

Tuesday, 23 March 2010

## **Bill Byrd's Testimony on the Procurement Reform Act of 2010**

Good morning!

I am Bill Byrd, President of Business Promotion Consultants, Inc., a Certified Business Enterprise in the District of Columbia. I am also a former member of former Councilmember Harold Brazil's Procurement Reform Task Force. This was an all-volunteer group that in the 1995-1996 timeframe analyzed DC Government procurement operations, produced a report, and then in conjunction with then-Mayor Barry's representatives, formed a legislative drafting committee that produced amendments to the Procurement Practices Act of 1985 that created OCP. As a result of my participation in that group's efforts, I've been an OCP watcher since OCP became OCP. From that perspective:

Chief Procurement Officer David Gragan made some revealing comments in a recent meeting with vendors, held to obtain their comments on this legislation. During the meeting, Mr. Gragan commented that it was time to overhaul the Procurement Practices Act of 1985 and consolidate the various amendments into one integrated, updated law. This legislation reflects his vision of the direction in which he wants OCP to go.

Another clue regarding the course that CPO Gragan has mapped out for OCP is his recent "good news" press release regarding the reduction in OCP FTEs from 142 to 118.

This reduction in force, the enhanced cooperative purchasing authority sought in the legislation, and the legislation's various attempts to reduce competition, indicate that the CPO wants to do more with less, and the way he wants to do that is to reduce staff and outsource the procurement decisions to cooperative purchasing bodies way outside of the Greater Washington Area.

This is, arguably, more efficient procurement, which is one of his goals. Of course, the most efficient procurement process is to dispense with competition all together, and just award sole-source contracts to the organization who was providing the goods or services previously, or to the largest company around, or better yet, to the one you like best. That is the way clubs do it. Clubs are private entities. They have no public procurement ethic. But Washington DC is not a club. It is the nation's capital, and arguably, the capital of the free world. It should be the model for municipal public

procurement practices. Its' original procurement regulations were the Federal Acquisition Regulations (i.e, the F.A.R.). The F.A.R. remains the model for rigorous public procurement. It supports many competitors, and socio-economic programs designed to involve minorities in the public procurement process.

The CPO advised that some points in this legislation were based on the American Bar Association's model procurement code. I submit that the ABA's model procurement code was designed to help any Podunk have a legally sufficient procurement code. Wikipedia defines "Podunk" as "a place of small size... in the middle of nowhere".

We, the residents, businesses, and Government of the District of Columbia, need more than that. In general, I urge the Counsel to stay true to the F.A.R. for procurement principals governing procurement policy in the District of Columbia.

Also, in general, I urge those members of the Counsel who played high school and/or college football to remember their coaches' advice, that razzle dazzle plays don't mean anything if you can block and tackle.

Procurement is like football. Fundamental skills are paramount.

I applaud the CPO's interest in establishing a Procurement Training Institute under Title II - Procurement Organization, Section 209, Procurement Training Institute. The Procurement Reform Task Force, of which I was a member, recommended the concept of "centralization", which became OCP, in part to facilitate the development of a specific and homogeneous procurement skills set for all procurement professionals in the Government of the District of Columbia. This Procurement Training Institute should accomplish that end.

However:

The enhanced cooperative purchasing initiative under Title XI - Miscellaneous Provisions, Section 1101, cooperative purchasing authorized should be deleted. I believe current law limits cooperative purchasing to the Council of Governments in the Greater Washington Area. Any greater geographic area will have a negative effect on small and minority businesses in Washington DC.

The use of reverse auctions under Title X - Electronic Transactions, Section 1003, Electronic auctions, should be severely limited. At one time, electronic auctions were thought to be the wave of the future. Practical experience has shown that, throughout the country, they are being used less and less; and have valid uses in only limited applications. The current legislation authorizes the CPO to use reverse auctions whenever he chooses.

The requirement to post a 5% protest bond under Title IX - Legal and Contractual Remedies, Section 914, Protest procedures, Paragraph "(h)" should be deleted. This

provision disincentivizes small and minority firms from protesting what they believe may have been unfair procurement practices.

The broadened use, beyond the selection of architectural and engineering or construction firms, of the concept of qualifying bidders or offerors prior to soliciting bids or proposals should be deleted throughout this legislation. It reduces the workload on OCP but it also eliminates the opportunities for small and minority firms in DC to compete.

Title II - Procurement Organization, Section 201, Office of Contracting and Procurement; authority, seems to move OCP from its independent status to become a tool of the Mayor's administration. This should be prevented, notwithstanding any real or perceived friendship between this CPO and the Mayor. Prior to my work with the above referenced Procurement Reform Task Force, the media frequently reported problems whose root cause was the manipulation of procurement operations for political ends. The Procurement Reform Task Force's recommendation for OCP's independence was intended to separate procurement from politics. The tenure of past Chief Procurement Officers may suggest that we have not yet achieved that separation, but I believe it is a noble state worth pursuing, and the ability to achieve that separation should not be made more difficult through legislation. It is hard enough to achieve through personal integrity.

There are many additional points on which I would like to have prepared testimony; but I am out of time.

Thank you for this opportunity to get some opinions off my chest.