THE CITY OF NEW YORK

Local Law 87 of 2021 FAQs Regarding Implementation
March 25, 2022

A. Overview

On February 4, 2022, the City of New York released a document providing answers to frequently asked questions ("FAQs") related to Local Law 87 of 2021, codified in Administrative Code § 6-145, and the City's contract terms implementing the local law. The February 4, 2022 FAQ document, which primarily related to the effective date of Local Law 87, remains in effect. This document constitutes a second FAQ that provides additional clarity regarding the mechanics of the Local Law. Throughout this FAQ document, references to what Local Law 87 requires also indicate what the City's contract terms require. These contract terms are contained in the "LPA Rider." As explained in greater detail below, the local law has provisions related to required certifications and required attestations:

Local Law 87 requires an applicable contractor working under a New York City human services contract to provide a certification regarding its legal compliance history prior to contract award or renewal, and update such certification annually during the term of the contract. The contractor is also required to certify that it will comply with the terms of the contract related to Local Law 87.

Local Law 87 also requires that an applicable contractor or subcontractor working under such contract provide an attestation regarding the class or classes of employees covered by this law. Such attestation shall, as applicable, state that:

> (1) The contractor/subcontractor has entered into Labor Peace Agreements ("LPAs") with labor organizations;

(2) The contractor/subcontractor has not received notice from a labor organization seeking to represent such employees; or
(3) The contractor/subcontractor is engaging in LPA negotiations with labor organizations that have not yet concluded.

Local Law 87 requires that such attestation be provided 90 days after contract award or renewal, or 90 days after subcontractor approval, as applicable. The attestation process may be initiated again during the term of the contract or subcontract where a labor organization notifies the contractor or subcontractor, as applicable, that such labor organization seeks to represent such employees.

B. Applicability and Definitions

1. What subcontractors does Local Law 87 apply to?

Local Law 87 applies to a subcontractor, 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 services the principal purpose of which is the provision of human services pursuant to the City Service Contract. Local Law 87 applies only to first-level subcontractors; Local Law 87 does not apply to subcontractors of subcontractors. Local Law 87 does not apply to persons who enter into a contract with a City Service Contractor for which the principal purpose of the subcontract is to provide supplies, or administrative services, technical support services, or any other similar services to the City Service Contractor that do not directly relate to the performance of the human services to be rendered pursuant to such City Service Contract.

2. What is the definition of "administrative services" and "technical support services" mentioned in Question B.1 of this FAQ?

"Administrative services" and "technical support services" are services that support the operations of a City Service Contractor, such as human resources and information technology services, rather than directly addressing the needs of, or delivering services for, clients. As noted in question B.1, above, the requirements of Local Law 87 do not apply where a person enters into a contract with a City Service Contractor the principal purpose of which is to provide supplies, administrative services, technical support services, or any other similar services to the City Service Contractor that do not directly relate to the performance of the human services to be rendered pursuant to such City Service Contract.

3. What is a Labor Peace Agreement (LPA)?

An LPA refers to an agreement between an employer and a labor organization that represents or seeks to represent its employees, where such agreement requires that the employer, the labor organization, and the labor organization's members agree to the uninterrupted delivery of services

provided for in a City Service Contract and agree to refrain from actions intended to or having the effect of interrupting such services. Collective bargaining agreements ("CBAs") may also constitute LPAs for the purposes of Local Law 87, as further discussed in Questions C.8 and C.11 of the Certification and Attestation section of this FAQ.

LPAs may also include other terms agreed upon by the parties, such as terms relating to: (i) alternate procedures related to recognizing the labor organization for bargaining purposes, (ii) public statements, (iii) workplace access, (iv) the provision of employee contact information; and (v) a process for the productive resolution of disputes. These topics are illustrative and are not intended to specify or limit the terms that may be included in an LPA in order to achieve the goals of ensuring the uninterrupted delivery of services and avoidance of actions intended to or having the effect of interrupting such services.

4. What classes of employees are covered by Local Law 87?

The classes of employees covered by Local Law 87 are those employees of a City Service Contractor or City Service Subcontractor who directly render human services in performance of a City Service Contract. Therefore, an LPA that applies only to employees directly rendering human services in performance of a City Service Contract would constitute an LPA for the purpose of the attestation procedure.

Supervisory employees, volunteers, and individuals performing work as independent contractors are not covered under Local Law 87. Building service employees are also not covered by Local Law 87. Building service workers are workers who spend a majority of their work time performing work in connection with the care or maintenance of a building or property, and include but are not limited to, a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

C. Certification and Attestation

1. When do "award" or "renewal" occur for the purposes of determining when certifications and attestations are required under this law?

For the purposes of determining when certifications and attestations are required under Local Law 87, "award" or "renewal" occurs on the date that the contract or renewal has been signed by both the City Service Contractor and the contracting agency. Please note that this standard for determining "award" or "renewal" applies for Local Law 87 compliance purposes, when it has already been determined that Local Law 87 applies to the contract. This standard for determining "award" is not applicable for the purpose of determining which contract awards or renewals are

subject to Local Law 87. The topic of determining which contract awards or renewals are subject to Local Law 87 is discussed in the February 4, 2022 FAQ, mentioned above.

2. When does the certification need to be signed and submitted?

The certification must be signed before the contractor signs the contract or renewal and provided to the contracting agency as part of the contract when the signed contract or renewal is submitted to the contracting agency. The certification must be included in the contract or renewal and updated during the 30-day period following each anniversary of the effective date of the contact or renewal.

3. Do City Service Subcontractors need to sign certifications under Local Law 87?

No. While City Service Subcontractors are obligated to comply with the attestation procedure under Local Law 87, City Service Subcontractors are not required to sign certifications.

4. In the case of a retroactive or delayed contract, where a City Service Contract is signed after performance has begun, is the City Service Contractor responsible for the obligations associated with Local Law 87 compliance for the period prior to signature?

No. A City Service Contractor's or City Service Subcontractor's responsibilities relating to certifications and attestations, as applicable, are triggered by contract signature or subcontractor approval, as applicable.

For City Service Contracts, certification is required prior to award or renewal, and thereafter, on an annual basis during the 30-day period following each anniversary of the effective date of such City Service Contract, such certification must be updated. The certification requirement is not triggered by the beginning of contract performance.

For City Service Contracts and City Service Subcontracts, attestation requirements are triggered by contract award or renewal (i.e., the date of signature) or by subcontractor approval, as applicable. This obligation is not triggered by the beginning of contract performance. For City Service Contracts, attestation is required no later than 90 days after award or renewal, as applicable, and then each time a labor organization notifies the City Service Contractor in writing of an interest in their representation of covered workers. With respect to a City Service Subcontract, attestation is required no later than 90 days after the subcontractor approval date, and then upon a labor organization notifying the contractor in writing of the labor organization's interest in representing covered workers.

5. **With respect to the certification, should a City Service Contractor include the business address or personal address of their Chief Executive Officer ("CEO")?**

   The Certification requires the business address of the CEO. The personal address of the CEO is not required.

6. **What must a City Service Contractor do to comply with Local Law 87's requirement related to disclosure of violations of federal, state, or local laws regulating labor relations?**

   Except as otherwise provided in section seven below, a City Service Contractor must include all the information required under Admin. Code § 6-145(c) on each certification that it submits. Such information includes, but is not limited to, a record of any instances during the preceding five years in which (a) such City Service Contractor has been found by a court or government agency to have violated federal, state, or local laws or rules regulating labor relations; and (b) such finding results from a judicial action, administrative proceeding, or investigation of such City Service Contractor in regard to such laws or rules that was initiated by a government body.

   For the purposes of Local Law 87 certifications, labor relation laws that trigger disclosure include Local Law 87 itself, laws that establish minimum workplace standards, laws that govern employers' obligations regarding employee health and safety, labor laws that require the provision of information or notices to employees, the National Labor Relations Act, the Labor Management Relations Act, and any other laws that govern collective bargaining.

7. **If a City Service Contractor has filed accurate and up-to-date PASSPort questionnaires, does that City Service Contractor need to submit a certification?**

   Even if a City Service Contractor has an accurate and up-to-date PASSPort questionnaire on file with the City, such City Service Contractor must still submit a certification pursuant to Admin. Code § 6-145(c). However, in lieu of disclosing its violation history, as required by Admin. Code § 6-145(c)(1)(c), such City Service Contractor may instead check the box on the certification form indicating that the City Service Contractor certifies that the City Service Contractor's electronic PASSPort questionnaires and all supplemental information submitted pursuant to Admin. Code § 6-116.2 are accurate and up to date as of the date of the Local Law 87 certification, and contain all of the information required under Admin. Code § 6-145(c)(1)(c), as described in question six of this Certification and Attestation section, above.

   Use of this PASSPort checkbox option does not relieve a City Service Contractor of the obligation of completing all other aspects of the certification not related to the disclosure of violation history pursuant to Admin. Code § 6-145(c)(1)(c).

8. How will a contractor know when a labor organization "seeks to represent" a group of workers for Local Law 87 purposes?

For the purposes of triggering Local Law 87's requirements, a labor organization "seeks to represent" covered employees of a City Service Contractor performing one or more classes of labor under a City Service Contract when a duly authorized representative of the labor organization transmits a writing indicating an interest in entering into an LPA.

The writing must be sent to either: (i) the chief executive officer of the contractor; or (ii) the business address or e-mail address provided for in section 14.04 of Appendix A of the City Service Contract.

For City Service Subcontractors, notice must be provided to either (i) the chief executive officer of such City Service Subcontractor; or (ii) the business address or e-mail address set forth pursuant to the notice provisions of the City Service Subcontract.

Where such notice is provided to a City Service Subcontractor, the labor organization must also inform the corresponding City Service Contractor at one of the two addresses listed above.

Each notice must reference Local Law 87 and explicitly state that the labor organization seeks to represent covered employees of the City Service Contract or City Service Subcontractor, as applicable.

Where a labor organization seeks to represent covered employees after the 90-day post award or renewal period, the labor organization must also send a copy of such notice to the contracting agency, as well, at the business address or e-mail address provided for in section 14.04 of Appendix A of the City Service Contract.

For the purpose of Local Law 87's attestation procedure, as further provided in question 11, below, a CBA may constitute an LPA with respect to the labor organization party to the CBA or the class of employees covered by such CBA. Therefore, a City Service Contractor or City Service Subcontractor with a "qualifying CBA," as such term is defined in Question C.11, below, should sign the attestation that they have an LPA for that group of workers, treating the labor organization as having sought to represent those workers.

9. What are the timeframes in which a labor organization's efforts to represent the employees of a City Service Contractor or City Service Subcontractor trigger the attestation requirement?

With respect to a City Service Contractor, a labor organization may trigger the attestation procedure at any point after contract signature and before the conclusion of the contract.

With respect to a City Service Subcontractor, a labor organization may trigger the attestation procedure at any point after subcontractor approval and before the conclusion of the subcontract.

10. Does Local Law 87 require a covered employer that has executed an LPA with a labor organization to collectively bargain with that labor organization?

No, Local Law 87 does not affect whether or not a covered employer is legally obligated to bargain collectively with a labor organization. The execution of an LPA, on its own, does not require an employer to bargain collectively with the labor organization with which it has executed the LPA.

11. How is the attestation procedure different for City Service Contractors and Subcontractors that are already unionized?

An effective CBA will constitute an LPA for the purpose of the attestation procedure with respect to the class of employees covered by such CBA, if it contains provisions requiring the uninterrupted delivery of services to be rendered pursuant to the City Service Contract and prohibiting actions intended to or having the effect of interrupting such services ("qualifying CBA"). However, a CBA must still be recorded on an attestation form when a qualifying CBA is in place, pursuant to the procedure set forth in Local Law 87. Where a qualifying CBA is already in place for a class of covered employees, a City Service Contractor or City Service Subcontractor is not required to follow the attestation procedure upon receipt of notice from another labor organization seeking to represent the same class of employees covered by the CBA.

12. Is a City Service Contractor or City Service Subcontractor required to follow attestation procedure with multiple labor organizations seeking to represent the same covered employees?

Yes. A City Service Contractor or City Service Subcontractor is required to follow the attestation procedure with any labor organization seeking to represent covered employees working under the contract or subcontract. There is one notable exception to this requirement: where a qualifying CBA is already in place for a class of covered employees, a City Service Contractor or City

Service Subcontractor is not required to follow the attestation procedure upon receipt of notice from another labor organization seeking to represent a class of employees covered by the CBA.

13. What happens if a City Service Contractor or City Service Subcontractor attempts to comply with the obligations related to the submission of attestations but such efforts are not successful?

An agency will consider a City Service Contractor's or City Service Subcontractor's good faith efforts in evaluating whether a Contractor or Subcontractor has complied with the requirements of Local Law 87. An agency will not find the Contractor or Subcontractor to be in breach of contract or violation of Local Law 87 for a failure to submit a signed attestation if the agency determines that the Contractor or Subcontractor has demonstrated that the Contractor or Subcontractor attempted to present an accurate attestation to a labor organization in a timely manner and otherwise exercised good faith efforts in order to obtain a fully executed attestation, but nonetheless was unsuccessful.

In evaluating whether such City Service Contractor or City Service Subcontractor has exercised good faith efforts, the City shall consider the City Service Contractor's or City Service Subcontractor's efforts to obtain execution of an attestation by labor organizations that seek to represent the City Service Contractor's or City Service Subcontractor's covered employees, and all relevant facts and circumstances. For example, if a labor organization seeking to represent the covered employees of a City Service Contractor or City Service Subcontractor fails to respond to a Contractor or Subcontractor's good faith attempts to initiate negotiations toward an LPA in order to obtain the signature of the labor organization on an attestation, that Contractor or Subcontractor would not breach the attestation requirements of Local Law 87.

14. Are enforcement actions under Local Law 87 subject to the Contract Dispute Resolution Board procedures?

No. Enforcement procedures initiated by a contracting agency pursuant to Admin. Code § 6-145(f) are not subject to the procedures set forth under Procurement Policy Board Rule § 4-09. Any City Service Contractor or City Service Subcontractor affected by such order, determination, or other disposition may seek review of such order, determination or other disposition solely in the form of a challenge, filed within four months of the date of the contracting agency's order, determination, or other disposition, in a court of competent jurisdiction of the state of New York, county of New York, pursuant to article 78 of the civil practice law and rules.