

November 2015

Legal Alert:

Increased Requirements by Comptroller's Office for Registration of Shelter Contracts

Currently over 57,000 people (40% of which are children) are sleeping in shelters overseen by New York City's Department of Homeless Services ("DHS"). The problem of homelessness was inherited by Mayor Bill de Blasio from Michael Bloomberg's tenure, when the homeless population grew substantially after the elimination of the Advantage rental assistance program. The homeless population in New York City has continued to increase despite Mayor de Blasio's efforts, including the commitment of an additional \$1 billion to address homelessness over the next four years.

At a time when homelessness in New York City is at historically high levels and with winter quickly approaching, Mayor de Blasio and Comptroller Scott Stringer are currently at odds regarding the registration of more than 30 contracts between DHS and nonprofit organizations providing services to the City's homeless. The Comptroller's refusal to register these shelter contracts has withheld payments due to the nonprofits, placing enormous strain on their operations and on the Mayor's Office to find other ways to advance funds to them.

Why is the Comptroller Refusing to Register these Shelter Contracts?

In 2014, at the request of Mayor de Blasio, New York City's Department of Investigation ("DOI") examined the condition of homeless shelters in New York City and in March 2015 released a report of its findings. The DOI examined 25 shelters and found 621 health and safety violations, including infestations and fire safety violations. They also found that many shelters operated on an emergency basis rather than under official contract, which often resulted in the City paying higher rent and having limited ability to force building owners to make repairs.

In response to the DOI's recommendation to bring more shelters under official contract with DHS, the DHS has entered into more shelter contracts, submitting 93 executed shelter contracts to the Comptroller for registration between March and September of this year (up from 81 submitted the same period last year). Comptroller Stringer, however, has undertaken a more stringent review of shelter contracts. Since taking office in January of 2014, the Comptroller's Office has rejected 33 shelter contracts. Of those 33, 18 had open violations, 21 were missing site inspections, and 15 lacked certificates of occupancy. DHS says that it has withdrawn another 21 contracts because it lacks the documentation required to meet the demands on the Comptroller's Office. The Comptroller has cited the DOI's report as justification for these refusals, asserting that he refuses to approve contracts without supporting documentation that they are safe.

The Comptroller's Office has made many statements to the press that the fault lies with DHS for failing to make sure shelters are safe and with the Mayor's Office for pressing the Comptroller to approve contracts with sites that have unsafe conditions.

What is the Effect of the Comptroller's Refusal?

The Comptroller's refusal to register shelter contracts puts a number of shelters in danger of closing their doors, thereby exacerbating the City's homeless problem. Payments cannot be made under these contracts until they have been registered. Many nonprofits, especially smaller organizations, lack the financial reserves necessary to advance expenses and keep a shelter operating while waiting for a contract to be registered, particularly when the wait is six months or more.

The 33 rejected contracts impact nonprofits that provide approximately 2,000 beds for single adults and 900 family units. Estimates place the amount owed to these nonprofits under unregistered contracts in the tens of millions.

For example, Samaritan Village, which operates several housing shelters across four boroughs, currently has four unregistered contracts with the City. The payments due to Samaritan Village under those contracts, totaling approximately \$37 million per year, remain unpaid.

In some instances, DHS has contributed to the problem by failing to submit contracts to the Comptroller's Office on a timely basis. For example, Pyramid Safe Haven, a south Bronx homeless shelter operated by BronxWorks, may be required to close because it has received no funding from the DHS since it opened in January 2015. The Comptroller's Office said DHS did not submit the contract until June 12th. The Comptroller's Office then rejected the contract on July 9th for failure to provide certain documents, including a copy of the budget and proof of site control.

Providers have been reluctant to expand services or add beds, which are desperately needed, because of non-payment due to delays in registration. Non-payments often deprive nonprofits of the funding they need to complete the very repairs at issue or put them in a situation where they need to divert limited resources away from services in order to complete repairs. The Comptroller's rejection of contracts also negatively impacts the ability of nonprofits to plan financially and to invest in long term programs.

Is the Comptroller Exceeding his Authority?

The process for obtaining a government contract from the City of New York involves many steps and input from a variety of government offices and agencies. Even after a contract between a vendor and the City is negotiated and executed, the contract is not effective, and no payments can be made from the City to the vendor under the contract, unless and until it is registered by the Comptroller.

Historically, the registration of contracts by the Comptroller has been largely routine and in fact happens automatically 30 days after filing the contract with the Comptroller's office unless the Comptroller objects to registration. Section 328 of the NYC Charter states:

"No contract or agreement shall be implemented until either the comptroller has registered it or thirty days have elapsed from the date of filing, whichever is sooner. The comptroller may object to registration by delivering such objection to the Mayor within

the 30-day period. After the Mayor has responded with reasons to proceed, the comptroller must register the contract within 10 days of receiving the response."

Section 328 gives clear authority to the Mayor to order the Comptroller to register a contract despite any objection by the Comptroller. However, the New York City Procurement Policy Board (the "PPB") has promulgated rules regarding the award of New York City contracts, pursuant to the powers granted to the PPB under the NYC Charter, including rules regarding registration of contracts by the Comptroller.

In particular, Section 2-12(c) of the PPB Rules sets forth the supporting documentation that must be provided when a contract is submitted for registration, which includes "any other information requested by the Comptroller and agreed to by the [Mayor's City Chief Procurement Officer], or required by law." In addition, Section 2-12(f) provides that:

"Upon making a determination that there is a basis for refusing to register the contract, the Comptroller shall promptly notify the [Chief Contracting Officer of the relevant city agency] of that determination and return the contract to the [Chief Contracting Officer of the relevant city agency]."

The Comptroller views the PPB Rules as granting him the authority to repeatedly reject contracts that are missing supporting documentation, although objectors note that the PPB Rules do not override the NYC Charter.

What is Being Done to Remedy the Problem of Unregistered Shelter Contracts?

Since the DOI report, the City's shelter repair team has completed 2,000 inspections, cleared 7,000 violations and completed nearly 3,000 repairs. Of the violations identified by the DOI, 83% have been cleared, 10% are in the process of being cleared and 7% are long-term repairs that the City is working on.

In order to keep nonprofits from shutting their doors, the City has temporarily issued approximately \$14 million in bridge loans to homeless service providers.

Nonprofits are continuing to advocate for a resolution whereby the Comptroller can continue to hold City agencies and nonprofits accountable for violations in a way that does not withhold payments for services provided.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Hedwig O'Hara at (212) 219-1800 ext. 226 or visit our website at www.lawyersalliance.org for further information.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.