



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

October 19, 2022

The Honorable Eric Adams
Mayor
City Hall
New York, NY 10007

RE: Request to convene New York City's Procurement Policy Board to consider changes to PPB rules to strengthen New York City procurement policy

Dear Mayor Adams:

I am grateful for the work that we have begun together to improve New York City's procurement practices. Procurement policy often falls to the bottom of municipal priority lists, but for so much essential work, from combating homelessness to providing meals to seniors to fixing bridges to responding to disasters, procurement is how city government gets stuff done.

Through our task force to address delays in contracting with the city's nonprofit human service providers, in partnership with Deputy Mayors Wright and Williams-Isom and MOCS Director Flores, we have already unlocked over \$4 billion of long-overdue payments. Through the capital projects task force convened by First Deputy Mayor Grillo, we have identified many strong steps to address the ways in which the city's infrastructure projects are so often years late and over budget.

In that spirit of partnership, I write today to request a convening of the New York City Procurement Policy Board (PPB) to advance several critical initiatives that will benefit New York City procurement for not only our partners but also the residents and visitors of our great city as we recover from this pandemic. As you are aware, this our shared channel to promulgate rules that govern City procurement activities and to propose creative solutions and measures to make City contracting more transparent, accountable and accessible. While our joint efforts are sure to produce many meaningful improvements to the City's procurement rules and process, I propose that we convene the PPB as soon as possible to consider the following changes to the rules in three areas of City procurement:

- Raising the M/WBE small purchase procurement threshold
- Closing corruption vulnerabilities in the City's oversight and administration of not-for-profit human service contracts (in light of the November 2021 NYC Department of Investigation report)
- Increasing compensation and diversity transparency of NYC contractors and subcontractors

Raising the M/WBEs small purchase procurement threshold

On October 6, 2022 the Governor signed legislation to amend the §311 of the New York City Charter, which currently allows the PPB to adopt rules for City agencies to procure goods, services and construction not exceeding \$500,000 from M/WBE firms without a formal competitive process. This amendment will double the M/WBE procurement threshold to \$1,000,000. In doing so, the City will be able to significantly broaden its range of contracts with M/WBE firms. The previous M/WBE procurement threshold increase to \$500,000 increased in the average size of contract awards to M/WBE firms by agencies and coupled with the best value tools and improved access to funding through the City's contract financing loan fund, provided many more opportunities for M/WBEs to do business with New York City.

Considering this, it is imperative that the PPB act quickly to amend the PPB Rules to raise the non-competitive small purchase threshold for M/WBEs to \$1,000,000. This will not only reduce barriers, but also help to increase the volume and value of meaningful contracting opportunities for M/WBE firms.

Closing corruption vulnerabilities in the City's oversight and administration of not-for-profit human service contracts (in light of the November 2021 NYC Department of Investigation report)

Each year, New York City contracts with nonprofit organizations to deliver critical social services to over three million New Yorkers including but not limited to programs for day care, housing and shelter assistance, homeless services, youth services, senior centers and employment training and assistance. In Fiscal Year 2021, New York City procured \$12 billion in human services, which accounted for approximately 40% of the City's total contracting portfolio.

Nonprofit organizations face unrelenting challenges and significant financial burdens when doing business with the City due to a historically slow and opaque procurement process. As a result, nonprofits are often forced to take out loans and may incur substantial costs in order to make payroll and keep their doors open to children, seniors and many more New Yorkers in need of their services. This is especially concerning given that the nonprofit sector employs nearly 500,000 people, a majority of whom are women and people of color.

In recognition of these important social programs and commitments to improving contracting conditions for nonprofits, our administrations partnered in an unprecedented collaborative effort ("A Better Contract for New York: A Joint Task Force to Get Nonprofits Paid On Time") to advance substantial reforms to our City's nonprofit contracting ecosystem that will result in shared accountability, greater transparency and improved leadership and management structures to solve these problems for generations of New Yorkers to come. Through the "Clearing the Backlog" initiative, led by MOCS as a part of this partnership, we have already worked together to register over 2,600 long overdue contracts, unlocking over \$4 billion in resources for critical human service work. There is still a lot of work to be done, but our ongoing collaboration is already producing positive change in the human services sector.

While the vast majority of the City's nonprofit partners are dedicated public servants who focus on providing high-quality services and make best efforts to administer public funds responsibly, it is critical that the City have robust procedures in place to ensure integrity and safeguard City resources. Bad actors inevitably slip through cracks, mismanaging City funds at the expense of the vulnerable New Yorkers they serve. Those limited, but high-profile scandals erode public

trust in City government, its use of tax dollars, and the organizations working hard to serve New Yorkers in need.

In November, 2021 the NYC Department of Investigation (DOI) published its “Report on Corruption Vulnerabilities in the City’s Oversight and Administration of Not-for-Profit Human Service Contracts,” reviewing its investigations over the prior seven years into corruption, waste, and fraud in nonprofit human services contracts. DOI made a series of recommendations to close corruption vulnerabilities. In response to the DOI Report, I believe there are substantive reforms to the City’s procurement rules that can be made to promote transparency, accountability and equity while reducing risks of corruption, fraud, and nepotism within nonprofit organizations and other related parties that participate in the City’s nonprofit sector.

While my office recognizes that proposing reform measures may result in some additional administrative and legal requirements placed on both agencies and hardworking, reputable nonprofit providers, these proposed rules will help ensure an equitable workplace as well as protect the sector from bad actors and ensure that the City has legally enforceable means to protect from fraud, waste and abuse. To this end, I believe that the PPB reform measures below will lead to more accountability and transparency in New York City’s human services contracting:

- Incorporating restrictions on third-party contractors/subcontractors, so they cannot be owned or controlled by related parties or relatives

In order to meet contractual commitments to the City, nonprofit organizations frequently rely upon third party contractors and/or subcontractors to provide goods and services as well as office space and other real property that support contracted social services programs. The City’s Human Services Standard Contract requires that contractors maintain Conflicts of Interest Policies (§6.06) along with procedures for disclosing, addressing and documenting Related Party Transactions (§1.01 J.) in line with §715 of the Not-for-Profit Corporation Law. However, my office would like to propose ways to enhance the PPB Rules so that as a city we can better safeguard against third parties and/or subcontractors being owned and/or controlled by relatives of the nonprofit provider or contractor that is under direct contract with the City. This may include but not be limited to disclosures of conflicts of interest and certifications pertaining to the competitive bidding process through which third party subcontractors are selected. In these ways, we can ensure that subcontracted expenditures are paid responsibly and without potential for conflicts of interest, which can result in corrupt or otherwise suspect activities.

- Strengthening anti-nepotism provisions

The PPB Rules reflect our ongoing obligation to ensure the fair and equitable treatment of all who deal with the City’s procurement system. Nepotism unfairly precludes contractors, subcontractors and other third parties from opportunities to provide quality goods and services to New Yorkers. Establishing anti-nepotism provisions in the PPB Rules in furtherance of the principles behind §715 of the Not-for-Profit Corporation Law and the City’s Human Services Standard Contract is aligned with fostering open and competitive contracting opportunities for all segments of the vendor community while preserving the City’s duty to protect against favoritism.

- Increasing compensation and diversity transparency for NYC contractors & subcontractors

Greater transparency is needed regarding worker compensation, as well as board and workforce diversity, not only for not-for-profit organizations, but for all City contractors responsible for delivering public services and goods to New Yorkers. The disclosure of salary and compensation is a simple and necessary step we must take to strengthen trust, to prevent waste, fraud, and abuse and to close the gender and race pay gap to create a more equitable and inclusive economy.

In the area of workforce diversity, the federal government, requires that all private sector employers with 100 or more employees, and federal contractors with 50 or more employees submit an EEO-1 report that includes demographic workforce data, including data by race/ethnicity, sex and job categories. In the area of board diversity, many corporations publish a [“board matrix”](#) that identifies demographic information about its board members. Through the Corporate Governance practice in our office, we have successfully pushed many companies where the City’s pension funds hold investments to make this information public.

To improve transparency, accountability and better reach our equity goals, the PPB should implement and enforce the following measures.

All City contractors and subcontractors, including both for-profit and not-for-profit contractors, should be required to disclose:

- Compensation paid to the Executive Director, Chief Operating Officer, and/or functional equivalent of either position along with every contract submitted for registration.
- Maximum, median, and minimum compensation paid to full time workers employed by that contractor during the previous calendar year.
- Their federal EEO-1 reports, if they are required to file them (i.e., if they have over 100 employees, or are a federal contractor with over 50 employees)
- A board matrix, identifying race/ethnicity, and gender information of their board members

Our office is committed to using this data to inform future risk-based audits and investigations of contractors that raise serious concerns of waste, fraud, corruption and abuse. This data should additionally be made public in a downloadable dataset on Open Data as a resource to advocate for greater pay equity, workers’ rights, and the expansion of these transparency metrics.

Furthermore, the City must **establish executive compensation limitations** to create more transparency and accountability in this sector. Though this action falls outside of the scope of the PPB’s current authority, the City should pursue State authorization to enact an executive compensation limitation to ensure comprehensive policies safeguarding human services contracting. As the DOI report identifies, “The City, of course, carefully controls and monitors the salaries it pays its own employees ... [However], unlike the State and federal governments, the City has no clear guidelines limiting executive compensation paid to its not-for-profit social service contractors. Payment of excessive executive compensation is an important issue because, where it does occur, it is often linked to other types of fraud and waste of public services” (p. 12-13).

There are some controls in place with respect to executive compensation to prevent corruption, but those efforts are extremely limited in scope and inconsistently applied. The City, pursuant to State authorization, should therefore pursue and implement a clear and easily enforceable cap on executive compensation for all nonprofit contractors delivering public services to New Yorkers. In line with New York City Comptroller’s Directive 2, that cap should be tied to the

compensation of the highest paid public sector worker in the previous fiscal year, who could reasonably be described as in a “similar circumstance” as the nonprofit sector executives delivering public services to New Yorkers. In FY 2022, that highest paid worker according to publicly available records was Mitch Katz, President of NYCH+H at a total salary of \$699,081. Capping executive compensation among nonprofit contractors to the salary of the highest paid public sector worker (\$699,081), which would require State legislation, is a simple step the City can take to prevent corruption and ensure that high-quality services and programs are delivered to New Yorkers.

My office recommends a convening of the PPB in the near future in order to build on the strong procurement reform we have already begun together, and to enact these critical changes. Together, we can build a stronger post-pandemic New York that provides the best possible use of public resources, provides high quality services, expands opportunities, closes corruption loopholes, and strengthens trust in our City government.

Thank you for your prompt attention to this matter, I look forward to collaborating with you to improve New York City.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander", with a stylized, flowing script.

Brad Lander
New York City Comptroller