

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2011**

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**No. 63**

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Introduced by Council Members Mealy, James, Williams, Comrie, Jackson, Arroyo, Levin, Barron, Gennaro, Brewer, Dickens, Rose, Chin, Crowley, Lander, Mark-Viverito, Van Bramer, Wills, Vann, Eugene, Sanders Jr. and Rodriguez

**A LOCAL LAW**

**To amend the New York city charter, in relation to the procedure governing agency service contracts.**

*Be it enacted by the Council as follows:*

Section 1. Subdivision a of section 312 of the New York city charter is amended to read as follows:

§ 312. Procurement; general rule and exceptions. a. Prior to entering into [or], renewing, *or extending* a contract valued at more than [one] *two* hundred thousand dollars to provide [technical, consultant, or personal] *standard or professional* services, *including agency task orders pursuant to multi-agency task order contracts, but excluding emergency procurements, government-to-government purchases, and the procurement of legal services or consulting services in support of current or anticipated litigation, investigative or confidential services*, an agency shall follow the procedure established herein *and the mayor shall comply with the reporting requirements set forth in paragraph 8.*

1. Prior to issuing an invitation for bids, request for proposals, or other solicitation, *or renewing or extending an existing contract*, the agency shall determine whether such contract is

*the result of or would [directly] result in the displacement of any city employee within the agency. For the purpose of this section, "displacement" shall mean a reduction in the number of funded positions, including but not limited to, that resulting from the attrition; layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.*

*a. There shall be a presumptive determination that a proposed contract is the result of or would result in displacement if any of the following events occurred in the three year period preceding the date the agency intends to issue an invitation for bids, request for proposal, or other solicitation, or renew or extend an existing contract:*

*(1) the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or*

*(2) the announcement of spending reductions in connection with a budgetary program, including but not limited to a Program to Eliminate the Gap, that could result or has resulted in the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or*

*(3) any other statement by an agency or the mayor of a specific anticipated employment action that could result or has resulted in the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose.*

*b. If the agency determines that [such result] displacement would not occur, it shall include a certification to that effect, signed by the agency head, in any invitation for bids, request for*

proposals, or other solicitation, *or with any contract renewal or extension. Such certification shall detail the basis upon which the agency determined that displacement would not occur, construing broadly the nature of the services sought and providing information including but not limited to:* (i) *whether any civil service title and/or job title within the agency currently performs the services solicited and/or services of a substantially similar nature or purpose, the names of such titles, and the extent to which agency employees within such titles currently perform such services;* (ii) *whether the solicited services expand, supplement, or replace existing services, and a detailed description comparing the solicited services with such existing services;* (iii) *whether there is capacity within the agency to perform the services solicited and, if there is no such capacity, a detailed description specifying the ways in which the agency lacks such capacity;* (iv) *for the term of the proposed contract, the projected headcount of employees within such titles or employees who perform such services and/or services of a substantially similar nature or purpose;* and (v) *confirmation that none of the events set forth in subparagraph a of this paragraph occurred within the agency in the three year period preceding the date such agency intends to issue an invitation for bids, request for proposal, or other solicitation, or renew or extend an existing contract.*

c. If the agency determines that [such result] *displacement* would occur, the agency shall determine the costs incurred and the benefits derived in performing the service, consistent with the scope and specifications within the solicitation, *renewal, or extension*, with city employees, and shall submit such analysis, with all supporting documentation, prior to issuance of any solicitation *or entry into any contract renewal or extension*, to the comptroller.

2. Immediately upon receipt of bids, [and] proposals, *and other solicitation responses, or prior to the renewal or extension of an existing contract*, the agency shall submit such determination, analysis, and supporting documentation to the council and to the appropriate

collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

3. Prior to award of a contract, *a renewal, or an extension*, the agency shall perform a comparative analysis of the costs expected to be incurred and the benefits expected to be derived from entering into, *renewing, or extending* a contract with the proposed vendor, based on such vendor's best and final offer, and such agency's analysis of the costs incurred and the benefits derived from providing the service with city employees. If the agency head intends to award, renew, or extend the contract, he or she shall submit the reasons therefor, together with such analysis, and all supporting documentation, to the comptroller, the council, and the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of [paragraph] *subdivision a* of this section.

4. The council may, within thirty days after receipt of such reasons, analysis, and supporting documentation hold a hearing on this matter. No contract award, *renewal, or extension* shall be made prior to the expiration of this thirty-day period or a council hearing, whichever is sooner.

5. a. All cost and comparative analyses required under this section shall be conducted in accordance with standard methodology of the office of management and budget, and consistent with the rules of the procurement policy board, as both are modified herein, subject to further modification by local law. Such analyses shall include all reasonable costs associated with performing the service using city employees and all reasonable costs associated with performing the service under the proposed contract *or contract renewal or extension*.

b. Such analyses shall further include[,] the total number, qualifications, job descriptions, and titles of all personnel to be employed by the vendor under the proposed contract *or contract*

*renewal or extension*, as well as the nature and cost of salaries and benefits to be provided to such personnel.

c. Such analyses shall further include, but not be limited to, the cost of employee supervision directly related to the provision of the service, vendor solicitation, contract preparation, contract administration, monitoring and evaluating the contractor, capitalization of equipment over the period such equipment shall be in use, supplies[;], the cost of providing the equivalent quantity and quality of service by city employees compared to the cost of providing such service by contract, based upon the best and final offer of the proposed vendor, and such other factors as will assist in arriving at full and accurate cost determinations and comparisons.

6. The reasons given to award, *renew, or extend* the contracts shall include all factors that have been considered in determining whether contracting for this service is in the best interest of the city, whether or not such reasons are contained within the cost or comparative analyses. Such factors shall include, but not be limited to, the potential for contractor default, the time required to perform the service, and the quality of the service to be delivered.

7. The mayor or his or her designee may prepare and implement a plan of assistance for displaced city employees, which may include, but need not be limited to, training to place such employees in comparable positions within the contracting agency or any other agency. The cost of such assistance plan may be included within the cost of contracting-out in the cost and comparative analyses.

8. a. *For the purposes of this paragraph, “agency” means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the department of*

*education, the health and hospitals corporation, and the New York city housing authority, but shall not include any court, or any local development corporation or other not for profit corporation or institution, including such a corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.*

*b. The mayor shall, no later than July 31st of each year, produce and publish on the mayor's office of contract services website a plan and schedule for each agency detailing the anticipated contracting actions of each such agency for the upcoming fiscal year. The plan and schedule shall include: (i) information specific to each prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the nature of services sought, the term of the proposed contract, the method of the solicitation the agency intends to utilize, the anticipated fiscal year quarter of the planned solicitation, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services; and (ii) information specific to each proposed contract renewal or extension, including, but not limited to, any modifications sought to the nature of the services performed under the contract, the term of the proposed renewed or extended contract, the reason(s) the agency intends to renew or extend such contract, the month and year of the expiration of the existing contract, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services.*

*c. If an agency intends to issue an invitation for bids, request for proposal, or other solicitation, or renew or extend an existing contract, but the mayor fails to include such*

*prospective invitation, request, solicitation, renewal or extension in the plan and schedule, the mayor shall provide public notice sixty days before such agency issues such invitation, request, or solicitation, or enters into such renewal or extension. Such notice, which shall be posted on the mayor's office of contract services website and in the city record, shall include: (i) information specific to the prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the nature of services sought, the term of the proposed contract, the method of the solicitation the agency intends to utilize, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services; or (ii) information specific to the proposed contract renewal or extension, including, but not limited to, any modifications sought to the nature of the services performed under the contract, the term of the proposed renewed or extended contract, the reason(s) the agency intends to renew or extend such contract, the civil service and/or job titles within the agency who perform the services sought and/or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services.*

[8. For the purpose of this section, "displacement" shall mean any employment action that results in a reduction in the number of funded positions, including but not limited to, those resulting from the layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.]

§2. Effect of invalidity; severability. If any section, subdivision, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed

severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§3. This local law shall take effect ninety days after its enactment into law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on.....October 5, 2011..... disapproved by the Mayor on ...November 4, 2011.....and repassed by the Council on .....December 8, 2011.....and said law is adopted notwithstanding the objection of the Mayor.

MICHAEL M. McSWEENEY, City Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 63 of 2011, Council Int. No. 624-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on October 5, 2011:

46 for, 0 against, 0 not voting.

Was disapproved by the Mayor on November 4, 2011

Was returned to the City Clerk on November 4, 2011

Was reconsidered by the Council on December 8, 2011 and received the following vote of the Council members at a meeting of the Council on December 8, 2011:

48 for, 0 against, 0 not voting

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.