



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

August 25, 2020

Honorable Bill de Blasio
Mayor
City of New York
City Hall
New York, NY 10007

Re: Termination of Section 2 of Emergency Executive Order 101

Dear Mayor de Blasio:

I am writing to urge you to swiftly rescind Emergency Executive Order (“E.E.O.”) 101, Section 2, which has suspended laws and regulations related to procurement in New York City since March 17, 2020. E.E.O. 101 may have seemed justified at the height of the COVID-19 pandemic when the City’s ability to quickly purchase ventilators and personal protective equipment (PPE) meant life or death for New Yorkers, but now that our city is in Phase 4 of reopening, the suspension of the checks and balances that govern our emergency procurement process can no longer be maintained.

Under normal circumstances, Chapter 13 of the New York City Charter allows the City to enter into emergency contracts in cases of unforeseen danger to life, safety, property or a necessary service with the prior approval of my office. My office’s legally mandated role in approving and registering emergency contracts was suspended by E.E.O. 101, Section 2 “to the extent necessary for the City to procure necessary goods, services and construction in response to the emergency”.

As New York City emerges from the acute phase of the COVID-19 pandemic, the number of COVID-related emergency contracts has steadily decreased. Yet the Mayor’s Office of Contract Services continues to register both emergency and non-emergency contracts, defying the intention of the E.E.O. and bypassing the safeguard of Comptroller registration established in the City Charter. As of August 20, the City had already paid out \$1,526,391,921 on the emergency contracts registered under the E.E.O. Moreover, it is not readily apparent that the terms of the suspension of Chapter 13 under the E.E.O. have been adhered to since the required documentation for these contracts has not been routinely submitted to my office.

Dwindling Need for the Suspension of Local Procurement Laws and Regulations

New York City is in a new phase of managing the COVID pandemic. With hospitalizations down 98 percent from their peak in April, the sweeping emergency procurement powers enacted in E.E.O. 101 are no longer justified. For example, in April 2020, contracts for PPE comprised 19 percent of registered COVID-19 emergency contracts, whereas in June 2020, PPE comprised only three percent of all contracts. Additionally, the City registered nine ventilator contracts in April 2020, but only one in July 2020. It also registered nine emergency staffing contracts in April 2020, but only two in July 2020.

Moreover, the continued suspension of local procurement laws and regulations is permitting the registration of contracts that are not appropriately related to the State of Emergency caused by COVID-19. Under the executive order, the City has registered contracts from every mayoral agency, contracts with expiration dates years away, and contracts with purposes that have unclear direct relevance to the fight against COVID-19. These registrations indicate a trend away from goods and services contracts that relate to immediate COVID-19 prevention and treatment and corresponds to the vast decrease in infections over the same period.

Noncompliance of Terms Associated with the Emergency Executive Order

When E.E.O. 101 was issued, it was done with the requirement that the suspension of procurement rules be done only “when an agency head determined in writing that the procurement is necessary to respond to the emergency”.¹ My office has yet to receive evidence of such determinations for the vast majority of contracts registered pursuant to the E.E.O., or criteria used by the Mayor’s Office of Contract Services to evaluate such determinations, assuming such a process exists. Additionally, complete contract files for the procurements have not been submitted to my office.

To comply with the terms of E.E.O. 101, please submit the following items for each contract registered under the E.E.O. to my Office’s Bureau of Contract Administration for filing purposes within two weeks from the date of this letter:

1. The complete emergency contract file as required by NYC Charter Section 93 that includes but is not limited to:
 - a) The agency head determinations for the need of the emergency contracts that are required under E.E.O. 101; and
 - b) The written determination for emergency contracts (including contractual information and vendor past performance) required by Mayor’s Office of Contract Services Guidance issued March 18, 2020.

Issues Arising from the E.E.O. 101 and Suspension of Local Procurement Laws and Regulations

I am also concerned that the City may be circumventing the Charter-mandated role of my office. The Charter places the responsibility on the Comptroller to review emergency contract submissions and to provide oversight over contract procurement, vendor integrity, agency accountability and registration generally.

It has been reported that a number of COVID-19 related contracts worth tens of millions of dollars have been canceled or not fulfilled. These same reports also indicate that many of these contracts were with vendors that lack the necessary capacity or relevant experience, or even have criminal backgrounds. Given these facts, it is imperative that my office resume its Charter-mandated role of safeguarding taxpayer funds.

Based on these concerning reports, please provide the following items to my office within two weeks of the date of this letter:

¹ E.E.O. 101 Section 2 has been extended by over thirty E.E.O.s, most recently E.E.O. 142. The fact that E.E.O.s are limited to 5 days indicates that they are to be temporary in nature and not to be extended in perpetuity.

2. A complete list of the contracts registered under the E.E.O. that have either been canceled or not fulfilled; and
3. The status of the City's efforts to recoup the funds paid to the vendors for any contract where an advanced payment was issued and goods or services were not received.

COVID-19 still presents an economic and public health threat; however, the need for E.E.O. 101, Section 2 no longer exists, and a return to the original emergency procurement framework provided by the City Charter is in order. Please notify my office of the date that E.E.O. 101 will lapse or be terminated, and submit the above materials without delay.

Thank you for your prompt attention to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer". The signature is fluid and cursive, with the first name "Scott" being more prominent.

Scott M. Stringer
New York City Comptroller