



## Legislation Text

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Int. No. 2252-A

By The Speaker (Council Member Johnson) and Council Members Riley, Ayala, Ampy-Samuel, Rose, Moya, Gibson, Treyger, Kallos, Grodenchik, Brannan, Van Bramer, Levine, Brooks-Powers, Gennaro, Dinowitz, Cornegy, Reynoso, Chin, Rivera, Salamanca, Cumbo, Koslowitz, Rodriguez, Vallone, Powers, Miller, Rosenthal and Barron

A Local Law to amend the administrative code of the city of New York, in relation to requiring city human services contractors to enter into labor peace agreements

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-145 to read as follows:

§ 6-145 Labor peace agreements for human services contracts. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Building service employee. The term “building service employee” means any person, the majority of whose employment consists of performing work in connection with the care or maintenance of a building or property, including but not limited to a watchperson, guard, doorman, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

City service contract. The term “city service contract” means any written agreement, except an emergency contract procured pursuant to the procedure set forth in section 315 of the charter, between any person and a contracting agency whereby:

1. a contracting agency is committed to expend or does expend funds;
2. the principal purpose of such agreement is to provide human services; and
3. the value of the agreement is greater than the city’s small purchase limit set pursuant to section 314 of

the charter.

City service contractor. The term “city service contractor” means any person that enters into a city service contract with a contracting agency. A person shall be deemed a city service contractor for the duration of the city service contract that such person enters into.

City service subcontractor. The term “city service subcontractor” means any person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that pursuant to an agreement with a city service contractor, performs any of the services to be rendered pursuant to a city service contract, except that the term “city service subcontractor” shall not include any person who enters into a contract with a city service contractor the principle purpose of which is to provide supplies, or administrative services, technical support services, or any other similar services to such city service contractor that do not directly relate to the performance the human services to be rendered pursuant to such city service contract. A person shall be deemed a city service subcontractor for the duration of the period during which such person performs subcontracted services under the city service contract.

Comptroller. The term “comptroller” means the comptroller of the city.

Contracting agency. The term “contracting agency” means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury, or the department of education.

Covered employer. The term “covered employer” means a city service contractor or a city service subcontractor.

Covered employee. The term “covered employee” means an employee of a covered employer who directly renders human services in performance of a city service contract, except that the term “covered employee” shall not include any building service employee.

Human services. The term “human services” means social services contracted for by an agency on

behalf of third party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.

Labor organization. The term “labor organization” has the same meaning as set forth in subdivision (5) of section 152 of title 29 of the United States code.

Labor peace agreement. The term “labor peace agreement” means an agreement between a covered employer and a labor organization that seeks to represent employees who perform one or more classes of work to be performed pursuant to the city service contract, where such agreement:

1. requires that the covered employer and the labor organization and its members agree to the uninterrupted delivery of services to be rendered pursuant to the city service contract and to refrain from actions intended to or having the effect of interrupting such services; and

2. includes any other terms required by rules promulgated pursuant to paragraph 2 of subdivision d of this section.

b. (1) No later than 90 days after the award or renewal of a city service contract or approval of a city service subcontractor, such covered employer, shall either:

(a) submit an attestation to the applicable contracting agency, signed by one or more labor organizations, as applicable, stating that the covered employer has entered into one or more labor peace agreements with such labor organizations, and identify: (i) the classes of covered employees covered by the labor peace agreements, (ii) the classes of covered employees not currently represented by a labor organization and that no labor organization has sought to represent, and (iii) the classes of covered employees for which labor peace agreement negotiations have not yet concluded; or

(b) submit an attestation to the applicable contracting agency stating that the covered employer’s covered employees are not currently represented by a labor organization and that no labor organization has

sought to represent such covered employees.

(2) Where a labor organization seeks to represent the covered employees of a covered employer after the expiration of the 90-day period following the award date of the city service contract or the approval of a city service subcontractor, and the labor organization has provided notice to the contracting agency and the covered employer regarding such interest, the covered employer shall then submit an attestation signed by the labor organization to the applicable contracting agency no later than 90 days after the date of notice stating that it has entered into a labor peace agreement with such labor organization or that labor peace agreement negotiations have not yet concluded.

c. 1. Prior to the award or renewal of a city service contract, the bidder or proposer seeking award or the city service contractor seeking renewal shall provide the awarding contracting agency a certification containing the following information:

(a) The name, address and telephone number of the chief executive officer of the bidder or proposer seeking award, or the city service contractor seeking renewal, as applicable;

(b) A statement that, if the city service contract is awarded or renewed, the bidder or proposer seeking award, or the city service contractor seeking renewal, as applicable, agrees to comply with the requirements of this section, and with all applicable federal, state and local laws; and

(c) A record of any instances during the preceding five years in which the bidder or proposer seeking award, or the city service contractor seeking renewal, as applicable, has been found by a court or government agency to have violated federal, state or local laws regulating labor relations, in which any government body initiated a judicial action, administrative proceeding or investigation of the bidder, proposer, or city service contractor in regard to such laws.

The certification shall be signed under penalty of perjury by an officer of the bidder, proposer, or city service contractor and shall be annexed to and form a part of the city service contract. The certification and the city service contract shall be public documents, and the contracting agency shall make such documents

available to the public upon request for inspection and copying pursuant to article six of the public officers law.

2. A city service contractor shall each year throughout the term of the city service contract submit to the contracting agency an updated version of the certification required under paragraph one of this subdivision, and identify any changes from the previous certification.

d. 1. The comptroller shall monitor, investigate and audit the compliance by all contracting agencies, and provide covered employers and covered employees with the information and assistance necessary to ensure that the provisions of this section are implemented.

2. The mayor or the mayor's designee shall promulgate implementing rules and regulations, as appropriate and consistent with this section, and may delegate such authority to the comptroller.

3. The comptroller and the mayor shall ensure that the information set forth in the certifications required to be submitted under subdivision c of this section is integrated into and contained in the database established pursuant to subdivision b of section 6-116.2.

4. The comptroller shall submit annual reports to the mayor and the city council summarizing and assessing the implementation and enforcement of this section during the preceding year and include such information in the report required pursuant to subdivision f of section 6-116.2.

e. 1. Contracting agencies shall comply with and enforce the requirements of this section.

2. The contracting agency shall state in the solicitation for each city service contract that the city service contract shall include:

(a) a requirement that the city service contractor comply with all applicable requirements under this section and any rules promulgated pursuant to this section, and that such requirements constitute a material term of the city service contract;

(b) the certification required under subdivision c of this section; and

(c) a provision providing that: (i) Failure to comply with the requirements of this section may constitute a material breach by the city service contractor of the terms of the city service contract; (ii) Such failure shall be

determined by the contracting agency; and (iii) If the city service contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 days of such notice or a longer time period established pursuant to the terms of the city service contract, the city shall have the right to pursue any rights or remedies available under the terms of the city service contract or under applicable law, including termination of the contract.

f. 1. Whenever the comptroller has reason to believe that a covered employer or other person has not complied with the requirements of this section, or upon a verified complaint in writing from an interested party, the comptroller shall conduct an investigation to determine the facts relating thereto. Based upon such investigation, the comptroller shall report the results of such investigation to the contracting agency. Based on the contracting agency's own findings or as a result of the comptroller's investigation, the contracting agency may, where appropriate, issue an order, determination or other disposition. Such disposition may:

(a) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(b) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer;

(c) Find the city service contractor to be in default or otherwise terminate the applicable city service contract;

(d) Withdraw approval of a city service subcontractor;

(e) Assess actual and consequential damages; or

(f) Enter an agreement with the city service contractor allowing the contractor to cure the violation.

In assessing an appropriate remedy, due consideration shall be given to the size of the covered employer's business, the covered employer's good faith, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping, reporting or other requirements.

2. Before issuing an order, determination or any other disposition, the contracting agency shall give

notice thereof together with a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person or covered employer affected thereby. The mayor or contracting agency, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and recommended disposition. Such covered employer shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard in respect to such matters.

3. When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid or proposal on or be awarded any city service contract for a period of five years from the date of the second disposition.

4. Each city service contract shall provide that, in circumstances where a city service contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, a contracting agency may obtain from another source the required service as specified in the original city service contract, or any part thereof, may charge the non-performing city service contractor for any difference in price resulting from the alternative arrangements, may assess any administrative charge established by the contracting agency, and may, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

§ 2. (a) This local law takes effect 90 days after it becomes law, provided that this local law shall not apply to awards or renewals of city service contracts prior to the effective date of this local law, and provided further that the mayor, or a designee of the mayor, may promulgate any rules necessary for implementation of this local law and take any other measures as are necessary for its implementation, prior to such date.

(b) For the purpose of this section, the term “city service contract”, shall be defined in accordance with

the definition in section 6-145 of the administrative code.

MHL/LCB

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