
Government of the District of Columbia



Office of Contracting and Procurement

Public Oversight Roundtable
On

Bill 18-610, the "Omnibus Procurement Reform Amendment Act of 2010"
and
Bill 18-635, the "Procurement Reform Act of 2010"

Before the
Committee on Government Operations and the Environment
Mary Cheh, Chair
Council of the District of Columbia

Testimony of
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John A. Wilson Building
1350 Pennsylvania Avenue, NW
Room 500
Washington, DC 20004

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Introduction. Good morning Chairperson Cheh and members of the Committee on Government Operations and the Environment. I am David P. Gragan, the Chief Procurement Officer (CPO) for the District and the Director of the Office of Contracting and Procurement (OCP). Thank you for the opportunity to present testimony on Bill 18-610, the "Omnibus Procurement Reform Amendment Act of 2010," and Bill 18-635, the "Procurement Reform Act of 2010." My prepared testimony will be posted on my agency's Website after this hearing.

Need for Procurement Reforms. When I was interviewed for this job by Mayor Fenty in March 2007, I was asked whether I had read the GAO report recommending specific reforms for OCP. That report was just one of many reports over the years which have pointed out areas within OCP needing improvement. From my conversations with the Mayor, and from the GAO and other reports, it was clear to me that implementing reforms would be my top priority when I accepted the job as the District's CPO.

Bill 18-635, the Administration's procurement reform legislation, is one of our key efforts to propel the agency and the District's procurement process forward. It is undoubtedly one of the Administration's most important goals, and I am grateful to have the opportunity to be part of this very important process.

Overview of Administration Bill 18-635. There are two bills before us today broadly addressing elements of the procurement process. My testimony will focus on the Administration's Bill, 18-635, which I believe streamlines our procurement code and makes the process more efficient and effective.

Over the past 18 months as we crafted this bill, we researched the ABA Model Procurement Code, collected best practices of many state and local governments, and explored issues with other procurement professionals inside and outside the District. This research, as

well as my experience as the CPO of two other jurisdictions and as a consultant to a number of governments on procurement best practices, allow me to say with confidence that this bill is a substantive improvement over the Procurement Practices Act which it will replace.

Specifically, our bill would:

- (1) Strengthen the CPO's authority by expanding the procurement code's applicability;
- (2) Revise the proposal evaluation process for competitive sealed proposals;
- (3) Update and expand the contracting methods for construction contracts;
- (4) Narrow the definition of a sole source contract;
- (5) Create a separate section for the DC Supply Schedule; and
- (6) Establish a common-sense list of purchases that would be exempt from competition.

Competitive Sealed Proposals. The first section of the bill that I will discuss deals with competitive sealed proposals and the negotiation process. Currently, the PPA requires a contracting officer to conduct negotiations under the competitive sealed proposal process once proposals are received. The contracting officer is required to negotiate with each and every responsible offeror in a competitive range, which makes the negotiation process more time-consuming, can unnecessarily prolong the award process, and adds no discernible value.

The Procurement Reform Act would allow that existing proposal evaluation process to continue, but also would add alternatives. The first alternative would authorize a contracting officer to issue a request for qualifications to prospective offerors, rank respondents from most qualified to least qualified, and then request a proposal from at least the top 2 offerors. The second alternative starts with a traditional request for proposals, but then allows the contracting officer to negotiate with the highest ranking offeror after proposals are received and ranked. If negotiation with the highest ranked offeror is unsuccessful, the contracting officer would

negotiate with the second highest ranked offeror, and then the third, and so on until an award is made.

Both alternatives have merit because the District would not be required to spend time and money negotiating with offerors who realistically have little chance of receiving an award. More important is the fact that we believe the adoption of a two-step process would make contract award more efficient, while maintaining fairness and without jeopardizing the integrity of our process.

The bill also would incorporate new procurement methods for construction contracts recommended by the ABA Model Procurement Code. The new methods include construction management at risk; design-bid-build; design-build-operate-maintain; and design-build-finance-operate-maintain, each of which is a commonly-used construction contracting method throughout the United States.

Sole Source Procurements. Bill 18-635 addresses the issue of sole source procurements by narrowing the definition. The current procurement code allows a sole source contract to be awarded when the CPO determines in writing that any of the following five conditions exist:

- (1) There is only 1 source for the required commodity, service, or construction item;
- (2) The contract is for the purchase of real property or interests in real property;
- (3) The contract is with a vendor who maintains a price agreement or schedule with any Federal agency (as long as the contract executed does not authorize a price higher than the one contained in the contract between the federal agency and the vendor);
- (4) The contract is with a vendor who agrees to adopt the same pricing schedule for the same goods or services as that of a vendor who maintains a price agreement or schedule with

- any Federal agency (as long as the executed contract does not authorize a price higher than the one contained in the contract between the federal agency and the vendor); or
- (5) Contracts for the purchase of commodities, supplies, equipment, or construction services that would ordinarily be purchased on a competitive basis when an emergency has been declared.

The Procurement Reform Act would revise the sole source definition by deleting the language related to the purchases of real property or interests in real property since real estate has always been acquired by the Department of Real Estate Services rather than OCP. It would also move the language authorizing the DCSS to a new section created solely for the supply schedule program. In other words, when this bill is passed, a sole source contract would exist if there were only one source for the required commodity, service, or construction item, or if the purchase were being made pursuant to a declared emergency.

DC Supply Schedule. As previously mentioned, this bill would create a separate section authorizing the DC Supply Schedule program. This change is needed since contracts awarded under the supply schedule program simply are not true sole source procurements. The bill would not change the current DC Supply Schedule processes for receiving proposals, awarding contracts, or placing orders.

Updating Competition. The last section of the bill that I will discuss deals with competition. Throughout the process of crafting this legislation, we worked hard to improve the balance among competition, best value, transparency, efficiency and equitable treatment of our trading partners. To make the procurement process more efficient and sensible, the bill proposes a very explicit list of purchases that would not and should not require competition. For example, this list would include:

- (1) Dues and memberships fees;
- (2) Postage;
- (3) Event registration fees;
- (4) Subscriptions;
- (5) Copyrighted material;
- (6) Maintenance and support of proprietary software;
- (7) Public transportation; and
- (8) Contracts for which the vendor or provider is established by law.

Concerns of the Local Business Community. The procurement-related challenges we face are not unique to the District. Like other jurisdictions, we have to balance the needs of our local business community and our client agencies with the need to procure efficiently and effectively while ensuring the highest level of integrity in the process so that we can ensure that public confidence in the contracting process is well-placed.

I have tried to be very open to vendor questions and concerns with the procurement reform efforts underway. In fact, I realized even before listening to the public witnesses this morning that there are concerns within our vendor community. I am happy to continue to address these concerns as we go forward in reforming the procurement process. I also have been as collaborative as possible with all the stakeholders in the procurement process. My staff and I met a number of times with valued members of our local business community to discuss their questions and concerns with this bill and the Procurement Efficiency Act. I anticipate that this bill and all of our reforms will make the system work more efficiently for everyone involved in the procurement process, while properly respecting the value of taxpayer dollars which I know the public expects us to spend wisely.

To institutionalize this open forum with our suppliers, I recently created the Vendor Advisory Council comprised of representative businesses which will meet on a scheduled basis to discuss vendor matters and make recommendations to the CPO. I created a similar group when I served as the CPO for the State of Texas, and know that such a group can be a great help in understanding the impact of our actions on the vendor community.

Conclusion. Let me close by reading to you my agency's mission statement. Our mission is to "partner with vendors and District agencies to purchase quality goods and services in a timely manner and at a reasonable cost while ensuring that all purchasing actions are conducted fairly and impartially." I believe that the reforms in both the Council's Bill 18-610 and the Administration's Bill 18-635 are consistent with OCP's mission, and will benefit everyone with an interest in the process. I appreciate the Council's continued support in these efforts, and look forward to working with you as we strive to achieve the vision of making this the model municipal procurement operation in the United States.

Madam Chair, this concludes my testimony. I would be happy to answer any questions.

