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News Alert for NYC Vendors: Two New Whistleblower Laws

On June 20, 2012, Mayor Bloomberg signed into law two new sets of whistleblower requirements applicable to NYC contractors and subcontractors.

The first bill passed into law¹ prohibits City contractors and subcontractors from taking any adverse personnel action against any officer or employee who reports corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of such contractor or subcontractor which concerns a City contract. The law specifically enumerates that such protected reports may be made to the Commissioner of the NYC Department of Investigation. Reports may also be made to a City Councilmember, the Public Advocate, the Comptroller, the City Chief Procurement Officer, the agency Commissioner, or the agency Chief Contracting Officer, who will refer the report to DOI. A covered contractor is any person or business entity that is a party or proposed party to a City contract in excess of \$100,000. A subcontractor who is a party or proposed party to a contract with a covered contractor in excess of \$100,000 is also covered. Covered contracts and subcontracts in excess of \$100,000 must contain a provision regarding these requirements.

The new law will also allow an officer or employee of a covered City contractor or subcontractor who has been subject to such retaliation to sue his or her employer. A court may award relief, including (1) an injunction to restrain the retaliation, (2) reinstatement to the position or an equivalent position, (3) reinstatement of fringe benefits and seniority, (4) payment of two times back pay, plus interest, and (5) compensation for any special damages, including attorneys fees.

The second bill² requires City contractors and subcontractors having contracts valued in excess of \$100,000 to post information notifying their employees of their whistleblower protection rights and the process for reporting misconduct to the NYC

¹ Introductory Number 816-A

² Introductory Number 479-A

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Department of Investigation. The new posting must be placed in a prominent and accessible place on any site where work pursuant to such contract or subcontract is performed. The law takes effect 120 days after its enactment into law (October 18, 2012), provided that the City takes such measures necessary for the implementation of the new law (i.e., promulgation of rules). It will apply to bids and proposals for contracts solicited after such date, and such City contracts should include provisions regarding the new law's requirements.