

**COUNCILMEMBER MARY M. CHEH, CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS AND THE ENVIRONMENT**

“Bill B18-610, the “Omnibus Procurement Reform Amendment Act of 2010,” and
Bill B18-635, the “Procurement Reform Act of 2010.”

MARCH 23, 2010

TESTIMONY
JOHNNIE WALKER

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Good morning Chairperson Cheh. AFGE will discuss two bills, bill B18-610, the “Omnibus Procurement Reform Amendment Act of 2010,” and on bill B18-635, the “Procurement Reform Act of 2010.” currently pending before this Committee. Both bills are intended to modify the requirements of the existing D.C. Procurement Practices Act, D.C. Code § 2-301.01, *et seq.* (the Procurement Act). We are here today to make specific recommendations regarding possible revisions to each bill, as well as to offer a separate draft bill for submission to the Committee.

The bills make substantial changes to the Procurement Act, including many of the technical procurement provisions.

Bill 18-635 would replace the Procurement Practices Act of 1985 with a revised procurement law. This is the bill introduced by Chairman Vincent Gray on behalf of the Mayor. It is designed to replace the current Procurement Act.

We do not support this bill. For one, it appears that B18-635 eliminates the current section 2-301.05b, which pertains to privatization contracts and procedures requirements. Thus, we think that while the bill may improve procurement practices with respect to contractors, the bill ultimately diminishes the already weak rights of bargaining unit employees when it comes to privatization. What both bills seem to lack, however, are any enhanced protections for District employees.

Overall, both bills represent some change for the better. They institute tighter controls on which contracts must be submitted to the Council, what the Council must do in order to approve the submitted contracts, and what the consequences are for contracts entered into in violation of the mandated requirements.

For example, section 202(b)(1) of B18-635 the Mayor's bill changes current D.C. Code § 1-204.51(b) to provide that multi-year contracts over one million dollars must be submitted to the Council, and that absent a resolution affirmatively approving a multi-year contract, it will be deemed disapproved. This strikes us as a positive change, given that previously no action by the Council meant that the contract was approved. We also recommend for insertion into the Council bill 18-610 the following change to DC Code section 1-204.51:

(b) Contracts exceeding certain amount.

(1) In general. -- No contract involving expenditures in excess of \$1,000,000 during a 12-month period may be made unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council).

(2) Approval. -- For purposes of paragraph (1) of this subsection, a proposed contract shall not be deemed approved by the Council unless, during the 45-calendar day period beginning on the date the Mayor submits the contract to the Council (excluding Saturdays, Sundays, Holidays and Council recess periods), the Council adopts a resolution approving the proposed contract.

The above change eliminates former subsections (b)(2)(A) and (b)(2)(B) in favor of a single method of approval for contracts calling for over one million to be spent in a 12-month period.

What both bills seem to lack, however, are any enhanced protections for District employees. One thing that both bills would benefit from, for example, is language clarifying that District employees may bring a court action to contest violations of procurement requirements. Consequently, we have aimed our recommendations at these deficiencies.

Contained in AFGE Draft Bill: This draft ups the savings threshold to 20% (i.e. the District must demonstrate 20% savings rather 5% before contracting out), which if adopted is more protective of employees. The revisions add, or fleshes out an administrative right of appeal. Our preference, evidenced as discussed, would be for a court right of action rather than adding layers of administrative review. This is especially so considering the great difficulty most of the District's adjudicative administrative agencies (e.g., PERB and OEA) have in hearing and deciding cases.

In the end, we believe that the two major changes that would enhance the bills for bargaining unit employees would be: 1) recognition that the bills do not override collective bargaining agreements; and 2) the express creation of a private right of action for District employees harmed by a violation of the procurement requirements. We would like to present these amendments in a draft form to your committee for consideration.