



# RUNNING LATE: AN ANALYSIS OF NYC AGENCY CONTRACTS

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Doing business with the City of New York can be complicated and time consuming – and for good reason. The City has an obligation to spend public funds wisely, fairly, and prudently. To achieve these goals, the City’s procurement process involves oversight from a number of agencies before a contract can be registered – the final step in City procurement that allows vendors to be paid for contracted work.

While oversight from a number of agencies is crucial to ensure that required procedures are followed and to root out corruption, waste, and fraud in City spending, the length of time involved in the procurement process can cause hardship to vendors doing business with the City. It can also delay the start of important projects, driving up costs, or cause construction projects to stop midstream while change orders and contract amendments are processed. For these reasons, it is important to examine the length of time involved in the process, and to consider efficiencies that may speed up City procurement without sacrificing thorough review.

This report aims to analyze the length of time it took to register a City contract in Fiscal Year 2017, and in particular, to take a closer look at the prevalence of contracts being registered after the start date of the contract has passed. Why is this important? Because a vendor can only be paid once a contract is registered. When a contract isn’t registered before work is meant to begin, it leaves a vendor with two options – wait to begin work, which can stall projects and drive up costs, or begin work without a registered contract, which can cause significant risk and financial burden to a vendor.

This report places a special focus on human service contracts. These contracts pay for a range of educational, social, and health services – often for vulnerable populations – such as home delivered meals for seniors, after-school programs for youth, and shelters for the homeless. Human services are typically provided by non-profit organizations that find themselves in a catch-22 when contracts are not registered on time: provide services without payment, causing budget strain and cash flow problems, or wait to provide services until a contract is registered, which may mean turning away clients in need or shuttering and then reopening programs – which is often unfeasible.

This report offers data and analysis to provide insight into the City contracting process, revealing that:

- In FY17, 81% of all new and renewal contracts arrived at the Comptroller’s Office for registration after their start date had already passed. When examining human service contracts only, a full 90% arrived at the Comptroller’s Office after the contract start date.

- In FY17, 10% of new and renewal contracts arrived at the Comptroller's office more than a year after their start dates, and an additional 25% of contracts arrived between six months and a year after their start date.

To help alleviate the burden placed on vendors that wait months for contracts to work make it through the City's review process, the Comptroller's office is proposing two recommendations for the City's consideration:

- Assign each City agency with a role in contract oversight a specific timeframe for their contract review work. By holding agencies to specific contract timeframes, the contracting process can be expedited and standardized.
- Create a public facing tracking system to allow vendors to monitor the progress of their contract through each stage of the contract process. Making the contract process more transparent would introduce real accountability to the City's oversight agencies.

## **Total Contract Actions Registered By Comptroller's Office In Fiscal Year 2017**

The Comptroller's office registered a total of 18,365 contract submissions in Fiscal Year 2017. These contract actions were submitted by all City agencies and spanned all procurement categories.

Uniquely among City agencies, the Comptroller's Office has a 30 day window to register or return a contract, as stipulated by the City Charter. In Fiscal Year 2017, the Comptroller's portion of the contract review process took an average of 19 days to register a contract. While an average of 19 days may seem like a reasonable length of time in which to review and register a contract, it is important to realize how long a contract may be in various stages of review before it is submitted to the Comptroller's office for registration.

After a contract is signed between a vendor and the contracting agency, up to five other City agencies may play a role in review before it is submitted for registration at the Comptroller's Office. Those agencies include the Mayor's Office of Contract Services, Corporation Counsel, the Department of Investigation, the Office of Management and Budget, and the Division of Labor Services at the Department of Small Business Services. These agencies perform a range of tasks from the relatively simple, such as holding public hearings, to the more complex, such as conducting research that enables procuring agencies to determine the financial strength, integrity and capacity of potential vendors. Collectively, these processes can take months, and there are currently no timeframes within which oversight agencies are mandated to perform their tasks.

To investigate this process and its impact on contract registration, our office examined the "retroactivity" of each contract received in Fiscal Year 2017. Retroactivity refers to the length of time that passed between the contract's start date and its registration date. If a contract arrives at the Comptroller's Office for registration after the contract start date, it is considered retroactive.

# Retroactivity Trends Among All City Contracts In Fiscal Year 2017

To determine the retroactivity of each contract, our office tracked each distinct contract action from the date it was first received by our office within the fiscal year, to the date it was ultimately registered within the same fiscal year. We then further narrowed that group of contracts to identify ones that were received by our office after the contract start date.

Of the 18,365 contract submissions registered in FY 2017, it appears that 16,543 – or 90.1% – were already retroactive by the time they reached our office. However, this figure paints a misleading picture of retroactivity rates among City contracts, making it seem like more contracts were retroactive than was actually the case. That is because certain contract actions, such as amendments and extensions, can appear inherently retroactive upon arrival for registration due to difficulty isolating the start date of the amendment or extension from the start date of the initial contract using current tracking systems. The figure may also include multiple submissions of the same contract action, in instances where a contract was withdrawn by an agency or returned by the Comptroller’s office.

To control for this, we removed contract amendments and extensions from our analysis, allowing us to look at the retroactivity of only new contracts and renewal contracts, which have start dates that can be easily and accurately identified. Of the 18,365 contracts that were registered in FY 2017, 6,328 were new or renewal contracts, known as CT1s. Of those 6,328 CT1 contracts – 5,148 or 81.4% – were retroactive.

## How Retroactive Were These Contracts?

The following chart shows the length of time from contract start date until submission to the Comptroller’s Office for the 5,148 retroactive CT1 contracts that were registered in FY17

**Chart I: Length of Retroactivity Among Registered CT1 Contracts, FY17**

	Under 30 days	31 – 60 days	61 – 90 days	91 – 180 days	181 – 365 days	Over 1 year	Total
Number of contracts	1,680	462	328	873	1,247	558	<b>5,148</b>
% of total	32.6%	9.0%	6.4%	17.0%	24.2%	10.8%	<b>100%</b>
Average number of days retro	3.6	44.0	75.6	132.9	267.0	557.7	<b>157.6</b>

As this chart illustrates, of the 5,148 retroactive CT1 contracts that were registered in FY17, 35% were more than 180 days retroactive. To put this into context, it means the vendors that were awarded those contracts would not be able to receive payment for at least six months after the contract start date. For the unlucky vendors that were awarded the 10.8% of contracts that arrived at the Comptroller’s Office over one year late, the average length of retroactivity was a whopping

557 days. Again, that means payments could not be issued to those vendors until one and a half years after their contract start date.

That does not mean all vendors are working without payment. For example, construction firms may elect not to start work until the contract is registered. This often means slowed progress on City projects, and can lead to cost increases over the life of the contract, as costs generally rise with time and delay. For non-profit vendors that may not have the option of waiting to begin contracted work, this could mean taking bridge loans from the City, seeking other loans, and potentially having cash flow problems that threaten the health of the organization. Other contractors, aware from past experience of the slow pace of contract review, may refuse to bid on a contract, narrowing the pool of contractors the City can draw on and potentially raising prices.

By comparison, in the vast majority of instances, the contract registration process conducted by the Comptroller’s Office does not add significant time to the overall life of a contract. For example, 96.5% of contract submissions in FY17 were registered within the initial 30 day review window, with 19.4 days being the average length of time to register a contract. In certain instances, contracts were withdrawn or returned to the agency within the initial 30 day review window, and had to be resubmitted to the Comptroller’s Office for a second review. When a contract is resubmitted, another 30 day review window begins. In these instances, the length of time it takes to register the contract has been calculated from the date the contract was first submitted to the final date of registration, even if it involved more than one review period.

**Chart II: Length of Time to Register a Contract Upon Submission to Comptroller’s Office, FY17**

	Under 30 days	31 – 60 days	61 – 90 days	91 – 180 days	181 – 365 days	Over 1 year
Number of contracts	17,725	215	234	166	25	0
% of total	96.5%	1.2%	1.3%	0.9%	0.1%	0
Average number of days to register	19.4	46.8	73.1	120.1	216	0

## Retroactivity Trends Among Human Service Contracts In Fiscal Year 2017

New York City relies on an extensive network of non-profit human service organizations to meet the needs of our diverse population. Whether it’s after-school programs for youth, home delivered meals for seniors, or temporary shelter for homeless families, City government delivers services to its residents through community-based partner organizations in all corners of the city.

Non-profits usually struggle the most with delayed contract registration due to tight budgets and the need to deliver services to vulnerable populations regardless of payments. The seven City

agencies that contract for the majority of human service programs are: Administration for Children’s Services (ACS), Department of Education (DOE), Department of Youth & Community Development (DYCD), Department for the Aging (DFTA), Department of Homeless Services (DHS), Human Resources Administration (HRA), and Department of Health and Mental Hygiene (DOHMH).

To examine the unique impact of contract registration delays on non-profit organizations, our office looked at contract retroactivity at these seven agencies, using only Type 70 contracts – the contract category that is primarily used for human service programming.

The City’s seven primary human service agencies registered a total of 4,526 Type 70 contracts in Fiscal Year 2017. Of those 4,526 contracts – 4,302 or 95.1% – were already retroactive by the time they reached our office. When isolating only new and renewal contracts (CT1s) to paint a more accurate picture of retroactivity rates among human service contracts, a total of 2,448 contracts were registered for the seven agencies, and 2,224 or 90.8% were retroactive by the time they reached the Comptroller’s Office.

This is a significantly higher percentage than the 81.4% retroactivity that was found among CT1s across all City agencies. This means that non-profit organizations typically wait longer for their contracts to be submitted for registration than vendors that do business with the City overall. This is problematic for several reasons. First, non-profit organizations often have fewer income streams and smaller budgets than corporate vendors, making cash flow tighter. But more significantly, non-profit organizations often begin work *before* a contract is registered so as not to interrupt the provision of critical services to vulnerable clients. This can force non-profit vendors to take loans from the City in order to make payroll while waiting for their contracts to be registered. In fact, in FY17, the City’s Returnable Grant Fund processed 751 loans for non-profits worth a combined total of \$149.9 million<sup>1</sup>. The need for these loans was a direct result of delayed contract awards.

## How Retroactive Were These Contracts?

This chart shows the length of time from contract start date until first submission to the Comptroller’s Office for the 2,224 retroactive CT1 contracts that were registered for the seven primary human service agencies in FY17. As the chart illustrates, half of all retroactive CT1 contracts were over six months retroactive by the time they were submitted for registration.

**Chart III: Length of Retroactivity Among Registered Human Service Contracts, FY17**

	Under 30 days	31 – 60 days	61 – 90 days	91 – 189 days	181 – 365 days	Over 1 year	Total
Number of contracts	428	158	155	371	709	403	<b>2,224</b>
% of total	19.2%	7.1%	7.0%	16.7%	31.9%	18.1%	<b>100%</b>
Average number of days retro	7.1	45.1	76.5	133.7	269.7	504.0	<b>209.5</b>

The following chart shows the number and percentage of CT1 human service contracts that were already retroactive when submitted to the Comptroller’s Office in FY17, by individual agency, in aggregate. Two agencies – HRA and DHS – submitted 100% of their CT1 contracts retroactively, meaning not one contract from these agencies arrived for registration prior to the contract start date. However, DOE and DFTA did not do much better. DOE submitted 99.8% of CT1 contracts retroactively and DFTA submitted 98.9% of CT1 contracts retroactively.

**Chart IV: Retroactivity Among Registered CT1 Human Service Contracts by Agency, FY17**

Agency	# of Contracts	# Retroactive	% Retroactive
DHS	104	104	100%
HRA	231	231	100%
DOE	406	405	99.8%
DFTA	275	272	98.9%
DYCD	859	795	92.5%
DOHMH	314	265	84.4%
ACS	259	152	58.7%

The following chart shows the length of time from contract start date until submission for the 2,224 retroactive CT1 contracts that were submitted for registration to the Comptroller’s Office, broken down by individual human service agency. It is worth noting that several agencies submitted a large number of contracts more than one year retroactively: 19% of HRA’s retroactive contracts were retroactive by more than a year, 29% of DOHMH’s retroactive contracts were retroactive by more than a year, and 33.3% of DOE’s retroactive contracts were retroactive by more than a year.

**Chart V: Retroactivity of CT1 Human Service Contracts, Agency By Agency Breakdown, FY17**

		Under 30 days	31 – 60 days	61 – 90 days	91 – 189 days	181 – 365 days	Over 1 year	Total
DOE	Number of contracts	66	46	39	41	78	135	405
	% of total	16.3	11.4	9.6	10.1	19.3	33.3	100%
ACS	Number of contracts	84	12	13	21	18	4	152
	% of total	55.3	7.9	8.6	13.8	11.8	2.6	100%
HRA	Number of contracts	31	5	16	32	103	44	231
	% of total	13.4	2.2	6.9	13.9	44.6	19.0	100%
DHS	Number of contracts	9	7	10	43	27	8	104
	% of total	8.7	6.7	9.6	41.3	26.0	7.7	100%
DFTA	Number of contracts	144	8	13	13	75	19	272
	% of total	52.9	2.9	4.8	4.8	27.6	7.0	100%
DYCD	Number of contracts	59	68	58	194	300	116	795
	% of total	7.4	8.6	7.3	24.4	37.7	14.6	100%
DOHMH	Number of contracts	35	12	6	27	108	77	265
	% of total	13.2	4.5	2.3	10.2	40.8	29.0	100%

By comparison, in the vast majority of instances, contract registration does not add significant time to the overall life of a contract. 96% of all human service contract submissions for these seven agencies were registered within the initial 30 day review window, with 18.8 days being the average length of time to register. In instances where contracts were returned to or withdrawn by the agency, the length has been calculated from the first date of submission to the final date of registration, even if it involved more than one review period.



**Chart VI: Average Length of Time to Register a Human Service Contract Upon Submission to Comptroller’s Office, FY17**

	Under 30 days	31 – 60 days	61 – 90 days	91 – 189 days	181 – 365 days	Over 1 year
Number of contracts	4,343	57	66	50	10	0
% of total	96%	1.3%	1.5%	1.1%	0.2%	--
Average number of days to register	18.8	44.5	74.4	112.7	217.4	--

## Recommendations

The slow pace of New York City procurement—and specifically delayed contract awards—can cause hardship to the City’s vendors. This is particularly true for non-profit organizations that often provide services without payment or take bridge loans in order to make payroll when contracts are not registered on time. It can also delay the start of important projects, driving up costs to the City as projects run over their contracted end dates.

To create a more efficient procurement process, the City should consider the following recommendations:

**Amend New York City’s Procurement Policy Board Rules to assign each agency with an oversight role in the procurement process a timeframe to complete its task.**

The Comptroller’s Office is currently the only agency in the City’s procurement process that carries out its duties within a specified timeframe. All other oversight agencies involved in the process perform their tasks without mandated timeframes, or with timeframes that can be easily waived. In the interest of promoting efficiency and cost savings, the New York City Procurement Policy Board – the entity that determines the City’s procurement rules and regulations – should amend its rules to give each agency with an oversight role in the procurement process a timeframe to complete its task.

Assigning each oversight City agency with a specific timeframe would help prevent the delay of required steps within the procurement process. The parties responsible for various stages of the process include the Mayor’s Office of Contract Services, Corporation Counsel, the Department of Investigation, the Office of Management and Budget, and the Division of Labor Services at the Department of Small Business Services. Assigning timeframes, while taking into account the range of tasks each agency performs, has the potential to considerably speed up the process. Timelines should be developed in consultation with each agency so as not to sacrifice the City’s high standard of thorough review.



## **Create a transparent contract tracking system that would allow vendors to view the status of their contracts.**

Just as consumers can track the status of a package as it makes its way towards their home, vendors should be afforded transparency into the status of their contract. Currently, from the time a City contract is entered into by a vendor until the time it is submitted to the Comptroller's Office for registration, there is very limited visibility into the contracting process. Vendors typically wait many months or longer for a contract to be registered, but have no idea what is actually happening to their contract during that time. This only changes once contracts are submitted to the Comptroller's office – when their registration status automatically appears in [checkbooknyc.com](http://checkbooknyc.com) – the Comptroller's transparency website for City spending and contracts.

To bring more transparency to the process, the Mayor's Office of Contract Services should create a tracking system that allows vendors to follow their contracts throughout each stage of the procurement process. With such a system, vendors would be able to see if their contracts are under review at the Mayor's Office of Contract Services, the Office of Management and Budget, or Corporation Counsel, and track how much time each agency is taking to execute their tasks.

## **Conclusion**

New York City's procurement process is in dire need of reform. While the City is currently taking a number of steps to improve procurement, including the current development of an "end to end" procurement system, additional concrete changes must be made to improve and expedite the contract review, approval and registration process. Reducing contract retroactivity by creating timeframes and transparency during contract review would help the City's thousands of vendors do a better job of delivering crucial services to the public.

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<sup>1</sup> Testimony of Dan Symon, Acting Chair of the Mayor's Office of Contract Services, before the New York City Council Committee on Contracts, February 27, 2018.