and protection of traffic permit to address community concerns or better coordinate with another project nearby. All of these changes are the result of external factors that are outside the responsibility and control of the contractor.

Data tracking will help the city identify causes of contract changes that may help improve the management and delivery of the capital program. Contract modifications are not the fault of the contractor, are wholly outside of the control of the contractor, and should not be used to evaluate the qualifications of a contractor.

The GCA supports providing the public with information about the status of capital projects. We object, however, to characterizations as to the "cause" of perceived delays and cost issues, as many of those issues are either resolved once more information becomes available or become the subject of professionally mediated settlements. Both situations are expected processes in construction and cannot be characterized as a failure of project management by either the agency or the contractor. Moreover, an incorrect characterization can later prejudice either the agency's or the contractor's ability to defend its own actions during claim settlement or other negotiations.

While well intentioned, Intro 1238-A should be redrafted to limit its scope to the reporting on the factual status of capital projects without including premature rush to "assign" blame for an issue. The City's contracts include detailed notice, claim documentation, and change order justification procedures to foster fact-based resolution of issues. These procedures need to work unimpeded by "dashboard" summaries of what can often be lengthy and complicated engineering issues. For these reasons, the GCA expresses reservations about 1238-A as written and requests the opportunity to engage with the Council in further dialogue to develop a process that will meet the legislation's positive intentions of providing the public readily available information about the City's investments in their communities.



**Testimony submitted by Anthony Edwards, Chief Financial Officer
Prepared for the NY City Council Committee on Contracts
April 16th, 2019**

Good afternoon. My name is Anthony Edwards and I'm the Chief Financial Officer for Sheltering Arms Children and Family Services. Thank you Chair Brannan and members of the New York City Council Committee on Contracts for the opportunity to submit testimony.

Sheltering Arms is one of the City's largest providers of education, youth development, and community and family well-being programs for the Bronx, Manhattan, Brooklyn, and Queens.

Overview: Late Contracts for Human Service Providers

Human services providers continue to face late contracting issues, which have a detrimental effect on both the organizations themselves and the communities that we serve. According to NYC Comptroller Scott Stringer's analysis of NYC Agency contracts, in Fiscal Year 2018, 89% of human services contracts arrived at the Comptroller's Office after the start date. This is important because providers are paid once the contracts are registered, creating a risky situation where we have to start the work without a registered contract and payment, or delay in starting the contract, which affects the communities that are dependent on the services of providers. Many of the late contracts are also renewals, so there isn't really an option to suspend services while we wait for a registered contract; the City's delays cost us real money and jeopardize the quality of services by diverting funds away from programs to pay interest on lines of credit.

Thank you to Chair Brannon for proposing these two bills, which require interest to be paid on late payments under city contracts with nonprofit organizations and creates a team within the Mayor's Office of Contract Services (MOCS) dedicated to expediting the review process of unregistered contracts so that these contracts are registered before their start dates. These are important steps to compel the City to make timely payments to providers while making them accountable for any delays. Delays in registration, as well as a complex contracting process overall, exacerbate contracting issues, and there needs to be immediate attention and resources devoted to solving these concerns.

The City needs to do more, both in investing in contracts and in fixing systemic issues that increase late registration. We realize that the City will release PASSPort in 18 months to resolve these issues; however, the City should address the immediate concerns that providers have with the backlog in contracts. Nonprofits are forced to compensate the delay by taking out loans, laying off staff, and scaling back or closing programs. Additionally, delays in registration or in processing contract amendments can mean that we are unable to spend down all the money on a contract. For example, if we delay in starting a contract until it is registered, the program starts late so we do not spend a full year's worth of program funds, or if an amendment is processed late, we cannot move money around to spend it where we really need it. These delays cost our organization's money and also impact the communities we serve.

Impact of Late Contracting on Sheltering Arms

In FY18, Sheltering Arms had a total of 10 late contracts, primarily from DYCD for Afterschool and Youth Services programs. To compensate for these delayed contracts, we had to draw more than \$1M from our line of credit, for which we paid ~\$20,000 in interest. Enhancement funds that were added to our ACS Preventive contracts in FY18 were registered with only three months to spend down the funds. We spent as much as possible on things like salary increases and furniture, but nearly \$800,000 were left unspent.

In FY19, our Early Childhood Education and Non-Secure Detention contracts through ACS, which total ~\$21.5M, were registered two months late, requiring us to apply for an interest-free loan from the Fund for the City of New York (FCNY).

Challenges with Bridge Loans

While we are grateful to be able to access the bridge loans, they only cover basic expenses (i.e. salary, fringe, rent, and utilities), not the full cost of the contract. This puts providers in a precarious place, because we are expected to provide full service, but are paid a fraction of the contract amount and are left to fill the gap to pay for overhead, consultants, and other bills during this time.

Investment in Indirect: Thank You!

We want to thank the Council for including \$106 million to bring indirect funding rates up to 12 percent in your budget response, which is crucial funding to help close the gap between what it costs to run programs and what the City pays for. The nonprofit human services sector suffers from cash flow problems and chronic underfunding largely because government contracts and philanthropic grants rarely cover operating costs—and payment is often late and unpredictable. Contracts and grants must fully cover indirect costs such as information technology, compliance, building maintenance, program evaluation, accounting, human resources, and employee training. Contracts should include cost escalation clauses that accommodate increases in the cost of doing business and/or allow for the surrender of contracts when they become unsustainable due to unforeseen circumstances. The City should work closely with the sector to determine what it actually costs to run a successful program. The new *Health and Human Services Cost Policies and Procedures Manual*, which was developed as part of the Nonprofit Resiliency Committee lays out standardized indirect costs for our sector. However, without increased funding to address the gaps this manual displays in our contracts, the fiscal crisis we are facing remains unaddressed. Based on numbers provided by the Office of Management and Budget, \$250 million should cover the costs to fully implement this manual and we greatly appreciate the Council including indirect investment in their response.

Thank you for providing me with this opportunity to testify. I am happy to answer any questions you may have, and I can be reached at aedwards@shelteringarmsny.org or 212-886-5618.

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