

**Written Testimony before the New York City Charter Revision Commission
Government and Election Reform Forum & Hearing**

NYC Health + Hospitals/Lincoln
234 East 149th Street
Bronx, New York 10451
June 17, 2024

Submitted: June 21, 2024

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About the Author

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*The Manhattan Institute does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my research as an Institute scholar, the views represented today are solely my own, not my employer's.

Chair Scissura and members of the 2024 Charter Revision Commission, thank you for the honor and opportunity to submit this written testimony on improving New York City's government and electoral system. As a preliminary matter, I would like to reiterate the excellent recommendations that my colleague E.J. McMahon offered at the fiscal responsibility forum on June 13.¹

In 2019, New York City voters approved a revision to the city charter that introduced single-winner ranked choice voting (technically known as instant-runoff voting, or IRV) in primary and special elections for local offices.² IRV was integrated into the city's existing electoral architecture: single-member council districts, fully closed primaries, and elections held on odd-numbered years, all of which generally discourage political competition.

After two local elections using IRV—the 2021 mayoral and city-council primaries and the 2023 city-council primaries—New York City's local electoral dynamics remain essentially unchanged.

Turnout in local races has not improved substantially. Consider that in the 2021 mayoral primary, the first without an incumbent since 2013 and the first to use ranked choice voting following the 2019 charter amendment, only 26.5 percent of eligible voters participated.³ This was higher than other primaries, but not by a dramatic margin. In the 2013 mayoral primary, also without an incumbent, 23.3 percent of eligible voters participated.⁴ Last June's primaries for city council had even worse turnout—less than 10 percent in many districts—and roughly in line with earlier city-council contests.⁵ General elections likewise suffer from low voter participation.

Nor has standalone IRV spurred greater political competition. Today, one party still controls nearly 90 percent of city council seats and the three major citywide offices of mayor, comptroller, and public advocate.⁶ If there is any genuine political competition to speak of, it is still almost entirely between factions of the local Democratic Party.⁷ And in the few council districts where Republicans predominate, Democrats find themselves similarly disadvantaged. Worst off are the over one million registered city voters who do not affiliate with any political

¹ See E.J. MCMAHON, TESTIMONY BEFORE THE NEW YORK CITY CHARTER REVISION COMMISSION (2024), <https://manhattan.institute/article/testimony-before-the-new-york-city-charter-revision-commission>.

² N.Y.C. Bd. of Elections, *Learn about Ranked Choice Voting for NYC Local Elections*, <https://vote.nyc/page/ranked-choice-voting>.

³ NYC VOTES, 2021–2022 VOTER ANALYSIS REPORT vii (2022), https://www.nycfb.info/pdf/2021-2022_VoterAnalysisReport.pdf.

⁴ *Id.* at 45.

⁵ See Jennifer Bisram, *Low voter turnout in NYC may reflect "lost faith in the system"*, CBS NEWS N.Y. (Nov. 7, 2023, 9:03 PM), <https://www.cbsnews.com/newyork/news/low-voter-turnout-in-nyc/>; Carl Campanile, *NYC's 2023 primary election had less than 200K voters cast ballots — with only 5% of Democratic Bronx voters showing up: analysts*, N.Y. POST (June 28, 2023, 6:55 PM), <https://nypost.com/2023/06/28/nycs-2023-primary-election-had-less-than-200k-voters-cast-ballots-analysts/>.

⁶ N.Y.C. Council, *Council Members & Districts*, (last visited Jan. 5, 2024), <https://council.nyc.gov/districts/>.

⁷ See, e.g., Chris Sommerfeldt, *NYC's next comptroller, public advocate are progressives who could be thorns in Eric Adams' side*, N.Y. DAILY NEWS (Nov. 2, 2021, 9:56 PM), <https://www.nydailynews.com/2021/11/02/nycs-next-comptroller-public-advocate-are-progressives-who-could-be-thorns-in-eric-adams-side/>.

party.⁸ They cannot vote in any primary, nor can those registered with parties that do not hold primaries.

The city's modest results with ranked choice voting are consistent with other findings in the academic literature. In a New America report discussing the results of 15 papers on the effects of ranked choice voting, Lee Drutman and Maresa Strano found a pattern of “null to small” effects.⁹ Most of these papers suggest it is a modest procedural change, a “comparable or modestly better alternative” to plurality, or first-past-the-post (FPTP), voting.¹⁰ Their report sums up the matter succinctly:¹¹

[R]eplacing FPTP with RCV without addressing the other structural drivers of America's hyperpolarized and inequitable two-party system, including single-member districts, is unlikely to bring about the large-scale change we need to repair our national political dysfunction. Put another way, adopting RCV will not hurt as much as you might fear, but it may not help as much as you might hope.

New York City's electoral system, therefore, does not create the conditions for robust political competition and broad voter participation. Its structural elements insulate the dominant political party from challenges and impede voters from a meaningful say. The city's anemic local democracy calls into doubt whether electoral outcomes reflect the deliberate will of the majority.

Opportunities for Electoral Reform

Manhattan Institute polling conducted in April 2024 indicates that city voters across political persuasions—Democrat, Republican, and Independent—support electoral reform. Results show that when given a choice between an open (that is, not limited exclusively to party members) and closed primary, a slight majority (53 percent) of likely city voters believe that open primaries are better than closed primaries.¹² Respondents also received a prompt that introduced a nonpartisan primary (technically, a top-two primary used in California and Washington State that failed to be adopted in New York City in the proposed 2003 charter amendment). A plurality of 33 percent prefers this system, alongside a further 25 percent who opt for an open primary.¹³

New Yorkers also believe that open and nonpartisan primaries will encourage higher voter turnout compared with the current closed primary system. When given a choice between open

⁸ New York State Board of Elections, *NYSVoter Enrollment by County, Party Affiliation and Status*, (February 27, 2024).

⁹ LEE DRUTMAN & MARESA STRANO, *EVALUATING THE EFFECTS OF RANKED-CHOICE VOTING* 9 (2022), https://d1y8sb8igg2f8e.cloudfront.net/documents/Evaluating_the_Effects_of_Ranked-Choice_Voting.pdf.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 9.

¹² Jesse Arm, *Polling NYC Survey Analysis of 2025 Likely Mayoral Voters on Politics, Crime, Migrants, and Electoral Reform*, MANHATTAN INST. (Apr. 18, 2024), <https://manhattan.institute/article/polling-nyc-survey-analysis-of-2025-likely-mayoral-voters>.

¹³ *Id.*

and closed primaries, 62 percent believe that open primaries encourage more people to vote.¹⁴ When nonpartisan primaries are added, 36 percent respond that a nonpartisan primary would encourage the most people to vote, followed by 30 percent for an open primary.¹⁵ Though evidence for the impact of primary reform on turnout in other jurisdictions is mixed or muted,¹⁶ the responses from our poll suggest that New Yorkers would be encouraged to vote by opening up primaries.

As for electoral systems that would represent an improvement over the status quo, several reasonable options exist. Some, for example, use ranked choice voting, and others do not. Each has tradeoffs that the Commission should carefully consider. It is critical that the Commission bear in mind that local issues do not bifurcate along partisan lines like many national issues. Zoning, for example, largely divides voters by interest, not ideology. Nor do local issues lend themselves to neat ideological bundles that groups of voters would tend to support. One's stance on zoning has little bearing on whether one prefers to see a police-oriented approach to public safety, greater support to charter schools, easier small-business permitting, or any number of other local decisions.

It is therefore imperative that a reformed electoral system allow for shifting coalitions of voters and their representatives on the city council. These coalitions should be identifiable and cohesive, yet flexible enough to change on an issue-by-issue basis.

On-ballot Party Labels and Endorsements

Regardless of the system considered, I strongly recommend keeping party labels on the ballot to help guide voter decision-making. Without on-ballot cues like party labels, low-information voters cannot distinguish easily between candidates' policy stances. The non-ideological nature of most local issues exacerbates this problem further. Ideally, voters would arrive at the ballot box informed of issues, electoral offices, and candidates' backgrounds and policy positions. Decades of research have revealed, however, that this aspiration does not match reality.¹⁷

Voters depend on party labels and other cues to make decisions, including in ranked-choice races.¹⁸ In fact, RCV amplifies voter information issues, as it asks voters to know enough about candidates to place up to five in order from most to least preferred. This is especially pronounced in city-council elections, where relatively unknown or low-profile candidates compete.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See, e.g., LEE DRUTMAN, WHAT WE KNOW ABOUT CONGRESSIONAL PRIMARIES AND CONGRESSIONAL PRIMARY REFORM 59 (2021) ("At best, open primaries increase participation by only 2 or 3 percentage points at best, and top-two primaries by about 6 percentage points."), <https://www.newamerica.org/political-reform/reports/what-we-know-about-congressional-primaries-and-congressional-primary-reform/implications-for-top-fourfive-voting/>.

¹⁷ See, e.g., generally Brian F. Schaffner & Matthew J. Streb, *The Partisan Heuristic in Low-Information Elections*, 66 PUB. OPINION Q. 559 (2002).

¹⁸ See, e.g., R. Michael Alvarez, Thad E. Hall, & Ines Levin, *Low-Information Voting: Evidence From Instant-Runoff Elections*, 46 Am. Pol. Rsch. 1012, 1012 (2018) ("[I]n partisan contests, voters make avid use of partisan cues in constructing their preference rankings, rank-ordering candidates based on the correspondence between voters' own partisan preferences and candidates' reported partisan affiliation. However, in nonpartisan contests where candidates have no explicit partisan affiliation, voters rely on cues other than partisanship to develop complete candidate rankings.").

I therefore recommend broadening the informational signals available on ballots by allowing endorsements, such as from high-ranking officials like the mayor and comptroller, to appear alongside candidates' names on ballots.¹⁹ Endorsements from local organizations, unions, business groups, newspapers, and others could likewise be printed on-ballot.²⁰ This would provide voters with an immediate cue, one far more information-rich than mere party labels. Voters would easily be able to select a candidate that closely aligns their values and preferences. The political salience and influence of these local endorsements would also encourage participation and engagement in local community groups. Candidates would vie for groups' endorsement, and New Yorkers would have an incentive to join and participate in these groups to influence candidate selection, thereby reinvigorating the city's civil society.

As for possible electoral systems to replace the status quo, I respectfully submit the following three for the Commission's consideration, without endorsing any one over the others, given the various tradeoffs of each: Final Five Voting (FFV), ranked choice voting in multimember city council districts (called the Single Transferable Vote, or STV), and party-list proportional representation systems for city council.

Final Five (or Four) Voting

Final Five Voting is a combination of three specific reforms: (1) a “nonpartisan primary,” in which all qualifying candidates appear, regardless of party, in a preliminary election open to all registered voters, who choose a single candidate using a non-ranked vote; (2) the top five (or, in some cases, four) primary vote-getters, regardless of party, advance to a general election where; (3) voters use RCV to elect a single winner (again, IRV) with a majority of final-round votes.²¹ Because this method selects a single winner, it can be used for single-member city council districts and for citywide offices like mayor, comptroller, and public advocate.

By definition, a “primary” is a process whereby voters select a party's nominee,²² making FFV's “top-five primary” not a true primary. Better termed a “qualifying-round election,” it reduces the larger pool of candidates who run initially to a smaller, more manageable five (or four) in the general election.²³ All candidates compete in this preliminary qualifying round, regardless of political party. Multiple candidates from the same major party can run against one another, as well as against minor-party and independent candidates, in the general election. Given that many elections have at least one or two clear front-runners, the third, fourth, and fifth qualifying-round vote-getters should secure general-election spots with relatively small shares of the vote—around

¹⁹ For the origin of this proposal, see Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties, and Election Law*, 2013 U. ILL. L. REV. 363 (2013).

²⁰ For more on how such a proposal could operate, see JOHN KETCHAM, NYC ELECTORAL REFORM: HOW TO INCREASE POLITICAL COMPETITION AND REVITALIZE LOCAL DEMOCRACY 19–20 (Manhattan Inst. 2022).

²¹ *Id.* at 24; see also Nat'l Inst. Standards & Tech, *Election Terminology Glossary: ranked choice voting*, (last visited Jan. 5, 2024), <https://pages.nist.gov/ElectionGlossary/>.

²² Libr. Cong., *Political Primaries: How Are Candidates Nominated?*, (last visited Jan. 5, 2024), <https://www.loc.gov/classroom-materials/elections/presidential-election-process/political-primaries-how-are-candidates-nominated/>.

²³ KETCHAM, *supra* note 20, at 24; DRUTMAN, *supra* note 16, at 59.

10 percent, according to a report by members of the American Political Science Association.²⁴ FFV general elections should, therefore, routinely feature competition from third-party and independent candidates.

And because of the relatively minor effects that IRV (again, the single-winner variant of ranked choice voting) has produced as a standalone reform, FFV's main mechanism to enable greater political competition is not IRV, but the top-five primary. In states that use a similar top-two primary system, such as in California, Washington, and Louisiana, only two vote-getters advance to the general election.²⁵ This avoids the "spoiler effect" present in plurality races with more than two candidates. That phenomenon results from voters who fear that voting for a long-shot but preferred candidate will give their least-preferred candidate a better chance of winning, thus motivating them to vote strategically for the least-objectionable candidate they believe is most likely to win.²⁶ The use of ranked choice voting in FFV general elections results from the need to avoid the spoiler effect in a general election with more than two candidates.

Alaska is currently the only state to use a variant of FFV, "Final-Four Voting" (in which the top-four vote-getters from the qualifying-round election advance), demonstrating that the system has been tried in a real-life setting. The results of its 2022 congressional special election have sometimes been characterized as unfair because the two Republican candidates together earned approximately 60 percent of first-preference votes, yet the Democratic candidate won after one of the Republican candidates was eliminated and his votes were reallocated to his supporters' second-ranked choices.²⁷ In truth, Alaska's voters have long expressed idiosyncratic political preferences, and party labels have not carried the same overwhelming significance as in other states.²⁸ FFV simply allowed voters to express these more nuanced preferences in a way that plurality voting does not. Voters in plurality races have an incentive to vote strategically for the perceived lesser of two evils offered by the major parties.

Of critical importance in FFV elections is the manner of treating party labels. These are not incompatible. I do not recommend allowing candidates' preferred party or even registered party to appear as their party designation. Under either circumstance, the party may not wish to be affiliated with a candidate that bears its label. Instead, I recommend that internal party mechanisms select one candidate to receive the party's endorsement for both primary and

²⁴ APSA PRESIDENTIAL TASK FORCE ON POLITICAL PARTIES, MORE THAN RED AND BLUE: POLITICAL PARTIES AND AMERICAN DEMOCRACY 144 (2023), <https://protectdemocracy.org/wp-content/uploads/2023/07/APSA-PD-Political-Parties-Report-FINAL.pdf>.

²⁵ See, e.g., Dan Ordorica, *Blanket Primaries or Ranked choice? Why Not Both?*, BOSTON U. SCH. L. DOME (Apr. 20, 2019), <https://sites.bu.edu/dome/2019/04/20/blanket-primaries-or-ranked-choice-why-not-both/>.

²⁶ Rachel Hutchinson, *Defining the Spoiler Effect*, FAIRVOTE (Jan. 25, 2023), <https://fairvote.org/defining-the-spoiler-effect/>.

²⁷ Igor Derysh, "Scam to rig elections": Tom Cotton fumes over Sarah Palin loss as GOP fans cry "stolen election," SALON (Sept. 1, 2022, 9:30 PM), <https://www.salon.com/2022/09/01/scam-to-rig-elections-tom-cotton-fumes-over-sarah-palin-loss-as-fans-cry-stolen-election/>.

²⁸ LEE DRUTMAN, MORE PARTIES, BETTER PARTIES 74 (2023), <https://www.newamerica.org/political-reform/reports/more-parties-better-parties/4-the-contemporary-choice-will-we-repeat-the-mistakes-of-the-past-or-build-something-better-for-the-future/> ("The three statewide elections in 2022 each yielded a different result. Alaskans elected a moderate Democrat to the House in its one statewide race, a moderate Republican to the Senate, and a conservative Republican to the governorship. This likely represents Alaska's somewhat idiosyncratic politics.").

general elections. This will encourage party-candidate cohesion, giving parties an incentive to support the charter revision, rather than stick with the status quo. This party-candidate cohesion would extend to the post-election legislature, reducing the risk that parties would suffer from defections by weakly aligned lawmakers that may imperil durable legislative coalitions.

Proportional Representation through the Single Transferable Vote

Other electoral systems would allow for proportional representation (PR) in the city council by electing multiple councilmembers from a smaller number of districts. PR-based electoral systems aim to reflect the composition of subgroups in the electorate within the elected body, such as by matching the share of a party's seats with the share of votes that a party receives in an election.²⁹ The number of candidates elected in each multi-member district can vary; with more seats per district, each candidate requires a smaller percentage of the vote to secure a seat. In a 51-member body, four or five members per district would likely be small enough to encompass adjoining neighborhoods with similar demographic compositions while allowing for better representation of political minorities.

STV, one option to achieve PR, uses ranked choice voting to elect multiple winners. New York City used this system between 1936 and 1947 for city-council elections.³⁰ Under STV, voters rank their preferred candidates as they do today. A quota is established to win a seat, and if a candidate's votes meet or exceed the quota, she wins the seat.³¹ Any "surplus" votes above the quota are distributed proportionally to the second-choice candidates selected by the winning candidate's supporters.³² (If multiple candidates cross the quota threshold, the order will start with the largest vote-getter.) If there is at least one additional seat to be filled with no candidate over the quota, the last-place candidate is eliminated, and her votes redistributed among her second choices. This process of elimination and redistribution repeats until a candidate reaches the threshold, until all remaining seats are filled.³³

Proportional Representation through Party Lists

Finally, proportional representation can be obtained without RCV. In fact, list-based proportional representation is the most common form of PR worldwide.³⁴ Unlike with STV-based PR, in which voters exclusively select representatives, list-based proportional representation systems count votes at the party level, and parties receive seats in proportion to their shares of the vote.³⁵ Those who win seats come from party-designated lists of candidates, set by internal party

²⁹ FairVote, *Fair Voting/Proportional Representation*, <https://archive3.fairvote.org/reforms/fair-representation-voting/> (last visited June 21, 2024).

³⁰ See generally JESSE DOCTER AND THEODORE LANDSMAN, *PROPORTIONAL REPRESENTATION IN NEW YORK: NEW YORK'S CITY EXPERIMENT WITH PROPORTIONAL REPRESENTATION AND MULTI-PARTY DEMOCRACY*, (2017).

³¹ Opavote, *Single Transferable Vote*, <https://www.opavote.com/methods/single-transferable-vote> (last visited June 21, 2024).

³² The number of surplus votes is the difference between the winning candidate's number of votes and the amount necessary per the quota.

³³ FairVote, *Proportional Representation Voting Systems*, https://www.fairvote.org/how_proportional_representation_elections_work (last visited June 21, 2024).

³⁴ *Id.* ("Over 80% of the PR systems used worldwide are some form of party list voting.")

³⁵ JACK SANTUCCI, *MORE PARTIES OR NO PARTIES: THE POLITICS OF ELECTORAL REFORM IN AMERICA* 7 (2022).

processes. This makes list-based PR systems fundamentally different from STV. As the political scientist Jack Santucci writes, “Elections in list systems are fundamentally contests among parties.”³⁶

Open-list PR systems, for example, give voters a choice from among a party’s listed candidates. Party committees or some other internal mechanism select the candidates who appear under the party’s label on the ballot, (and, in some systems, candidates’ order of appearance). Each voter would then select her preferred candidate under the party heading. For example, a single, non-ranked vote could count for both the candidate and his party.³⁷ Votes cast for any of a party’s candidates are summed up as the party vote, and seats are allocated to each party based on its proportion of the total vote. Individual candidates who receive the most votes from the party’s list are elected first, and then in descending order, until all of the party’s seats are filled.

Procurement Reform

New York City public procurement involves an extremely complex, time consuming, and bureaucracy-laden process. Many of the rules governing public procurement have not been updated to keep up with advances in technology and governance. Section 326 of the charter is a perfect example. Adopted in the 1989 charter revision, it requires that agencies hold a public hearing for proposed non-emergency contracts of over \$100,000 awarded by a method other than competitive sealed bidding.³⁸ This \$100,000 threshold has not changed in 35 years, even as inflation has eroded the value of that figure to less than half of its original purchasing power.

Despite the considerable public expense and the average of three weeks that these hearings add to the procurement process, they offer virtually no benefits. Members of the public hardly ever appear at them or submit comments. As Lisa M. Flores, Director of the Mayor’s Office of Contract Services, wrote in an op-ed earlier this year, “These hearings, modeled on the Board of Estimate Era, provide only the illusion of transparency and public engagement without delivering any of the benefits.”³⁹

This month, the state legislature passed legislation that would replace section 326’s public-hearing requirement with an online notice-and-comment rulemaking period.⁴⁰ If Governor Hochul does not sign this legislation into law before the Commission concludes its work, I respectfully suggest that the Commission consider proposing it to city voters.

The Covid-19 pandemic and ongoing migrant crisis have also demonstrated the need to safeguard the public purse during emergencies. The extensive use of emergency, non-competitive contracts for prolonged periods has contributed to wasteful spending. At the same time, the Executive must retain the flexibility necessary to respond to crises.

³⁶ *Id.*

³⁷ Kevin R. Kosar, *What is the one-vote system? A Q&A with Jack Santucci*, AEIDEAS, Oct. 25, 2021, <https://www.aei.org/politics-and-public-opinion/what-is-the-one-vote-system-a-qa-with-jack-santucci/>.

³⁸ N.Y.C. Charter § 326(a).

³⁹ Lisa M. Flores, *Buying into procurement reform*, CRAIN’S N.Y. BUS. (Apr. 15, 2024, 6:03 AM), <https://www.craigslist.com/op-ed/buying-procurement-reform-new-york-city>.

⁴⁰ S.B. S7383A, 2023 S., Reg. Sess. (N.Y. 2024).

Between 2020 and 2021, Mayor de Blasio oversaw at least \$6.9 billion in emergency contracts, utilizing over a hundred emergency orders to avoid the oversight of the regular procurement process.⁴¹ Much of the personal protective equipment purchased during the early days of the pandemic was defective, eventually selling unused for pennies on the dollar.⁴² A February 2023 report of an audit conducted by the city comptroller's office also found that the Department of Citywide Administrative Services failed to provide documentation for vendor background checks in 11 out of 59 procurements, representing about \$226 million in contract value from these unvetted vendors.⁴³ Of those 11, four provided defective goods or none at all.⁴⁴

During Mayor Adams's tenure, the city has entered into at least 340 unique contracts to procure \$5.7 billion in services and goods related to the migrant crisis, much through emergency, noncompetitive contracts also enabled by repeated emergency orders.⁴⁵ A February 2024 report by the city comptroller's office found that emergency noncompetitive contracts contributed to services billed to the city at wildly different rates, though almost universally inflated relative to non-emergency vendor contracts.⁴⁶ The report noted that hiring city employees at just one migrant shelter would have saved the city \$50 million compared with the emergency contract, even after accounting for the city's generous fringe benefits.⁴⁷ High-profile examples of migrant-services contractors with dubious qualifications, most notably DocGo, have been a recurring theme in news and opinion coverage of the migrant crisis.⁴⁸

Recent news reports have also revealed that City Hall made a "handshake" no-bid deal last September with DocGo to operate a migrant shelter at Austell Place in Long Island City.⁴⁹ This is an undesirable practice for several reasons. It masks the true costs of public emergencies, circumvents the legally required emergency procurement process, affords the public no transparency until finally uncovered, and prevents accountability. The city charter and PPB Rules afford the mayor wide latitude with emergency contracting in part to avoid such "handshake" arrangements. The charter should be amended to prohibit the disbursement of public funds on an emergency basis unless the vendor has executed an emergency contract with a procuring city agency.

⁴¹ See, e.g., Office of the N.Y.C. Comptroller, *Comptroller Stringer Files Suit Against Mayor de Blasio to Restore Full Charter-Mandated Oversight of Contracts and Procurement*, (July 6, 2021), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-files-suit-against-mayor-de-blasio-to-restore-full-charter-mandated-oversight-of-contracts-and-procurement/>.

⁴² See, e.g., Greg B. Smith, *Gear Purchased by City as Part of \$224 Million in COVID Contracts Auctioned Off for Just \$500,000*, THE CITY (Feb. 21, 2023, 5:07 AM), <https://www.thecity.nyc/2023/02/21/covid-bridge-vent-ppe-auction/>.

⁴³ OFFICE OF THE N.Y.C. COMPTROLLER, SPECIAL REPORT ON THE DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES' COVID-19 EMERGENCY PROCUREMENTS 4 (2023).

⁴⁴ *Id.*

⁴⁵ OFFICE OF THE N.Y.C. COMPTROLLER, ASYLUM SEEKER STAFFING CONTRACT COMPARISON AND REVIEW 1 (Feb. 27, 2024), <https://comptroller.nyc.gov/reports/asylum-seeker-staffing-contract-comparison-and-review/>.

⁴⁶ *Id.* at 1–2, 19–21.

⁴⁷ *Id.* at 2.

⁴⁸ See Nicole Gelinas, *How City Hall frittered away \$41M on no-bid migrant shelter deal with dodgy DocGo*, N.Y. POST (June 16, 2024, 10:41 AM), <https://nypost.com/2024/06/16/opinion/how-city-hall-blew-41m-on-docgo-migrant-shelter-deal/>.

⁴⁹ Craig McCarthy, *Dodgy DocGo quietly nabs \$41M no-bid deal to run migrant shelter same day city rejected separate contract due to mistreatment*, N.Y. POST (June 13, 2024, 5:23 PM), <https://nypost.com/2024/06/13/us-news/docgo-quietly-nabbed-nearly-41m-deal-to-run-queens-migrant-shelter/>.

Unlike for non-emergency contracts, the charter and Procurement Policy Board Rules (PPB Rules) do not require emergency contracts to be registered as a precondition for effectiveness.⁵⁰ The charter does, however, require agencies to submit awarded emergency contracts and related documentation to the comptroller's office "as soon as is practicable" for registration and an audit of the procedures used and basis for the determination of need for the emergency procurement.⁵¹ PPB Rule 2-12(e)(4) further stipulates that awarding agencies shall submit a copy of the emergency contract "within thirty days of award" to the comptroller.⁵² Yet as the comptroller's November 2023 report on emergency procurement makes clear, about 84 percent of the emergency contracts it reviewed were filed over 30 days after the contract start date, with 22 percent exceeding 180 days.⁵³

This situation should be rectified by including a 30-day contract submission requirement in the charter. The comptroller's office should then be required to make this information publicly available on its website, which it has already done through initiatives like Checkbook NYC and in various reports. Ensuring timely reviews by the comptroller's office would prevent unqualified businesses from continuing to do business with the city.⁵⁴ My proposed reform should not materially add to agencies' administrative burdens, as the requisite information should be available at the time the contract is awarded. Transparency would thus allow for public accountability while not directly impeding agencies' ability to respond to emergencies.

To correct for these issues, I recommend revising sections 315, 326, 328, 497, and related sections of the New York City Charter in the following ways:

- Section 326(a) shall be amended to repeal the public-hearing requirement. For proposed contracts awarded on a basis other than competitive sealed bidding, contracting agencies shall conduct an online seven-day notice-and-comment rulemaking procedure. The Procurement Policy Board shall have the authority to set the minimum contract value to trigger the requirement for an online notice-and-comment procedure.⁵⁵
- Section 328(d) shall be amended to require that for an emergency contract awarded under section 315 or an accelerated procurement as defined under section 326, the awarding agency shall, within thirty days of award, submit a copy of the contract to the comptroller for an audit of the procedures and of the basis for the determination of the need for an emergency or accelerated procurement.

⁵⁰ See N.Y.C. Charter § 315; PPB § 2-12(e).

⁵¹ N.Y.C. Charter § 328(d).

⁵² Procurement Pol'y Bd., Rule 2-12(e)(4) ("For contracts described in subdivisions (e)(1) and (2) above, the awarding agency shall, within thirty days of award, submit a copy of the contract (and such related materials as are included in subdivision (c) of this section) to the Comptroller for registration and for an audit of the procedures and of the basis for the determination of the need for an emergency or accelerated procurement.").

⁵³ OFFICE OF THE N.Y.C. COMPTROLLER, RETHINKING EMERGENCY PROCUREMENTS: A ROADMAP TO EFFICIENCY AND ACCOUNTABILITY 14 (2023).

⁵⁴ See *id.* at 15–16.

⁵⁵ For more on this proposal, see Flores, *supra* note 39.

- Within seven days of receipt, all awarded emergency contracts shall be listed publicly on the website of the New York City Comptroller. The information listed shall include, at a minimum: (a) the vendor name (including “doing business as” names); (b) the contract’s effective date; (c) the contract’s duration; (d) the total dollar amount of the contract; (e) the type of goods, services, or construction to be procured pursuant to the contract; (f) the name or code of the awarding agency; (g) the source selection method used; (h) the name (including “doing business as” names) of each subcontractor; and (i) the total dollar amount of each subcontract associated with the emergency contract. A digital facsimile of the awarded contract shall also be made publicly available on the comptroller’s website.
- Section 315 shall be amended to add that no public funds shall be disbursed to a vendor pursuant to an emergency contract with a city agency unless the vendor: (1) has undergone a background check administered by the procuring agency or the Department of Citywide Administrative Services; and (2) has executed an emergency contract with the procuring agency.
- In keeping with past charter revision recommendations by the city comptroller’s office,⁵⁶ charter section 497 shall be amended to require that the Office of Emergency Management incorporate emergency procurement into its emergency planning process,⁵⁷ and create an emergency procurement plan. This shall include making available comprehensive lists of “on-call” contracts from vendors who can supply goods and services in anticipation of an emergency.

Thank you again for the opportunity to provide this written testimony. I hope that the Commission finds it helpful as it considers ways to deliver greater public value in procurement and have New York City’s electoral system reflect the diversity of opinions that make our city the dynamic, vibrant place we’re fortunate to call home.

⁵⁶ See OFFICE OF THE N.Y.C. COMPTROLLER, A NEW CHARTER TO CONFRONT NEW CHALLENGES 87 (2018), <https://comptroller.nyc.gov/wp-content/uploads/documents/A-New-Charter-to-Confront-New-Challenges.pdf>.

⁵⁷ See N.Y.C. Charter § 497.